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July 2016

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The journal of The Hong Kong  
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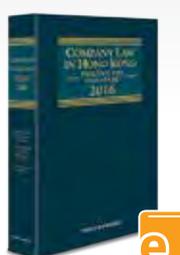
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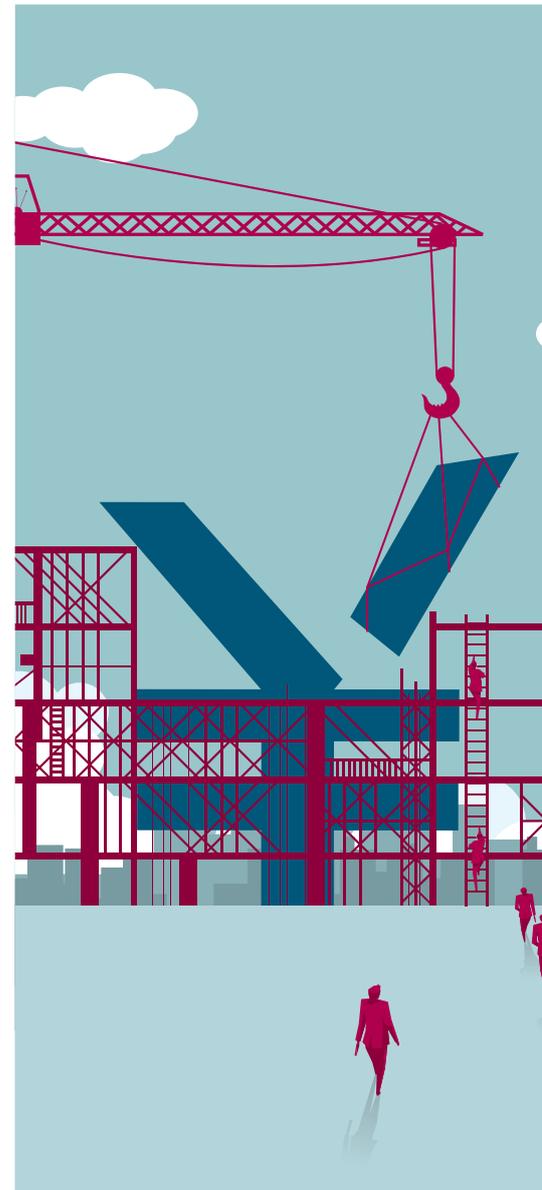
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This year is the 20th anniversary of the launch of our Beijing Representative Office (BRO), which was established in September 1996. Reading through the pages of this special 'China' edition of our journal, it strikes me just how far we have come in the intervening two decades. Back then, the Hong Kong market was host to only a handful of Mainland enterprises – today, such enterprises account for over 60% of Hong Kong's market capitalisation and investors have access to the stock markets on both sides of the border via the Stock Connect programme.

Our Institute took the view, well before the launch of the BRO, that it can and should play an integral part in this remarkable story, and in my President's Message this month I would like to take you through some of the ways in which we have been able to promote the development of good corporate governance at both the theoretical and practical levels throughout China.

First and foremost, we have focused our efforts on supplying high quality and relevant training. We set up our Affiliated Persons (AP) programme for the board secretaries of H-share companies listed in Hong Kong in 2004, and since that date we have held over 40 enhanced continuing professional development (ECPD) seminars and workshops in Hong Kong and the Mainland to help our APs deepen their knowledge and practical skills. These events have proved to be very popular, and not only with our APs and their teams, but with board directors, senior executives and other professionals.

## China anniversary

Our Institute has also expanded the services we provide to Mainland students. We set up our first International Qualifying Scheme (IQS) examination centre in Beijing in 2007 and added a second centre in Shanghai in 2015. As of May 2016, a total of 156 candidates have registered for the IQS examination, and 22 have since qualified as Chartered Secretaries recognised both internationally and by Hong Kong regulatory bodies. Given the scarcity of qualified company secretaries on the Mainland recognised by the Hong Kong Exchange, this route to the Chartered Secretary qualification will become increasingly important in the years ahead.

In addition to providing training, our Institute also provides a networking forum for our APs. In a country the size of China, our Institute set up regional networks around the country (in Beijing, Shanghai, Shenzhen, Guangzhou, Chongqing and Chengdu) and hosting conferences for board secretaries from these regions. These Regional Board Secretary Panel meetings help to strengthen the ties between our Mainland members and also helps focus attention on the issues specific to them.

Over the last two decades, our Institute has also dedicated itself to becoming a thought leader on regulatory and corporate governance issues in the Mainland. In 2013 we published *The Guidelines on Practices of Inside Information Disclosure of A+H Companies*. In 2014 we joined forces with the Board Secretary Special Committee of the China Association for Public Companies to set up a task force to study the need for amendments to *The Articles of Association of Companies Seeking a Listing Outside the PRC Prerequisite Clauses*.

These achievements would not have been possible without our ever closer working relationship with our stakeholders on the Mainland. An important part of my role as President of the HKICS is to attend regular visits to relevant government departments and regulators every year to build our collaborative relationship with these

stakeholders. Since 2011, we have signed memorandums of cooperation with the Shanghai and Shenzhen stock exchanges, the China Association of Public Companies and the Insurance Association of China, paving the way for further cooperation with these bodies on corporate governance research, training, communication and other professional services.

No assessment of our Mainland work would be complete, however, without a mention of how all these developments impact our Hong Kong members. There is an increasing demand for corporate governance professionals in Mainland China and our members are well placed to seize these opportunities. Even if they are not directly involved in China business though, professional practitioners in Hong Kong need to keep a close eye on Mainland developments and our Mainland work is equally focused on ensuring that our Hong Kong members are well informed about the corporate and regulatory environment in the Mainland.

Our growing network of senior board secretaries and key stakeholders in government and regulatory bodies helps our members to stay connected to the fast-changing governance landscape in Mainland China. The benefits of this can be seen clearly in our Corporate Governance Conference, which will be held on 23 and 24 September this year. The second day of this forum will be devoted to Mainland China related themes and I urge you to take a look at the conference website ([www.hkics.org.hk/CGC2016](http://www.hkics.org.hk/CGC2016)) for the impressive line-up of speakers and themes we will be addressing.

Needless to say, our journal also plays an important part in this effort and this special 'China' edition of CSj is an excellent demonstration of that. Happy reading!

Ivan Tam FCIS FCS

# 中国代表处二十周年志庆

公会北京代表处于1996年9月成立，今年庆祝20周年。我通读本期「中国特刊」后，深切感受到公会过去20年来在内地走过的道路。回想当年，香港市场上的内地企业寥寥可数；时至今日，内地企业占香港股票交易的市值已超过六成，投资者亦可透过「互联互通」，投资两地的股市。

北京代表处尚未成立之前，公会已相信我们会在中国发展的进程中有所作为，并扮演重要的角色。在本期会长的话中，我将概述公会如何在中国内地促进有关良好公司治理的理论和实务发展。

首先，公会一直以来致力提供优质的相关培训，并于2004年为在香港上市H股公司的董事会秘书设立联席成员计划。公会目前已经在香港和中国内地共举办了40多期强化持续专业发展讲座与工作坊，协助联席成员提升其专业知识和实务技巧。这些活动很受欢迎，不仅有联席成员及其工作团队参加，也吸引了公司董事、高级行政人员和其他专业人士参与。

近年，公会也拓展了为内地学员提供的服务。公会在2007年于北京开设了内地首个国际专业知识评审考试 (IQS) 的考点，其后又于2015年在上海设立内地第二个考点。截至2016年5月，共有156名人士于内地注册参加IQS考试，22人已取得国际和香港监管机构认可的特许秘书专业资格。由于目前获得香港交易所认可的内地合资格特许秘

书较为稀缺，相信内地业内人士通过以此方式获取特许秘书专业资格将变得日益重要。

除了提供培训外，公会也为联席成员提供交流的平台。中国内地地域辽阔，公会在多个城市（北京、上海、深圳、广州、重庆及成都）设立了地区董事会秘书小组，为当地的董事会秘书举办研讨会，以就相关议题进行交流。这些区域会议加强了我们的内地联席成员的沟通，并提高他们对与其息息相关议题的关注。

20多年来，公会亦致力在内地规管及治理事宜上，发挥其专业引导作用。2013年，公会出版了《A+H股公司内幕信息披露实务指引》；2014年，公会与中国上市公司协会董事会秘书委员会共同成立工作小组，针对《到境外上市公司章程必备条款》的修订进行调研。

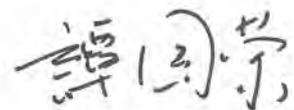
以上的工作成绩，得益于公会与内地相关各方的紧密联系与合作。作为公会会长，我其中一项重要工作，就是每年定期拜访内地相关政府部门和监管机构，促进合作关系。自2011年以来，公会已与上海及深圳证券交易所、中国上市公司协会及中国保险行业协会签订合作备忘录，以加强与这些机构在公司治理研究、培训、沟通及其他专业服务方面的合作。

谈到公会于内地的工作，亦需提及这些发展对香港会员的影响。中国内

地对公司治理专业人员的需求日增，而公会会员正具备有利条件把握这些机会。即使他们并非直接参与内地业务，香港的专业从业人员也要密切留意内地的发展。故此，公会的内地工作，也致力于确保香港的会员及时掌握内地企业及规管环境的资讯。

公会与资深董事会秘书及相关政府和监管机构之联系网络不断扩展，有助会员及时更新中国内地在治理方面的快速发展情况，这一点在即将举行的公司治理研讨会中将得以体现。今年的研讨会将于9月23至24日举行，第二天的会议将深入探讨与中国内地有关的课题。欢迎大家浏览研讨会网站 ([www.hkics.org.hk/CGC2016](http://www.hkics.org.hk/CGC2016))，了解强大的讲者阵容及研讨主题。

毋庸置疑，本刊也在内地工作上发挥重要作用，本期「中国特刊」就是很好的例证，欢迎大家细阅。



谭国荣先生 FCIS FCS



# Capital market reform: an overview

## Huang Qing, Company Secretary, China Shenhua Energy Co Ltd, assesses the progress of China's capital market reform programme.

Between June and July 2015, China's stock market was hit by a wave of turbulence and instability. In hindsight, traders behaved irrationally and serious faults in our market system were exposed. The regulatory framework did not function well, in fact it failed to identify, prevent and mitigate material risks, but we have learned a good lesson from the market upheaval – unwavering adherence to the rule of law is key to ensuring market stability and its healthy development.

### Refining our approach to market reform

As part of the country's capital market reform, the government is pressing ahead with its IPO registration system. This reform will be introduced in a gradual manner, and the pace of implementation will depend on the development of the capital market and legal conditions.

The regulatory framework underpinning the IPO registration system is now in place, having been enacted by the National People's Congress (NPC), but the details will still have to be clearly defined for the new system to function effectively. The China Securities

Regulatory Commission (CSRC) is now working on the formulation of the detailed rules and regulations within the framework, including the disclosure rules and pro-forma information requirements.

Regulators have also announced enhancements of the existing M&A and corporate restructuring mechanisms in China's capital market. This aims to eliminate barriers to M&A and corporate restructuring activities across industries, regions and ownership systems, and also hopes to widen listed companies' access to capital via asset injections, the introduction of strategic investors, amalgamation and merger, the issuance of preferred shares and convertible bonds through private placement, etc. It is believed that this initiative will drive innovation in M&A and corporate restructuring activities, and cut red tape by streamlining the approval process.

Regulators are also studying ways to develop the bond market in China, in particular by finding ways to deepen the interconnection of the bond market and increase the variety of bonds, such as green bonds, renewable bonds, high-

### Highlights

- regulations must be strictly enforced – there should be no room for evasion and misinterpretation
- only when regulations are implemented and enforced in a consistent, open and predictable way, can the market continue to develop healthily
- a healthy capital market can help improve productivity, stimulate innovation and inject a fresh dose of vibrancy to China's economic growth

yield bonds, project revenue bonds and hybrid bonds. Regulators are also studying ways to develop corporate asset securitisation, infrastructure asset securitisation and the launch of real estate investment trusts (REITs).

After years of relying on its qualified foreign investor (the QFII and RQFII) programmes, we are seeing the first steps towards a broader opening up of the capital market to foreign investors. However, we should continue to fine-tune the existing QFII and RQFII programmes by gradually relaxing the investment quotas. On the heels of the success of the Shanghai-Hong Kong Stock Connect programme, the Shenzhen-Hong Kong Stock Connect programme is set to be introduced and regulators are looking into the feasibility of establishing a trading link with the London bourse. Whenever possible, the A-share index should be included in internationally recognised indices. Quality foreign institutional investors, such as sovereign funds and pension funds, should be given a bigger role in Chinese capital markets.

#### The new approach to enforcement

In 2016, the CSRC proposed to make amendments to the existing rules on the issuance of securities by listed companies in order to improve the oversight of private stock placement activities. It also proposed amendments to the existing rules on material asset restructuring by listed companies in order to introduce an approval process to significant asset restructuring activities. Other amendments have also been proposed aimed at strengthening the tentative rules on private equity funds.

“ we have learned a good lesson from the market upheaval – unwavering adherence to the rule of law is key to ensuring market stability and its healthy development

”

The CSRC has also formulated rules against the manipulation of the futures markets and other illegal activities involving futures trading. In addition, the regulator has made amendments to the rules on protecting securities investors, and drafted a set of rules to define the eligibility of investors to participate in the futures markets. As a quick summary, these initiatives aim to fix loopholes in the current regulatory framework on listed issuers, private equity funds, futures markets, and so forth.

The CSRC has recently accepted proposals by the Investor Services Centre designed to prevent retail investors from engaging in market speculation. The proposed rules would require retail investors to hold onto stocks for a certain period, while enhancing their ability to exercise their legal rights as an ordinary shareholder. Tailor made for small investors, a trial scheme is now underway which will enable investors to buy a board lot (for example 100 A-shares) of the companies registered with the scheme. This way, the market watchdog believes, investors will be encouraged to behave rationally and will

be better informed about the importance of shareholder rights.

In this pilot scheme, the Investor Services Centre is responsible for operating the voting scheme, handling the distribution of dividends and monitoring participating listed companies. Going forward, the Investor Services Centre will eventually play a more important role in investor protection.

As the market continues to develop at a rapid pace, strict enforcement of the rules must be upheld. Abnormal fluctuations in stock prices are a warning sign that indicates a need for closer supervision. Only when regulations are implemented and enforced in a consistent, open and predictable way, can the market continue to develop healthily.

Regulations must be strictly enforced – there should be no room for evasion and misinterpretation. Foresight is better than hindsight, so enforcement must be proactive and consistent and should intervene before situations deteriorate far enough to cause serious damage. The CSRC has introduced further



restrictions on the sale of shares by major shareholders to prevent a major sell-off. The system for trading halts and resumption of trading has also been improved with the introduction of a new set of rules against unnecessary or arbitrary suspensions and aimed at reducing the suspension periods. Last but not least, administrative measures on all listed companies must be standardised.

#### The way forward

As a market-oriented resource allocation platform, capital markets play an integral part in China's ongoing economic reform

programme, providing enterprises with a variety of financing channels to fund their business activities. A healthy capital market can help improve productivity, stimulate innovation and inject a fresh dose of vibrancy to China's economic growth.

Looking ahead, institutional investors such as pension funds can play a more important role in the capital markets. With the right regulatory framework, they could also directly invest in companies or their assets or income-producing projects to generate

long-term, stable returns on investment for the benefit of pension fund holders. Moreover, while we continue to explore and open up new financing channels for listed companies, investor protection must not be compromised. As such, establishing a regulatory structure on the basis of transparency, fairness and consistency is of utmost importance to the healthy development of Chinese capital markets.

#### Huang Qing

*HKICS Affiliated Person  
Company Secretary,  
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# 深化改革 依法治市 从严监管 稳健发展



中国神华能源股份有限公司董秘黄清认为，中国资本市场改革和市场监管须并驾齐驱。

2015年6月中旬至7月上旬期间内地股市的异常波动充分反映了中国股市不成熟，不成熟的交易者、不完备的交易制度、不完善的市场体系、不适应的监管制度等，也充分暴露了监管有漏洞、监管不适应、监管不得力等问题，因此必须深刻汲取教训，深化改革，依法治市，从严监管，稳健发展。

## 深化改革

研究制定股票发行注册制改革的相关制度规则，做好启动改革的各项准备工作。注册制改革是内地资本市场改革的方向，改革的制度设计必须充分考虑我国市场的环境和条件。全国人大做出的

授权决定，为启动注册制改革的技术准备工作提供了法律依据。中国证监会还需按程序研究制定专门的部门规章、信息披露准则和规范性文件，系统构建注册制的规则体系。

完善资本市场并购重组机制，推动消除跨行业、跨地区、跨所有制并购重组的障碍，支持上市公司特别是国有控股上市公司通过资产注入、引入战略投资者、吸收合并、整体上市等多种方式做优做强，更好地支持经济结构转型和产业升级。深化并购重组市场化改革，进一步取消简化上市公司并购重组行政许可，研究实行并购重组股份协商定价，

推动扩大并购重组支付手段，研究出台发行优先股、定向发行可转换债券等作为并购重组支付方式的实施细则。

更好地支持经济结构转型和产业升级。深化并购重组市场化改革，进一步取消简化上市公司并购重组行政许可，研究实行并购重组股份协商定价，推动扩大并购重组支付手段，研究出台发行优先股、定向发行可转换债券等作为并购重组支付方式的实施细则。

发展绿色债券、可续期债券、高收益债券和项目收益债券，增加债券品种，发展可转换债、可交换债等股债结合品种。发展企业资产证券化，推进基础设施资产证券化试点，推出房地产投资信托基金（REITs）。深化债券市场互联互通。

进一步拓宽境内企业境外上市融资渠道，研究解决H股“全流通”问题。完善合格境外机构投资者（QFII）、人民币合格境外机构投资者（RQFII）制度，逐步放宽投资额度，推动A股纳入国际知名指数，引导境外主权财富基金、养老金、被动指数基金等长期资金加大境内投资力度。启动深港通，完善沪港通，研究沪伦通。

### 依法治市

2016年，中国证监会拟修订《上市公司证券发行管理办法》，加强上市公司非公开发行再融资监管；修订《上市公司重大资产重组管理办法》，进一步简化重大资产重组行政许可审核；修订《私募投资基金监督管理暂行办法》，加强对私募基金活动的监督管理；制定《证券期货市场操纵行为行政违法认定规则》、《证券期货违法行为行政处罚办法》，加大监管执法力度，规范并保障监管执法行为；修订《证券投资者保护

基金管理办法》、制定《证券期货市场投资者适当性管理办法》，进一步加大中小投资者保护力度；做好证券法、期货法的制定、修订工作，研究推动完善有关打击证券期货违法犯罪行为的法律制度等相关工作；做好上市公司监管条例、私募基金管理条例的制定、修订工作，并研究推动证券期货投资咨询管理暂行办法的修改完善工作。

近日，中国证监会批准了中证中小投资者服务中心有限责任公司报送的《持股行权试点方案》。根据《持股行权试点方案》，投资者服务中心将在上海、广东（不含深圳）、湖南三个区域开展持股行权试点，依法购买持有试点区域所有上市公司每家1手（100股）A股股票（持有后原则上不再进行买卖），以普通股东身份依法行使权利，通过示范效应提升中小投资者股权意识，引导中小投资者积极行权、依法维权，督促上市公司规范运作。试点阶段，投资者服务中心将主要在中小投资者投票机制、利润分配决策机制、公开承诺及履行、自愿性简化信息披露等方面，行使知情权、建议权等无持股比例和期限限制的股东权利。在积累经验的基础上，逐步丰富行权事项和行权手段。

市场发展越快，就越要严格监管。股市异常波动警示我们，监管部门必须强化监管本位，牢固树立从严监管、一以贯之的理念，紧跟市场发展变化，保持监管定力，只有严格监管下的发展才是可持续的发展，才是高质量的发展。

要把监管制度规则立起来、严起来，切实做到法规制度执行不漏项、不放松、不走样。事中监管要抓早抓小、抓实抓细，坚决遏制苗头性、倾向性问题，不能因未出现大的风险就放过。事后监管要依法从严处罚，严厉打击各类违法违规行。建立健全上市公司信息披露制度规则体系，推进简化、差异化、分行业信息披露。完善上市公司股权质押信息报送和披露规则。完善大宗交易减

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去年内地股市的异常波动，充分反映了中国股市、交易者、交易制度以至市场体系的不成熟，也充分暴露了监管漏洞，因此必须深刻汲取教训，深化改革，依法治市，从严监管，稳健发展。

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持信息披露规则，增加具体受让人信息。完善停复牌制度，缩短停牌时间，减少随意停复牌现象。统一上市公司行政监管措施实施标准。

### 稳健发展

作为市场化配置资源的平台，资本市场具有服务和支持供给侧结构性改革的独特优势，可以为企业提供多样化融资方式，降低企业杠杆率和融资成本，支持企业并购重组，助力产能化解和存量盘活，培育新产业、新业态、新商业模式，服务大众创业、万众创新，激发经济增长新动力。

从资源配置和资本形成角度来说，养老金入市可以将当期储蓄的一部分转化为长期资金，由专业机构配置于股票、债券，或直接投资于公司股权或资产，追求长期稳健收益，自发地转化为经济增长所需的长期资本，从而提高了全社会金融资本的配置效率。

发展资本市场是中国的改革方向。让我们共同努力，加快形成融资功能完备、基础制度扎实、市场监管有效、投资者合法权益得到充分保护、公开透明、长期稳定健康发展的资本市场。

### 黄清

公会联席成员

中国神华能源股份有限公司董秘

## 摘要

- 监管部门必须强化监管本位，牢固树立从严监管、一以贯之的理念，紧跟市场发展变化，保持监管定力
- 只有严格监管下的发展才是可持续的发展，才是高质量的发展
- 稳健的资本市场能提升生产力，鼓励创新，激发经济增长新动力

# Compliance risks and challenges faced by dual-listed companies



## Xie Bing FCIS FCS, Board Secretary, China Southern Airlines, explains four factors relating to the compliance risks and challenges of A+H share listed companies.

During the last few years, the Mainland and Hong Kong capital markets have been in an expansionary phase with frequent innovations. The two capital markets have also seen marked increases in interactions and cooperation amongst regulators, particularly following the implementation of the Shanghai-Hong Kong Stock Connect, with its related synergies and cooperation. The regulatory philosophies of the regulator have also seen an incremental convergence in the face of the ever rapidly evolving and increasingly complex capital market which requires strengthening of regulatory oversight and synergies as the choice approach of regulators. This means increasing compliance risks and challenges for A+H share companies, flowing from the four main factors set out below.

### The 'through-train' increases disclosure pressures and responsibilities

Against the backdrop of the China Securities Regulatory Commission (CSRC) efforts to deepen the Mainland's securities structural reforms, the Shanghai and Shenzhen stock exchanges are increasing the speed of regulatory changes. The basis of these reforms relates to the protection of investor interests and satisfying their needs, and information disclosure at the core, and regulatory controls both during and after the event as the regulatory philosophy. The implementation of the Shanghai and Shenzhen 'through train' – the direct connection between the Hong Kong and Mainland stock markets – means that disclosure of information in the Mainland will be moving from the minimum compliance-based approach and converging towards

Hong Kong and international practice where listed companies really take on their disclosure responsibilities. The Stock Connect programme involves large-scale regulatory changes, and represents a milestone and pathway towards a more mature capital market.

But, in comparison to the more mature Hong Kong market, the Mainland's capital market environment still has some areas that are less mature and comprehensive. In relation to the disclosure of inside information, in the Mainland the professionalism of intermediaries like consultants and lawyers is relatively low. This means that, for A+H shares and A share companies, the level of support that they can obtain externally from such intermediaries in comparison to H-share companies is lower. With the implementation of the through-train disclosure mechanism, A+H share companies, in their A share disclosure work, are inevitably faced with more risks and challenges in terms of meeting Hong Kong's disclosure requirements. Companies' board secretaries and their teams need to be more diligent and

professional in carrying out their duties relating to information disclosure.

### Comprehensive regulation increases information disclosure difficulties and risks

The Chairman of the CSRC, Liu Shiyu, at the time of the National People's Congress (NPC)/ China's People Political Consultative Committee's (CPPCC) meeting, made it clear that his mission is regulation, and that regulation should be according to the law and effected in a comprehensive manner. Furthermore, information disclosure is a core concern. In recent years, the Shanghai and Shenzhen exchanges have learnt from Hong Kong's experience. On the one hand, there has been a strengthening of inside information regulation during and after the event, and on the other, there has been an emphasis, not only on authenticity, accuracy, completeness and timeliness, but also on effectiveness, comparability, conciseness and the relevance of disclosures. Corporate disclosure should be approached from the investor's perspective, should be clear and explain risks to satisfy the increasing and diverse needs of investors.

## Highlights

- the Mainland and Hong Kong capital markets have been in an expansionary phase with frequent innovations
- corporate disclosure should be approached from the investor's perspective, should be clear and explain risks to satisfy the increasing and diverse needs of investors
- regulators in both the Mainland and Hong Kong have strengthened the requirement for timeliness of responses to regulatory enquiries

## “ companies' board secretaries and their teams need to be more diligent and professional in carrying out their duties relating to information disclosure ”

Broadly speaking, these manifest in two aspects: the first is the regulation of different industries. In 2015, the Shanghai Stock Exchange began to implement disclosure requirements for different industries. It required listed companies to strengthen disclosure in line with its industry over the company's financial information and business operations with a horizontal comparison with its peers. It also required companies to disclose significant risks to enhance regulatory effectiveness. Secondly, there is the strengthening of during and after the event regulation, through a multi-dimensional monitoring of companies' voluntary disclosure relating to the internet, virtual financial and other market 'hot topics' as part of the regulatory method. Additionally, there has been a continuous strengthening of the post-vetting of companies' annual reports.

The above increases the difficulties and risks faced by A+H share companies. A listed company has to disclose more comprehensively, with more attention to effectiveness, comparability, brevity and relevance of disclosures.

### Inside information regulatory pressures are ever increasing

In recent years, both Hong Kong

and Mainland regulators have been increasingly concerned about inside information controls. The CSRC, and the Shanghai and Shenzhen stock exchanges, in addition to preserving the existing current insider filing system, have also strengthened their monitoring of price fluctuations, potential inside information leakage, insider dealing and other illegal activities. In respect to insider dealing, the strength of enforcement is ever increasing. In 2012, Hong Kong's regulator upgraded disclosure regulations from stock exchange rules to statutory requirements, and a violation thereto could lead the company, its directors and senior managers to being exposed to direct responsibility and legal consequences with a maximum fine of HK\$8 million.

Board secretaries and their compliance teams need to continuously assess and perfect the company's internal inside information management system, especially strengthening insider training and management. Also, as to the timing of disclosure, this must be done cautiously, to ensure that the inside information disclosures are timely and compliant.

### The need for faster response times

Regulators in both the Mainland and Hong Kong have strengthened the requirement for timeliness of responses to regulatory enquiries. The Hong Kong regulators have real-time monitoring of media reports relating to important matters, and they are in continuous communication with companies. Likewise, the Shanghai Stock Exchange has recently strengthened the monitoring of price fluctuations and media reports. If there are significant rumours in the market, both regulators in Hong Kong and Mainland make enquiries and seek verification from the

company. If necessary, the listed company would be required to issue a clarification announcement. In order to facilitate real time disclosures, the Shanghai Stock Exchange has introduced new morning, afternoon and after-hours disclosure windows. In a way, this narrows the gap in information disclosure with the Hong Kong market, and enhances the efficiency of inside information disclosure, and in another way, allows for the listed company to clarify inside information to manifest speedy disclosure reactions to the market.

A+H listed companies must strengthen daily market information monitoring; enhance communications with controlling shareholders and the like with efficiency; build effective and reactive mechanisms; deal with and react to emergency situations; answer exchange queries; and, as required by the exchanges, issue clarification announcements, along with coordinating the A and A+H share disclosures and consistency.

### Conclusion

In summary of the above, A+H listed companies compliance work is involved and far reaching, particularly in the context of the regulatory changes in the Mainland and the convergence between Mainland and Hong Kong regulations. Board secretaries must be diligent in performing their duties, and form a more professional team and build comprehensive compliance regulations. There is also a need to facilitate and manage compliance work flow with a high degree of responsibility, a strict work attitude and outstanding knowledge of risk to perform the listed company's compliance work.

### Xie Bing FCIS FCS

*Board Secretary,  
China Southern Airlines*

# 两地上市公司的合规风险与挑战综述

南方航空董秘谢兵透析A+H上市公司在合规工作四大范畴的风险与挑战。

近年来，中国内地和香港资本市场快速发展、不断创新，两地资本市场交流和合作显著增多，尤其是沪港通的实施显著加强了两地监管机构的联系与协同，两地监管理念也逐步趋同。面对瞬息万变，日趋复杂的资本市场，加强上市公司监管是两地监管机构的共同选择，A+H上市公司合规风险与挑战与日俱增，主要体现在以下四个方面。

## 1. 信息披露直通车加大了信息披露工作的责任和压力

在中国证监会深化证券监管体制改革的背景下，沪深交易所加快了上市公司监管转型的步伐，以保护投资者利益，满足投资者需求为导向，确立了以信息披露为核心，加强事中和事后监管的监管理念。沪深交易所信息披露直通车的实施，告别了过去“保姆式”的监管模式，实现了与香港等国际资本市场的接轨，使上市公司真正承担起信息披露的主体责任。可以说，直通车是中国证券市场监管方式的一次重大变革，也是中国资本市场逐步走向成熟的表现和标志之一。

但是，同香港等成熟资本市场相比，内地资本市场环境还存在不成熟、不完善的地方，就信息披露而言，主要体现在合规律师、合规顾问等专业化中介机构市场化程度比较低。A+H上市公司涉及A股的信息披露工作比涉及H股信息披露工作可借助的外力要少很多。在信息披露直通车实施后，A+H上市公司在A股信息披露工作中面临着挑战和风险，需要公司董事会秘书及团队更加专业、严谨的做好信息披露工作。

## 2. 全面监管增加了信息披露工作的难度和风险

中国证监会刘士余主席在全国两会期间曾表示，其首要任务就是监管，并且要依法监管、从严监管、全面监管，而信息披露又是监管的核心。近年来沪深交易所持续借鉴香港监管机构的事中和事后监管，另一方面对上市公司信息披露监管重点已从过去的真实性、准确性、完整性、及时性，转为更加强调信息披露的有效性、可比性、简明性、针对性，要求上市公司

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 随着内地市场与香港等国际  
 资本市场接轨，内地上市公  
 司真正承担起信息披露的主  
 体责任  
 ”

的信息披露要从投资者角度出发，清晰易懂、充分揭示风险，满足投资者日益多元化的需求。

具体来讲，主要表现在两个方面，一是，分行业监管。2015年上海证券交易所开始实施信息披露分行业监管，要求上市公司加强对同行业公司财务信息、经营业务、商业模式的横向比较分析，要求公司充分揭示重大风险，进一步提高信息披露监管的有效性和可比性。二是，加强事中事后监管，通过多维度举措，对公司自主发布的涉及互联网金融、虚拟现实等市场热点题材的公告采取“刨根问底”的监管模式；并持续加强对上市公司年报的事后审核力度，尤其是对年报“高送转”信息披露的监管力度。

监管转型带来的上述变化增加了A+H上市公司的信息披露工作的难度和

## 摘要

- A+H上市公司面对更严格的信息披露要求
- 内地监管部门正加强监督和执法工作，特别是实时性监管
- 董秘务必保持警觉，并在其合规工作上采取更加积极主动态度



风险，上市公司信息披露的内容要更加全面，要更加注重披露内容的有效性、可比性、简明性和针对性。

### 3. 内幕信息管控压力越来越大

近年来，两地监管机构均特别注重内幕信息的管控。内地证监会、沪深交易所除了保持原有内幕信息知情人报备制度以外，还特别加强了价格异常波动及可能涉及内幕信息泄露、内幕交易等违法行为的督查，对内幕交易的打击力度日益加强。香港监管机构2012年也正式将内幕信息的披露从交易所条文要求上升为法律规定，违反相关规定会导致公司或者董事、高级管理人员直接承担法律责任，最高罚款可至港币800万元。

因此，A+H上市公司董事会秘书及团队需要不断检讨和完善公司内幕信息管理制度，加强对内幕知情人的风险提示和管理，在内幕信息的保密程

序、披露时机上更谨慎，确保上市公司内幕信息管理和披露的合法合规。

### 4. 上市公司应对监管机构的快速反应能力要求更高

两地交易所对于上市公司的监管实时性正逐渐加强，香港联交所对于新闻媒体报导涉及公司的重大事项予以实时监控，随时与公司保持沟通。上交所近年来也加强了对股票价格异常波动和新闻媒体报导的监控力度。一旦市场上出现有关上市公司的重大传闻，两地交易所就会分别向公司进行问询和核实，如有必要还会要求上市公司及时发布相关澄清公告。为了配合实时监控，上交所还出台了多时段信息披露制度，新增了交易日早间、午间以及非交易日披露时段，一方面缩小了与香港市场信息披露时段的差异，提高上市公司信息披露效率，另一方面也为上市公司及时澄清、披露提供了条件，实现对市场关切的快速反应。

因此，A+H上市公司必须加强对市场舆情的日常监控，提高与控股股东等相关方的沟通效率，建立有效的应急处置预案，确保在有紧急情况下能够快速反应，及时回复交易所的问询并按照交易所的要求发布澄清公告，并妥善处理好A股和H股信息披露的一致性。

### 结论

综上所述，在中国内地监管机构不断深化监管转型和两地监管逐步趋同的情况下，A+H上市公司合规工作可谓任重道远，董事会秘书必须更加严格的履行忠实、勤勉义务，需要打造更加专业的团队，建立和完善公司各项合规制度，梳理和改善合规工作流程，以高度的责任心、严谨的工作态度和杰出的风险意识做好上市公司的合规工作。

### 谢兵

公富资深富士  
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**Professor K C Chan GBS JP**, Secretary for Financial Services and the Treasury

**Directors and CG – Guard Dogs, Police Dogs or Lap Dogs?**

**Mr Antony Leung Kam-chung**, Group Chairman and CEO, Nan Fung Group

**Mr Nicholas Charles Allen**, Chairman, Link REIT

**Ms Ada Chung FCIS FCS FCPA LLB JP**, Registrar of Companies, CR

**Mr Chua Hoi-wai**, Chief Executive, The Hong Kong Council of Social Service

**Management and CG – Hands On or Handcuffed?**

**Mr Lincoln Leong Kwok-kuen**, CEO, MTR Corporation

**Ms Edith Shih FCIS FCS(PE)**, Head Group General Counsel & Company Secretary, CK Hutchison Holdings

**Mr William Lo Chi-chung**, Executive Director, Finance, Airport Authority HK

**Mr Andrew Weir**, Regional Senior Partner, Hong Kong; Head of Capital Markets, KPMG China; Global Chairman of Real Estate and Construction

**Shareholders and CG – Players or Spectators?**

**Ms Sau-wing Mak**, Director, Corporate Finance, Securities and Futures Commission

**Ms Pru Bennett**, Director, BlackRock

**Dr Kelvin Wong**, Executive Director & Deputy Managing Director, COSCO Pacific

**Mr David Chase Lopes**, Managing Director, EMEA, D.F. King

**External Stakeholders and CG – At the Table or Just Noisy Neighbours?**

**Mr David Graham**, Chief Regulatory Officer and Head of Listing, HKEX

**Mr Cas Sydorowitz**, CEO, Georgeson

**Ms Melissa Brown**, Partner, Daobridge Capital

**Mr David Simmonds**, Group General Counsel, Chief Administrative Officer and Company Secretary, CLP Holdings

**Day 2: Saturday, 24 September 2016  
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**Keynote Address**

**Mr Anthony Neoh FCIS FCS QC SC JP**, Former Chief Advisor to the CSRC

**The Mainland and CG – Telling it Straight?**

**Mr Edward KF Chow JP**, Chair, HK Chapter, Institute of Chartered Accountants in England & Wales and Past President, HKICPA

**Ms Estella Ng ACIS ACS**, Executive Director and Deputy Chairman, Tse Sui Luen Jewellery

**Mr Alfred Chan Wing-kin BBS**, Managing Director, The Hong Kong and China Gas Company Limited

**Mr Paul Chow FCIS FCS GBS SBS JP**

Former Chairman, Hong Kong Cyberport Management Company

**Ms Cimi Leung**, Partner, Risk Assurance Practice, PwC

**The Mainland and Hong Kong – One Country, Two Systems?**

**Mr Yu Tengqun**, Board Secretary, China Railway Group

**Mr Wu Enlai**, Board Secretary, PetroChina Company Limited

**Mr Fang Chunfa**, General Manager, Strategy and Planning Department, China General Nuclear Power Corporation

**Professor Christine Chow**, Associate Director, Hermes EOS, Hermes Investment Management

**Ms Elsie Leung Oi-sie GBM JP**, Deputy Director HKSAR Basic Law Committee of Standing Committee of National People's Congress

**Event/Panel Chairs**

**Mr Peter Greenwood FCIS FCS**

**Professor C K Low FCIS FCS**, The Chinese University of Hong Kong

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# The role of the board secretary



## Guo Xiangdong FCIS FCS, Deputy General Manager and Board Secretary, Guangshen Railway Co Ltd, looks at the role of the board secretary in Mainland China and compares it to the role of the company secretary in Hong Kong.

The Company Law of the People's Republic of China recognises the board secretary of a listed company as a member of senior management, sharing legal responsibilities with the directors for certain tasks required by the Company Law.

As China's securities market and its regulatory framework continue to mature, the role of the board secretary in promoting and maintaining corporate governance best practices is growing. According to the Company Law and the listing rules of the Shanghai and Shenzhen stock exchanges, the primary responsibilities of the board secretary include:

- assisting the company and the board of directors in establishing a comprehensive internal control system
- ensuring compliance with disclosure requirements, and developing and improving the company's disclosure management system
- maintaining effective communications with regulators and assisting the board in responding to inquiries made by the stock exchange in a timely manner
- organising board and shareholder meetings, including preparing agendas and taking minutes
- managing the company's stock rights, assisting in investor

communications and managing shareholder information

- preparing and organising regular training on rule and regulation updates for directors, supervisors and senior management, and implementing control measures to facilitate compliance.

The Shanghai Stock Exchange (SSE) requires the board secretary to uphold corporate governance best practices, such as establishing a sound internal control system, fulfilling information disclosure requirements, avoiding horizontal competition and fulfilling compliance requirements relating to connected transactions. The board secretary should also assist in the formulation of the company's financing strategy in capital markets, and plan or implement the company's financing, M&A or other corporate restructuring strategies.

The board secretary is the person designated to provide the contact between the listed company and the SSE, handling information disclosure, corporate

governance, equity management and other issues on behalf of the listed company.

### Comparing the 'board' and the 'company' secretary

The most obvious difference between corporate secretaries in Mainland China and Hong Kong is their professional title – they are called 'board secretaries' in the Mainland and 'company secretaries' in Hong Kong. The differences, however, do not stop there.

As required by Hong Kong's Companies Ordinance and listing rules, listed issuers in Hong Kong must have a company secretary in place, reporting to the chairman of the board and/or the CEO. The company secretary's responsibilities include:

- maintaining regular communications to ensure the smooth exchange of information among members of the board
- advising the chairman and CEO on corporate governance matters, and

### Highlights

- the board secretary is recognised as a member of senior management
- this status empowers board secretaries to fulfil their duties as required by law and as gatekeepers of good corporate governance
- there is a significant overlap in the responsibilities and duties of both the 'board' and the 'company' secretary, but their status within the company and the qualifications and experience they are expected to have differs

assisting the company in improving corporate governance standards

- preparing and disseminating crucial information, such as meeting agendas, to all board members and committees, and record keeping
- identification and disclosure of inside information
- reminding all directors of their responsibilities to fulfil their disclosure obligations and to pay attention to restrictions with respect to securities trading that are subject to disclosure, such as connected transactions and insider trading, and
- arranging induction and the professional development for directors, and establishing continued training programmes for directors and senior management.

The company secretary needs to be familiar with the Companies Ordinance, the Securities and Futures Ordinance, the listing rules, and other relevant rules and regulations, so as to ensure that the company and its directors comply with applicable rules and regulations.

While board and company secretaries share similarities in their roles – there is a significant overlap, for example, in terms of their responsibilities and duties – some interesting divergences between Hong Kong and Mainland practices exist. There are differences, for example, in their status within the company and the qualifications and experience they are expected to have.

The SSE and Shenzhen Stock Exchange (SZSE) rules confirm that the board

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**as the regulatory environment continues to consolidate and improve, requiring listed companies to meet higher corporate governance standards, the role of board and company secretaries is becoming more complex and more professional**  
 ”

secretary is a senior officer of the listed company appointed by the board of directors, with the approval of the SSE or SZSE. Anyone appointed as the board secretary of a listed company must have:

- good professional ethics and integrity
- expertise in finance, management and the law, sufficient for performing his or her duties
- work experience necessary for the performance of his or her duties, and
- board secretary qualification certificate(s) recognised by the respective stock exchange.

The Hong Kong listing rules requires company secretaries to be 'appropriately qualified'. The stock exchange considers the following professional qualifications for company secretaries to be acceptable, they should be:

- a solicitor or barrister (as defined in the Legal Practitioners Ordinance), or
- a certified public accountant (as defined in the Professional Accountants Ordinance).

Hong Kong Exchanges and Clearing Ltd (the Exchange) also requires company secretaries to have 'relevant experience'. In assessing relevant experience, the Exchange will consider the individual's:

- length of employment with the issuer and other issuers, and the roles performed
- familiarity with the listing rules and other relevant law and regulations including the SFO, Companies Ordinance, and the Takeovers Code
- relevant training taken and/or to be taken in addition to the minimum requirement under Rule 3.29 of the listing rules, and
- professional qualifications in other jurisdictions.



In Mainland-listed companies, the board secretary needs to be approved by the stock exchange as well as the board, and has to be appraised annually. The SSE rules contain a range of punishments for violations by board secretaries.

Some Hong Kong-listed companies outsource the role of the company secretary to an external party. These company secretaries usually liaise with a senior manager or a director in carrying out their duties. In contrast, Mainland companies listed on the Shanghai and/or Shenzhen exchanges, or those dual-listed in the Mainland and Hong Kong, usually appoint a senior executive as the board secretary.

#### The future of the role

As the regulatory environment continues to consolidate and improve, requiring listed companies to meet higher corporate governance standards, the role of board and company secretaries is becoming more complex and more professional. Ever since the introduction of the new PRC Company Law, the board secretary has been officially recognised as a member of senior management. This status empowers board secretaries to properly fulfil their duties as required by law and as gatekeepers of good corporate governance.

As part of senior management, the board secretary and company secretary should not only be familiar with the company's business nature and day-

to-day operations, but should also be familiar with all the rules and regulations that apply to listed companies. The board secretary and company secretary report to the board on compliance and corporate governance matters in a timely manner, and also ensure that the decisions made by the board are properly executed. Last but not least, the board secretary and company secretary not only maintain communications between the company and investors, but also maintain effective communications with regulators on behalf of the company.

#### Guo Xiangdong FCIS FCS

*Deputy General Manager  
and Board Secretary,  
Guangshen Railway Co Ltd*

# 董事会秘书之职业定位

广深铁路股份有限公司副总经理兼董秘郭向东比较内地上市公司董秘与香港上市企业公司秘书的差异及专业发展方向。

《中华人民共和国公司法》（“《公司法》”）要求上市公司设立董事会秘书并确认上市公司的董事会秘书为高级管理人员，从法律上确立了董事会秘书的地位。

随着中国证券市场的发展以及相关的法律法规的日趋完善，董事会秘书在上市公司企业管治方面的作用日趋重要。根据《公司法》和沪深两地的上市规则，董事会秘书对上市公司及其董事会负责，其主要职责包括：

- 负责协助公司及其董事会建立健全的内部控制制度；
- 负责公司信息披露事务，制定并完善公司信息披露管理制度；
- 负责保持与监管机构之间有效的沟通，并协助董事会及时回复交易所的监管问询；
- 组织筹备董事会会议及股东大会等会议，负责会议记录；

- 负责公司股权管理事务，组织协调公司投资者关系和管理股东资料；以及
- 组织董事、监事和高级管理人员进行相关法规及规定的培训，并督促董事、监事和高级管理人员遵守合规事项等。

根据上交所发布的《上海证券交易所上市公司董事会秘书管理办法》（“《管理办法》”），董事会秘书协助上市公司董事会在建立健全内控制度、履行信息披露义务、避免同业竞争及减少关联交易等方面加强公司治理机制建设，并协助上市公司董事会制定公司资本市场发展战略，筹划或者实施公司资本市场再融资或者并购重组事务。

## 董秘与公司秘书的异同

企业发展至二十一世纪，公司秘书已成为了企业不可或缺的企业高级管理人员。根据香港《公司条例》及香港《上市规则》的要求，公司须设有一

名公司秘书，向董事会主席和行政总裁汇报。其主要职责包括：

- 维护日常联络，确保董事会成员之间资讯交流畅通；
- 透过主席和行政总裁向董事会提供有关公司管治事宜的意见，以协助公司完善企业管治；
- 向董事会和其下设委员会提供会议议程等资料，处理会议有关事宜，负责档案纪录；
- 鉴别和披露内幕消息，并监督内幕消息的整理和上报；
- 提醒董事履行披露责任和注意证券交易方面的限制，并监督须予披露的交易、关连交易及董事的证券交易的披露；以及
- 安排董事的入职培训及专业发展，为董事和高层管理人员设立持续培训计划等。

同时，公司秘书应熟知《公司条例》、《证券及期货条例》、《上市规则》等相关法例和规则的要求，协助董事会确保公司和其董事遵守适用的法例和规则。

虽然董事会秘书与公司秘书的在公司治理和证券监管方面的职责日趋相同，但在具体执业上仍存在着以下几点差异：

## 摘要

- 中华人民共和国《公司法》要求上市公司设立董事会秘书并确认上市公司的董事会秘书为高级管理人员
- 董秘的高管地位得到了法律上的认可，过去由于缺乏高管地位而造成的董事会秘书权责不均衡的情况也得到了改善
- 董秘与公司秘书的权责大同小异，但两者在公司的认可地位及资历要求都有所分别



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 随着监管要求的提高以及上市公司治理制度的完善，董事会秘书与公司秘书的发展均日趋职业化、专业化。  
 ”

在执业资格方面，根据《管理办法》和《深圳证券交易所股票上市规则（2014年修订）》，担任上市公司董事会秘书，应当具备以下条件：(1)具有良好的职业道德和个人品质；(2)具备履行职责所必需的财务、管理、法律等专业知识；(3)具备履行职责所必需的工作经验；及(4)取得本所认可的董事会秘书资格证书。

而香港《上市规则》规定，公司秘书必须为香港联交所认为在学术或专业资格或有关经验方面足以履行公司秘书职责的人士。其中香港联交所接纳下列各项为认可学术或专业资格：(1)香港特许秘书公会会员，(2)香港《法律执业者条例》所界定的律师或大律师或(3)香港《专业会计师条例》所界定的会计师。评估是否具备「有关经验」时，香港联交所会考虑下列各项：(1)该名人士任职于发行人及其他发行人的年期及其所担当的角色；(2)该名人士对香港《上市规则》以及其

他相关法例及规则的熟悉程度；(3)该名人士是否曾经或将会参加相关培训；及(4)该名人士于其他司法权区的专业资格。

在执业考核方面，公司秘书通常须接受公司董事会的考核，并由公司董事会决定其遴选、委任及解聘等事宜。而在上交所上市的公司的董事会秘书除向公司董事会负责并受其考核外，须接受上交所的年度评估，若其违反《上交所上市规则》，上交所可给予通报批评、公开谴责或公开认定不适合担任董事会秘书等惩戒措施。

在委聘方面，一部分香港上市公司选择外聘公司秘书服务中心担任其公司秘书，并且公司根据监管要求另指定一名公司内部职位较高的人士与外聘机构进行联络。而在沪/深上市或沪港/深港两地上市的公司通常委任公司内部的一名其高级管理人员担任董事会秘书。

#### 董秘与公司秘书的未来发展方向

综上所述，随着监管要求的提高以及上市公司治理制度的完善，董事会秘书与公司秘书的发展均日趋职业化、专业化。新《公司法》出台后，董事会秘书的高管地位得到了法律上的认可，过去由于缺乏高管地位而造成的董事会秘书权责不均衡的情况也得到了改善。作为公司高级管理人员以及公司良好企业管治不可或缺的环节，无论是公司秘书还是董事会秘书，不仅须熟悉公司的业务性质和日常经营管理，并且须熟知上市公司的监管要求；不仅需向董事会及时上报决策资讯，并且需监督董事会的决策得以有效实施；不仅应作为股东与公司沟通的桥梁，并且应成为公司与监管机构及时沟通的有效管道。

#### 郭向东

公晋资深富士  
 广深铁路股份有限公司  
 副總經理兼董秘



# A prescription for a healthier business

Sustainability-related risks are forcing companies to rethink the way they operate, argues Pat Dwyer, Founder and Director, the Purpose Business.

On a visit to Hong Kong back in January this year, Elon Musk (founder and CEO of Space X) warned anyone considering starting a business to ensure that they have a high pain tolerance. 'There's a friend of mine who's got a great saying about creating a company which is: "trying to build a company and have it succeed is like eating glass and staring into the abyss"; he said.

While the definition of an entrepreneur is someone who sets up a business taking on financial risks in the hope of profit, the reality is more someone who wants to make money out of a passion, or a gap in the market through a cocktail of luck, confidence and a bit of ambition. It's not for everyone!

Drilling down further, there are three main drivers: the first is to be profitable for everyone connected to the business, be they suppliers, employees or shareholders. The second reason is the desire to bring a new product or service to market – one with a perceived demand and a purpose whether functional or aesthetic. The final is simply to establish a business and make it last. Businesses with a legacy are the ones that evolve and reinvent themselves because they take the long-term view. They aim to be here for the long haul, for generations to come. In my opinion, businesses today need to reflect more profoundly on the value of taking a long-term view.

### The value of long-term planning

Some 98% of all local companies in Hong Kong are SMEs, there are more than 320,000 of them and they represent 50% of private sector employment. These SMEs presumably have taken the long-term view of building to last as long as they can – at least at the time of business

registration. Yet if this is true, how is it that so many fall victim to short-term measures of success? More to the point, the need to perform and demonstrate results for publicly-listed companies have driven them to focus primarily on quarterly earnings – and an obsession on generating these timely reports. This pressure detracts companies from focusing on things that take a longer period to turn around, such as strategic planning, people development, the creation of service standards and more.

'It is absurd for complex multinational companies to have to invest huge amounts of time preparing detailed income and margin statements every quarter,' says UN Champion of the Earth Awardee and Unilever CEO Paul Polman. 'No other aspect of business is run on such short time horizons – certainly not R&D, capital investment programmes, buying contracts, even advertising. So why should financial reporting?'

This isn't an invitation to recklessness and a disregard for day-to-day profits. Rather, as we adapt to real-time pressures that impact our business, we should look to focus on careful strategic planning and

astute but innovative capital investment decisions. Management thinker and now best-selling author Roger Martin calls this 'expectation management' in his book, *Fixing the game: bubbles, crashes, and what capitalism can learn from the NFL* (Harvard Business Review Press; May 2011). 'Our single-minded focus on the expectations market will continue driving us from crisis to crisis to ruin – unless we act now,' says Martin. He reflects on the big accounting scandals and breaches in ethics that have plagued business, now of course including the Volkswagen emissions scandal.

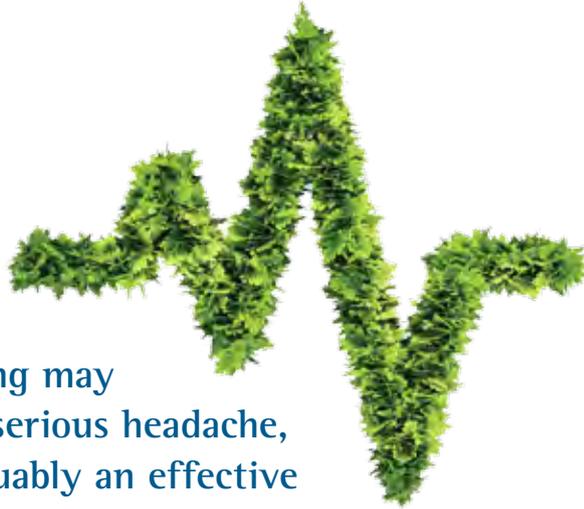
In taking a longer-term view, companies are not only able to better seize opportunities, but they can also take a more careful approach to managing risks that they may not have previously prioritised, such as water scarcity, food safety, supply chain transparency, management of natural resources, gender and diversity, governance codes and more.

There is no shortage of cases where the ruthless pursuit of profit has meant that business deprioritises other values such as health and safety, employee welfare, labour and human rights. Only three years

## Highlights

- prioritising short-term profits over the effective management of sustainability-related risks is not a good strategy for businesses that want to be around for the long term
- in taking a longer-term view, companies are not only able to better seize opportunities, they are also better able to manage risks that they may not have previously prioritised, such as employee welfare and the management of natural resources
- environmental, social and governance (ESG) reporting is now a comply or explain requirement in Hong Kong's listing rules

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**ESG reporting may  
 seem like a serious headache,  
 but it is arguably an effective  
 natural remedy that keeps  
 businesses healthy**



”

ago the deadliest disaster in the history of the global garment industry took place in Bangladesh. Over 3,000 workers in Rana Plaza, 80% of whom were women below the age of 25, refused to come to work on the morning of 24 April due to large and dangerous cracks in the factory walls. Media reports quoted the owners of the building having beaten workers with sticks to force them into the factory. When the building collapsed – 1,137 were killed.

Closer to home in 2008, the World Health Organisation (WHO) referred to the milk scandal in China as 'one of the largest food safety events... and a crisis of confidence among Chinese consumers'. A WHO representative said it was 'clearly not an isolated accident, [but] a large-scale intentional activity to deceive consumers for simple, basic, short-term profits'. About 300,000 children were affected.

#### Ethics and sustainability

These are both examples of sustainability-related risks forcing companies to rethink the way they operate – while not losing sight of profits. Part of this rethinking needs to be a genuine internal reflection on a company's value system. There has to be a general belief structure that companies go back to when things get difficult – whether it be due to a disagreement among senior leaders, a product recall, or a breach in operational standards. This is business ethics in action.

Ethics is the branch of moral philosophy which seeks to address questions about morality, concepts like good and bad, right and wrong, justice and virtue. It looks at the standards that govern the conduct of a person or a company, especially when faced with business dilemmas.

There is an inextricable link between ethics and sustainability, especially if companies

are to manage risk. But businesses will continue to face complex issues and risks, whether they are equipped to deal with them or not. Elon Musk is right – a high pain tolerance is needed to face profit problems. It is also needed for setting up simple structures in order to run businesses well. We all see pockets of good governance practices – whether it be a simple employees' handbook or a series of regular performance reviews and these all form part of investing in structures that allow businesses to operate methodically and without prejudice. Yet there always is room to strengthen the ways a business operates depending on the major risks it faces and this is as true for a start-up as it is for an established listed company. One way of managing risk is through disclosure and transparency.

We are not short on recent examples. Volkswagen equipped 482,000 diesel cars with software that would only meet emissions regulations when they were being tested. Takata, makers of air bags sold to Honda and Toyota, were found guilty of faulty inflators and admitted to failing to alert US regulators to defective air bags in a timely manner, affecting 34 million vehicles in the US and another seven million worldwide. Whilst these are high-profile examples, there are countless others which don't make the headlines. All of which point to the pressing need for a stronger sense of business ethics and greater transparency.

It is no surprise then that investors are in fact increasingly demonstrating interest in disclosures of environmental, social and governance (ESG) performance. Investment research houses like Morningstar and MSCI have introduced sustainability ratings for funds globally, giving investors a new way to evaluate investments based



# Green bonds: an opportunity for Hong Kong



## Karen Pong, Project Coordinator, CSR Asia Hong Kong, looks at the growing global green bond market and its implications for Hong Kong and China.

In a newly released report, *Hong Kong as a Regional Green Finance Hub*, the Financial Services Development Council (FSDC) proposes five approaches to developing green finance in Hong Kong. Enabling Hong Kong to become the regional capital for green bond issuance is a key recommendation.

### What is a green bond?

Like any other bond, green bonds are a fixed-income financial instrument issuers use to raise a fixed amount of capital from investors over a set period of time, repaying the capital when the bond matures and paying an agreed amount of interest along the way. But unlike other bonds, a green bond must be labelled as 'green' by the issuer publicly (note that this makes it different from, and more specific than, climate-aligned bonds) and its proceeds must be earmarked to fund projects, assets or business activities with an environmental benefit, be it clean energy, pollution control, green buildings, transportation and infrastructure, waste management, or any other climate or environment-related advancement.

Enjoying the high mobility and low-risk nature of bond products, issuers can issue green bonds to fund their green projects, especially more substantial ones, at a lower financing cost. In return, investors are provided with opportunities to engage in and support green or low-carbon projects while reaping a low-risk return on investment.

### A growing global market

The recommendations of the FSDC make a lot of sense. One of the reasons is

obvious: the growth of the global green bond market in the last three years has been dramatic. From 2012 to 2015, the value of the global green bond market increased by 1500%; from US\$2.6 billion to US\$41.8 billion. While the development banks remain important players, green corporate bonds became the catalysts of the market growth in 2014. Green city bonds issued by municipalities and cities have also been gaining popularity in various markets. While Europe remains the biggest player, with a total issuance of US\$18.4 billion as of 2015, many other countries have joined the marketplace over the last two years. The demand for green bonds has often grown faster than the issuance and over-subscription has been extremely common.

It is anticipated that 2016 will be another year of incredible growth for green bonds. In the first two months alone, various issuers, including Apple, ICBC and the Province of Ontario, already issued green bonds totalling US\$12 billion. A complete list of all labelled green bonds are captured by the Carbon Bonds Initiative (CBI). The CBI has been tracking the green labelled market since 2009 (see: [www.climatebonds.net](http://www.climatebonds.net)).

Green bond proceeds raised were tapped to address quite a few different environmental issues, but energy remains the most heavily invested area. The success of the UN climate change conference (COP21) at the end of last year might have given corporates and governments more pressure to figure out ways to finance energy efficiency and low-carbon initiatives in a more sustainable, long lasting way. In early 2016 for example, Apple issued a US\$1.5 billion bond, the largest US corporate green bond to date, in order to finance clean energy projects across its global business operations.

### Due diligence concerns

One may question the definition and eligibility of 'green' projects. While a universally accepted set of criteria has yet to be confirmed, the 'Green Bond Principles' and the 'Climate Bond Standards' released by the Climate Bonds Initiative in 2015, are the guidelines issuers reference when looking at use of proceeds; the process for project evaluation and selection; management of proceeds; and reporting on use of proceeds of the bonds. Statistics show that the majority of issuers will release publicly available reports after a year of

## Highlights

- Hong Kong's first green bond, issued in June 2015, was nearly five times over-subscribed
- the Financial Services Development Council urges the government to facilitate the growth of the green bond market in Hong Kong
- Hong Kong should aim to become a regional green finance hub

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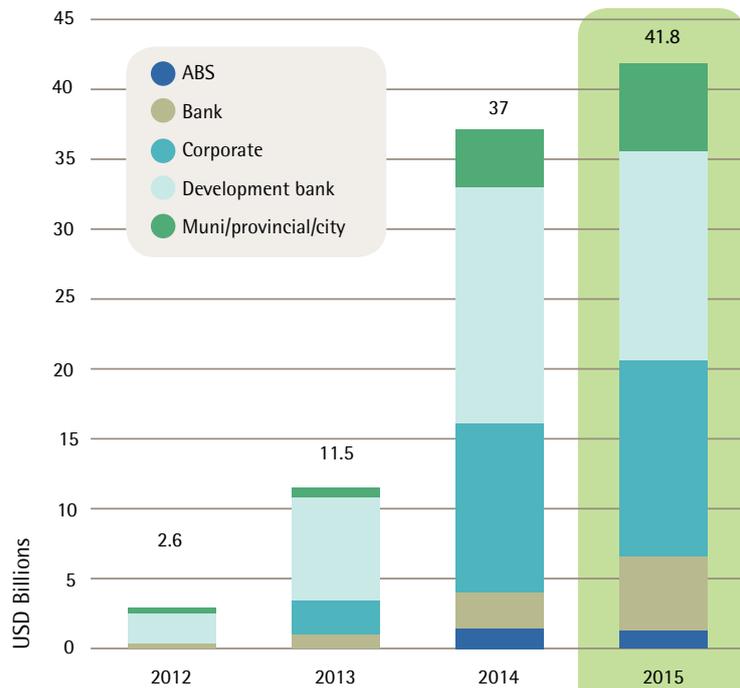
issuance. Second reviews or verifications by a third party is also a growing trend. That being said, moving forward there will certainly be more demand from investors for 'green due diligence' and impact assessment on the green projects.

**Opportunities for Hong Kong**

Another key reason for the FSDC's push to develop Hong Kong's green bond market is due to China's hunger for environmental funding. This has become even more pronounced after COP21, in which China pledged that CO2 emissions would peak and lower per unit of GDP by 60-65% by 2030 from the 2005 level. The ambitions around environmental improvements and carbon reduction are also captured in the ruling party's 13th Five Year Plan (*Shisanwu*).

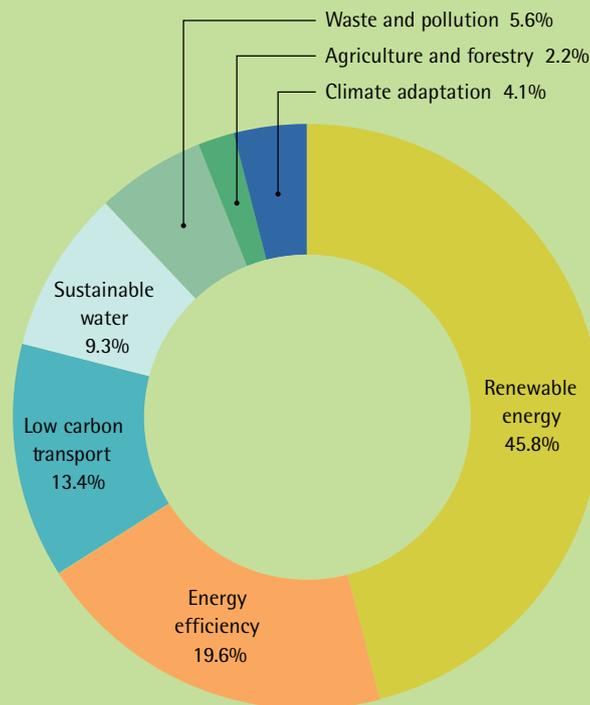
A report released by the Green Finance Task Force, a think tank approved by the People's Bank of China, forecasted that an annual investment of at least RMB 2 trillion (US\$305 billion) would be needed to accomplish the goals put forward in the 13th Five Year Plan to address severe pollution and climate change. Favourable central bank policy and incentives for financial institutions in the form of collateral eligibility, relending and interest subsidies also equip China's green bond

Annual green bond issuance continues to grow



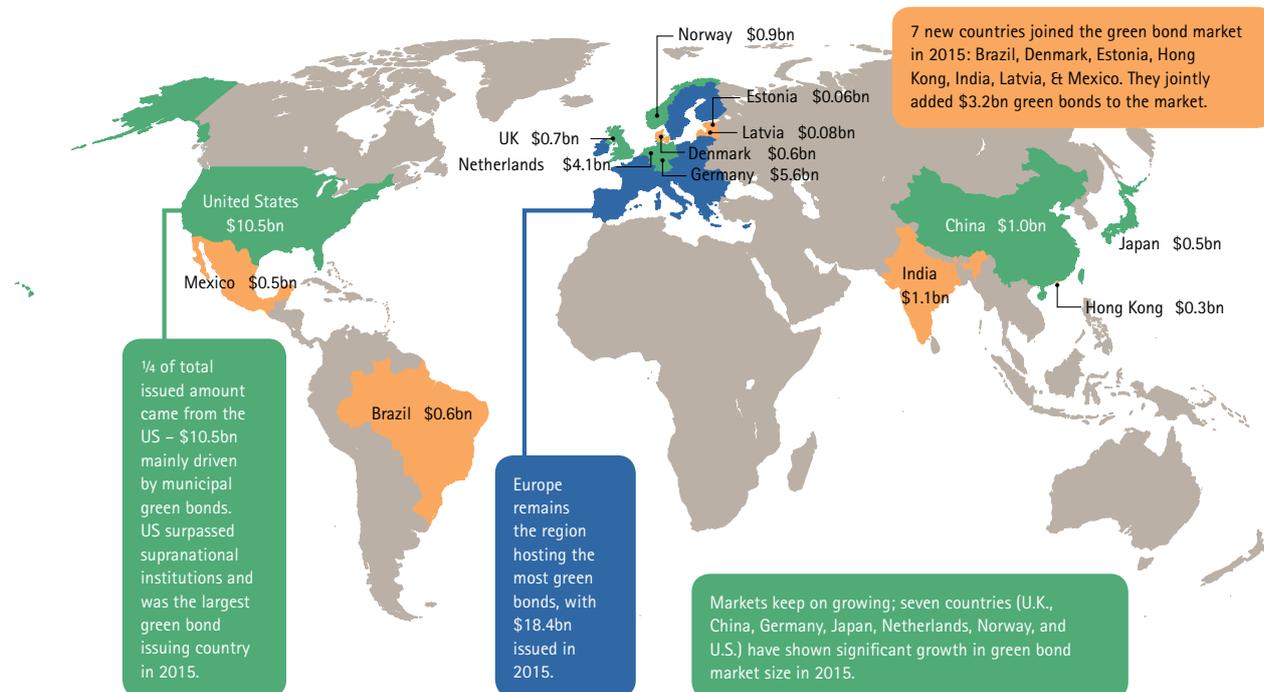
2015 green bond proceeds

Climate Bonds Initiative



## From tall trees to green shoots: green bonds are spreading across the world

Climate Bonds Initiative



markets with competitive edges against other markets. The total value of labelled green bonds in China was US\$1 billion in 2015. The room for growth is enormous and it would be a shame if Hong Kong makes no plan for its share in this market.

Hong Kong saw its first green bond issuance in June 2015. Issued by Xinjiang Goldwind Science & Technology, a wind energy firm, it was also the first corporate green bond issued by a Chinese company. Receiving orders of US\$1.4 billion, the US\$300 million green bond was nearly five times over-subscribed. While there appeared to be keen demand, Hong Kong was not necessarily the most attractive market for green bond issuance even for companies listed here. The FSDC report points out that even the Hong Kong listed ICBC chose to issue its RMB-denominated green bond out of London.

The FSDC thus proposes that the government should consider issuing benchmark green bonds, devising taxing regulations to favour bond issuers and influence development banks in the region to invest in green bonds issued locally, so that Hong Kong can eventually emerge as the regional green finance hub.

Apart from government action, it is equally important for the private sector and semi-private sector in Hong Kong to get involved in this space. There are a lot of opportunities to explore around building a more sustainable Hong Kong, for example, investment in certified green buildings, or more sustainable transportation and waste treatment facilities. Transparent guidelines and support in green due diligence and review will

also be necessary as the market (and the bonds) mature.

### Karen Pong

*Project Coordinator, CSR Asia, Hong Kong*

*The Financial Services Development Council (FSDC) seeks to promote the development of Hong Kong's financial services industry. Its report 'Hong Kong as a Regional Green Finance Hub' is available for download from the FSDC website: [www.fsd.org.hk](http://www.fsd.org.hk).*

*The full list of all labelled green bonds is available on the Climate Bonds Initiative website: [www.climatebonds.net](http://www.climatebonds.net).*

*Copyright: CSR Asia*



# Contractual risk management: tips for company secretaries

Zoe Chan So Yuen FCS, FCIS, LLM, MCI Arb, Solicitor, argues that a Supreme Court judgment in the UK will have a significant impact on contractual risk management in Hong Kong.

Corporations build up a number of contracts on a daily basis with investors, directors, shareholders, suppliers, employees, sub-contractors and vendors. Very often company secretaries play an important role in corporate contract management and are responsible for ensuring that the board is fully updated on the law. This article provides some practical tips for practitioners, focusing particularly on the Supreme Court's consolidated decisions of *Cavendish Square Holding BV v Talal El Makdessi (Cavendish)* and *ParkingEye Ltd v Beavis [2015] UKSC 67 (Parking Eye)* on the validity of the penalty and payment clauses. The judgment has significant practical lessons for those negotiating commercial contracts or attempting to impose charges for defaults in consumer arrangements. Company secretaries and contract administrators are recommended to review their contract management practices in the light of these rulings.

### The rules on penalties

The UK Supreme Court judgment concerned two appeals; the first appeal (*Cavendish*) was a complex dispute between sophisticated commercial parties, and the second (*Parking Eye*) was a consumer contract claim of a modest car parking charge in Britain.

The classic test in *Dunlop Pneumatic Tyre Co Ltd (Dunlop) [1915] AC79*, provides that a penalty payment for a specified sum is generally unenforceable. *Cavendish* involved the breach of a multi-million dollar commercial contract for the sale of shares in the largest advertising and marketing communications group in the Middle East. Both parties retained teams of experienced lawyers. As part of the sale, the defendant (seller) had contracted with a number of restrictive covenants

preventing him from competing against the interests of the group. But he breached those covenants and *Cavendish* withheld further payments under the contract with a forced transfer for no consideration or at undervalue. The defendant contended those clauses amount to an unenforceable penalty.

But the Supreme Court ruled that the clauses were constructed as the 'conditional primary obligations' and so they did not engage the penalty rule. It was concluded that 'the buyer had a legitimate interest in enforcing the covenants, in order to protect the goodwill of the business, and the parties themselves were the best judges of how that interest should be reflected in the agreement'.

In *Parking Eye*, the defendant disputed a parking charge of £85 for overstaying in a car park. This case did engage the penalty clause as the Supreme Court unanimously ruled that the parking charge did not infringe the rule against penalties and unfair terms for consumer transactions. First, it was 'not out of all proportion to the legitimate social and economic interest' which the car park operator had in preventing long over-stays in the car park. It facilitated an efficient use of the car park in the interests of retailers and

their customers by deterring long-stay commuters. Second, it generated income for *Parking Eye* in return for running the scheme smoothly.

### Impact on commercial transactions

The current approach after the judgments discussed above has apparently widened the tasks of courts, thus making litigation on penalty charges more costly and lengthy. It seems that more court time is needed to determine issues such as whether the clause is out of all proportion to the innocent party's legitimate interest in enforcing the counterparty's obligations under the contract. If so it will be unenforceable, but whether a clause is out of proportion to that interest may be open to debate in many cases.

### Practical contractual risk management implications for company secretaries

The landmark judgment of the Supreme Court discussed above is likely to expand the standard and scope of *Dunlop's* test to establish whether a sum payable on breach constitutes an unenforceable penalty or not. The sums constituting a 'genuine pre-estimate of loss' seem to have been expanded by new factors, namely, the primary and secondary obligations of the contract.

## Highlights

- the Supreme Court judgment will have a significant impact on the formation of contracts and the remedies available on breach of contracts in Hong Kong
- companies are recommended to review their contract management practices in the light of the Supreme Court judgment
- company secretaries should alert boards to the possible new approach of the courts

“  
**company secretaries  
 may need to take  
 a more proactive  
 role in documenting  
 contractual negotiations**  
 ”



It has now become important to consider documenting and inserting clauses to justify the commercial rationale for certain provisions on legitimate interest to perform the contract. Company secretaries would be in the best position to document those terms, either in the clauses or recitals, or by keeping a record of the negotiations and minutes of meetings.

Since the courts may now consider the wider commercial context of a transaction, company secretaries may need to take a more proactive role in documenting contractual negotiations. Even if the amount required by a clause bears no direct relationship to the loss actually attributable to the breach, it would not necessarily be a penalty if it can be shown that there is a legitimate reason why compensation for the actual loss suffered would not be sufficient.

The courts appear to prefer not to uphold payment provisions where the alleged amount to be paid would be 'disproportionate to the loss attributable to the breach'.

**Proactive contract management**

Company secretaries should consider

regular reviews of their payment terms stated in corporate contracts and contractual manuals. Company secretaries can play a significant role in:

- effectively administering contracts and arranging a regular contractual compliance audit
- alerting boards to update contracts as necessary to reflect the revised/ updated approach to protecting corporate legitimate interests as stated above, and
- Seeking professional advice to identify any possible contractual risks or loopholes that may result from the new approach of the courts.

Emphasising legitimate interests in the drafting of relevant clauses has become more important. This is obvious particularly in the situation of where the interests, and the sanction for breach, go beyond straightforward damages for (in effect) direct losses. An insertion of a rider clause will also help building in any material information (for example the legitimate interest to protect the target's goodwill in M&As) proving

that, even where there is a legitimate interest, the remedy stipulated is not, in the circumstances, extravagant or unconscionable.

**Increased role of company secretaries**

The above Supreme Court judgment will have a significant impact on the formation of contracts and the remedies available on breach of contracts in Hong Kong. Since Hong Kong's law has a strong link with the common law framework, the judgment will be highly persuasive and will be likely to be followed in Hong Kong. It will be interesting to see whether any forthcoming local court decision will accept the arguments and endorse the findings of *Cavendish and Parking Eye*. Such an endorsement would be a welcome development in the contract law of penalties in Hong Kong, thus resulting in a more realistic commercial and practical financial context. No doubt, Hong Kong company secretaries and contract administrators will play a key role in contract management, thus maintaining Hong Kong as a world class financial centre.

**Zoe Chan So Yuen FCS, FCIS, LLM,  
 MCI Arb**

*Solicitor*

## Programme Aims

This postgraduate programme aims to provide practical knowledge and skills for those who wish to pursue or further advance their careers as Company Secretaries and Corporate Governance professionals.

On successful completion of the programme, students should be able to demonstrate a comprehensive understanding of the theoretical, practical, comparative and international dimensions of corporate administration and company secretarial practices in changing business and regulatory contexts, evaluate the various theories underpinning good corporate governance, and offer financial and legal advice on the conduct of business.

## Programme Structure

Applications for this programme will only be open for the Autumn Term which commences in September.

Course Code	Course Title
ACT B861	Accounting for Corporations
FIN B862	Treasury and Financial Management
MKT B890	International Management Strategy
ACT B864	Tax Framework
LAW B868	Corporate Law
CGV B897	Corporate Administration and Secretaryship
CGV B898	Issues in Corporate Governance*
FIN B851	Financial Planning and Risk Management

## Entry Requirements

Applicants to this programme must meet one of the following entry requirements:

- a recognized degree in a business-related area (or its equivalent); or
- a recognized degree in a non-business area (or its equivalent), plus three years of supervisory/managerial experience.

## Tuition Fee

- Application fee: RMB 200
- Tuition fee: RMB 79,200
- Fee for the Residential School in Hong Kong (one week): RMB 1,500

## Conferment of Award

Upon successful completion of all prescribed courses for Postgraduate Programme in Corporate Governance, students will need to transfer all credits earned to the Master of Corporate Governance programme of The Open University of Hong Kong. They will be granted the degree certificate and transcript of the Master of Corporate Governance in Hong Kong after completing the Residential School. Graduates of the Master of Corporate Governance (MCG) programme are eligible to apply for full exemption from the examinations of International Qualifying Scheme (IQS) of The Institute of Chartered Secretaries and Administrators (United Kingdom) (ICSA) and The Hong Kong Institute of Chartered Secretaries (HKICS).

## Application

- Deadline: 31 August 2016
- Completed application should be sent to East China University of Science & Technology Room 101,166 Meilong Road, Xuhui District, Shanghai
- Required documents for application:
  - A completed application form
  - 2 passport photos 2.5 x 3 cm in size with the applicant's name written at the back
  - The applicant's identity card and two photocopies
  - The applicant's original academic credentials (e.g. award certificates and transcripts of studies) and 2 sets of photocopies
  - The applicant's original supporting documents of work experience and 2 sets of photocopies

(All original documents will be returned after verification.)

## Enquiries

**East China University of Science and Technology**

Address: Room 101, 166 Meilong Road, Xuhui District, Shanghai

Contact person: Ms Hua, Mr Kong

Tel: 021 – 64251865 / 64251139 / 18917101865 / 18917101139

Email: peixun@ecustmde.com

**Open University of Hong Kong**

Contact person: Mr Johnny Lui

Tel: 27686930

Email: jlui@ouhk.edu.hk

## Professional Development

### Seminars: May to June 2016

9 May

Shareholder engagement – local practices and global trends in various markets



*Chair: Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Senior Director and Head of Technical & Research, HKICS*  
*Speaker: James Wong, Chief Executive Officer, Computershare Hong Kong Investor Services Ltd*

10 May

Execution and proof of company documents for overseas use under the new Companies Ordinance (Cap 622) (re-run)



*Chair: Jenny Choi FCIS FCS(PE), Institute Professional Services Panel member, and Senior Manager, Ernst & Young Tax Services Ltd*  
*Speaker: Samuel Li, Notary Public & Solicitor, Samuel Li & Co*

13 May

Big security – using big data analytics and business intelligence to improve cyber security



*Chair: Richard Law FCIS FCS, Principal Consultant, Robinson's Legal Training Ltd*  
*Speaker: David White, Director, AlixPartners*

16 May

Company secretarial practical training series: board evaluation – the role of the company secretary



*Chair: Terry Wan FCIS FCS, Institute Membership Committee member, and Group Company Secretary, Li & Fung Ltd*  
*Speaker: April Chan FCIS FCS(PE), Institute Past President and Chair of the Technical Consultation Panel*

25 May

Company secretarial practical training series: annual general meetings – private and listed companies (re-run)



*Chair: Louisa Lau FCIS FCS(PE), Registrar, HKICS*  
*Speaker: Francis Yuen FCIS FCS, Institute Education Committee member & Chairman of Assessment Review Panel, and Director of a consulting company*

27 May

中国公司法调整对外资企业的影响



*Chair: Jerry Tong FCIS FCS, Institute Membership Committee & Education Committee member, and Financial Controller and Company Secretary, Sing Lee Software (Group) Ltd*  
*Speaker: Joe Zou, Managing Director, China Tax and Business Consultants Ltd*

**2 June**  
**Directors' liability risks  
 in corporate financial  
 distress/failure**



*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*

*Speakers: Terry Kan ACIS ACS, Partner, Shinewing Specialist Advisory Services; and Lawrence Chan, Partner, Wilkinson & Grist*

**7 June**  
**Company secretarial  
 practical training series:  
 risk management**



*Chair: Dr Davy Lee FCIS FCS(PE), Institute Past President, and Group Company Secretary, Lippo Group*

*Speaker: Michael Chan, Chief Executive, C&C Advisory Services Ltd*

**6 June**  
**Competition Law – part 1  
 (re-run)**



*Speaker: Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Senior Director and Head of Technical & Research, HKICS*

**8 June**  
**Competition Law – part 2  
 (re-run)**



*Speaker: Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Senior Director and Head of Technical & Research, HKICS*

**10th Corporate Governance Conference to be held in September**

The Institute's 10th biennial Corporate Governance Conference (CGC) under the theme of 'Corporate governance inside and out – forces shaping the corporate governance landscape', will bring together thought leaders from corporate governance, legal, regulatory, risk and finance, and other fraternities, locally and internationally to share perspectives on corporate governance for navigating the challenges ahead.

There are various internal and external forces that shape a company's corporate governance practices. This conference will explore their influence on the corporate governance landscape. Don't miss this opportunity to learn from peer sharing with players both inside and outside of companies on best practices in corporate governance.

*For details, please refer to the flyer on page 15 and the conference website: [www.hkics.org.hk/CGC2016](http://www.hkics.org.hk/CGC2016).*

## Professional Development (continued)

### ECPD forthcoming seminars

Date	Time	Topic	ECPD points
19 Jul 2016	6.45pm – 8.15pm	Key global enforcement trends in anti-bribery and anti-corruption and best practices to manage compliance risk	1.5
8 Aug 2016	6.45pm – 8.45pm	The guardian role of professionals in upholding ethical governance	2
12 Aug 2016	6.45pm – 8.45pm	中国公司法调整对外资企业的影响 (re-run)	2
16 Aug 2016	6.45pm – 8.45pm	Company secretarial practical training series: annual general meetings – private and listed companies (re-run)	2
25 Aug 2016	6.45pm – 8.45pm	Company secretarial practical training series: options for winding up a Hong Kong private limited company: liquidation vs deregistration	2

For details of forthcoming seminars, please visit the ECPD section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

### 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	13.5 (at least 2.5 ECPD points)	30 June 2017	31 July 2017

### MCPD requirement extends to graduates

All graduates are required to comply with the Institute's MCPD requirements from 2015/2016 CPD year and onwards.

## Advocacy

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### Passing the Torch 2016 – closing ceremony

This year's 'Passing the Torch' project closed with a ceremony on 30 May 2016. Organised by The Chartered Secretaries Foundation Ltd (CSFL), in collaboration with the Institute and the Hong Kong University of Science and Technology (HKUST) and sponsored by the Companies Registry, the 'Passing the Torch' project seeks to pass on knowledge and expertise in corporate governance and business ethics to the younger generation. Details

of the activities organised under the project this year were covered in the April and June 2016 editions of *CSj*.

The Institute would like to thank Ada Chung JP, the Registrar of Companies as the event's guest-of-honour, and the Companies Registry for sponsoring this project. In addition to Institute President Ivan Tam FCIS FCS; Vice-President Paul Stanford FCIS FCS; and Chief Executive

Samantha Suen FCIS FCS(PE); the ceremony was joined by Professor Kevin Chen, Chair Professor and Head of Department of Accounting; Dr Dennis Chan, Associate Professor of Business Education of the HKUST Business School; and senior Institute members involved in the project, including Dr PM Kam FCIS FCS; Angus Pang FCIS FCS; Banny Ma ACIS ACS; and Hammond Luk FCIS FCS.



*The 'Passing the Torch' closing ceremony attendees*

### Meeting with Tianjian government officials

Institute Chief Executive Samantha Suen FCIS FCS(PE) joined a meeting of the Hong Kong Coalition of Professional Services (HKCPS) with a delegation of Tianjian government officials. The Tianjian delegates expressed their interest in attracting professionals in Hong Kong to further develop their careers and/or set up a presence in Tianjian. The member professional bodies of HKCPS were invited to visit the city, and in particular the China (Tianjin) Pilot Free Trade Zone and the Binhai New Area.

## Advocacy (continued)

### Nominations for the HKICS Prize 2016

Nominations are now open for the HKICS Prize 2016. This is an opportunity to recognise individuals who have made significant contributions to The Hong Kong Institute of Chartered Secretaries and the Chartered Secretarial profession over a substantial period.

We have a vibrant community of over 5,800 Chartered Secretaries and graduates in Hong Kong. Celebrating the achievements of leaders of the Chartered Secretarial profession not only champions the leaders of our profession and recognises their achievements, but also inspires others to play their part in moving the profession forward.

You are cordially invited to nominate candidate(s) who have made outstanding contributions to the profession. These may include:

- making an ongoing contribution to the Institute and/or Chartered Secretarial profession over an extended period
- contributing to the Institute's technical and research, education and examinations, and professional development work
- contributing to the development of the profession/Institute in Hong Kong and Mainland China

- contributing to significantly enhance the image of the Chartered Secretarial profession within the local community, Mainland China and/or internationally
- contributing to the Institute in ways other than those stated above that has brought identifiable credit to the Chartered Secretarial profession.

*The nomination deadline is Friday, 30 September 2016. Submit your nominations now!*

*For details of the Prize and nomination, please visit the 'News' section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).*



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

Each issue is distributed to over **9,000** members of HKICS, and read by approximately **20,000** individuals.

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

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

**ninehills**  
media

# Rewarding the Extraordinary



## The Hong Kong Institute of Chartered Secretaries Prize 2016

### Call for Nominations

The Hong Kong Institute of Chartered Secretaries Prize will be awarded to a member or members who have made significant contributions to the Institute and the Chartered Secretarial profession over a substantial period.

Awardees are bestowed with the highest honour – recognition by their professional peers. We urge you to submit your nominations now!

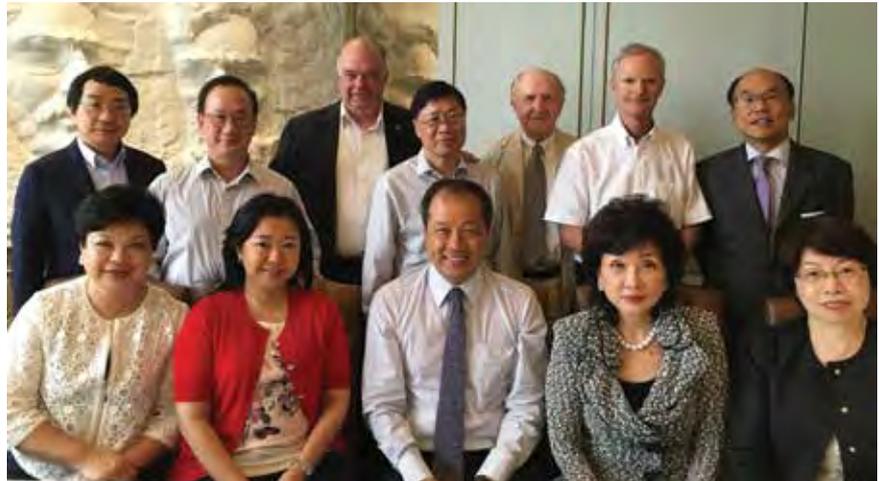
The nomination deadline is Friday, 30 September 2016.  
Please visit [www.hkics.org.hk](http://www.hkics.org.hk) or contact Louisa Lau at 2830 6008 or email to [member@hkics.org.hk](mailto:member@hkics.org.hk) for details.

**Please  
act now!**

## Advocacy (continued)

### Annual lunch gathering with Past Chairmen and Presidents

On 15 June 2016, Institute President Ivan Tam FCIS FCS hosted a lunch gathering with past presidents of the Institute and past chairmen of the Institute of Chartered Secretaries and Administrators – Hong Kong branch. The lunch was attended by Rebecca Chow FCIS FCS; Dr Davy Lee FCIS FCS(PE); Neil McNamara FCIS FCS; Frank R Mullens FCIS FCS; Paul Ng FCIS FCS; Dr Maurice Ngai FCIS FCS(PE); Mike Scales FCIS FCS; Natalia Seng FCIS FCS(PE); Edith Shih FCIS FCS(PE); Richard Stoneman FCIS FCS; Samantha Suen FCIS FCS(PE); Horace Wong FCIS FCS; and Duffy Wong FCIS FCS. The former leaders of the Institute shared their views on the future development of the Institute in the region.



*Annual lunch gathering with Past Chairmen and Presidents*

## Membership

### New graduates

Congratulations to our new graduates listed below.

Chan Yi Hang, Kristy  
Cheung Ching Ki  
Fok Chung Ki  
Long Yu, Alyssa  
Wong Chi Wa

### Membership renewal for the 2016/2017 financial year

The membership renewal notice for the 2016/2017 financial year, together with a demand note, will be posted to members and graduates in August 2016. The annual subscription rates for the 2016/2017 financial year remain at the current level, as set in 2013/2014, but will be pro-rated to reflect the period of 11 months due to the change of the financial year end from 31 July to 30 June. Members should settle payment as soon as possible, but no later than 31 January 2017. Failure to pay by the deadline will constitute a ground for membership/graduateship removal.

*For enquiries, please contact the Membership Section at: 2881 6177, or email: [members@hkics.org.hk](mailto:members@hkics.org.hk).*

## Membership (continued)

### Members' activities highlights: May and June 2016

21 May  
Young Group –  
cake baking



*Young Group members hone their baking skills*

28 May  
Community  
Service –  
Volunteer  
Training



*Group photo of the participants after the volunteer training*

3 June  
Members'  
Networking –  
用《易经》·  
做对养生



*Dr Eva Chan FCIS FCS(PE) presenting a souvenir to workshop speaker Michael So*

11 June  
Hong Kong  
International  
Dragon  
Boat Race –  
Professional  
Bodies  
Invitational  
Race



*The Institute's Dragon Boat paddlers*

16 June  
Members'  
Networking –  
energising life  
with laughter  
yoga



*Participants at the laughter yoga event*



*The Institute's Dragon Boat team wins the merit prize*

## Membership (continued)

### The Institute's fee structure 2016/2017

The subscription fees for members, graduates and students for the financial year 2016/2017, which will apply from 1 August 2016 to 30 June 2017, are set out below.

<b>Members/ Graduates</b>	
<b>Items</b>	<b>Amount (HK\$)</b>
<b>Annual subscription (pro-rated)</b>	
Fellows	2,300
Associates	1,970
Graduates (holding the status for less than 10 years, that is, after 1 August 2006)	1,690
Graduates (holding the status for more than 10 years, that is, on or before 1 August 2006)	2,300
<b>Concessionary subscription (note 1)</b>	
Retired rate	450
Reduced rate	450
Hardship rate	1
<b>Election fees</b>	
Fellows (note 2)	1,000
Associates	1,950
Graduate advancement fee	1,900
<b>Re-election fees</b>	
Fellows	3,200
Associates	2,650
Graduates	2,100
<b>Other fees</b>	
Membership card replacement	200
Certificate replacement	200
Membership confirmation	250
Transcript application	80 per copy
<b>Mainland's Affiliated Persons Programme</b>	
<b>Items</b>	<b>Amount (HK\$)</b>
Annual subscription/new application (pro-rated)	2,010

**Students**

Items	Amount (HK\$)
Registration fee	1,250
Re-registration fee	1,450
Renewal fee	780
Late studentship registration administration charge (note 3)	600
Examination fee	1,100 per subject
Examination postponement fee	800 per subject
Examination appeal fee	2,100 per subject
Exemption fee	1,100 per subject
Exemption re-application administration charge (note 4)	650 per application
Transcript application	80 per copy
Examination technique workshop	500 per subject
HKICS study online	350 per copy
ICSA study text	800 per copy
Study pack	470 per copy
CCA late registration charge	380 per month

**Notes:**

- Members are eligible to apply for concessionary rates (retired, reduced and hardship) if they have fulfilled the respective requirements and subject to the Membership Committee's approval. Application forms can be downloaded from the Membership section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk). The application deadline for any concessionary subscription for the year 2016/2017 is Monday 31 October 2016.
- The special rate for the Fellow election fee at HK\$1,000 will continue to be applicable during 2016/2017.
- An administration charge is applied to late studentship registrations for taking the corresponding examinations in June and December.

**Late studentship registration period**

1-15 August 2016  
1-15 February 2017

**Examination diet**

December 2016  
June 2017

- An administration charge for each exemption re-application will be applied to students who do not settle the exemption fee within the designated period of time following the approved exemption.

## International Qualifying Scheme (IQS) examinations

### December 2016 diet

#### Examination timetable

	Tuesday 6 December 2016	Wednesday 7 December 2016	Thursday 8 December 2016	Friday 9 December 2016
9.30am - 12.30pm	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2.00pm - 5.00pm	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

Please enrol between 1 and 30 September 2016.

### IQS information session

This free seminar will include information on the International Qualifying Scheme (IQS) and a member of the Institute will share valuable experience on the career prospects of Chartered Secretaries. This seminar is open to the public. Members and students are welcome to recommend the seminar to colleagues and friends interested in learning more about the Chartered Secretarial profession.

<b>Date:</b>	Wednesday 20 July 2016
<b>Time:</b>	7pm - 8.30pm
<b>Venue:</b>	Joint Professional Centre, Unit 1 G/F, The Center, 99 Queen's Road Central, Hong Kong
<b>Speaker:</b>	Mr Brian Chan ACIS ACS

## Studentship

### HKICS seminar for Collaborative Course students

At the recent seminar held for Collaborative Course students at the City University of Hong Kong on 21 May 2016, Polly Wong FCIS FCS(PE), Institute Education Committee Vice-Chairman and Company Secretary & Financial Controller of Dynamic Holdings Ltd, gave a presentation on the changing role of independent non-executive directors in Hong Kong.



*Polly Wong FCIS FCS(PE) receives a souvenir from Dr Guan Yuyan, Associate Head, Department of Accountancy, City University of Hong Kong*

### Policy – payment reminder Studentship Renewal

Students whose studentship expired in May 2016 are reminded to settle the renewal payment by Thursday 28 July 2016.

#### Exemption Fees

Students whose exemption was approved via confirmation letter on 22 April 2016 are reminded to settle the exemption fee by Saturday 23 July 2016.

## Studentship (continued)

### New postgraduate programme in corporate governance in Shanghai

The Open University of Hong Kong (OUHK) has launched a new Postgraduate Programme in Corporate Governance (PGPCG) which will commence in September 2016 at the East China University of Science and Technology (ECUST 上海华东理工大学) in Shanghai.

The programme aims to equip candidates with sound knowledge and competency in corporate governance and corporate secretaryship. Upon successful completion of all prescribed courses of the PGPCG, and attending a one-week residential school in Hong Kong, students can transfer all credits earned to the Master of Corporate Governance (MCG) programme of OUHK. MCG graduates are eligible to apply for full exemption from the Institute's international qualifying examination. Four scholarships (worth HK\$8,000 each) will be awarded to the top four students by the end of the programme.

The Institute, together with the OUHK and the ECUST, held an information session on 18 May 2016 on the PGPCG in Shanghai. Over 30 participants from Mainland companies listed in Hong Kong and multinational corporations attended.

Institute Chief Executive Samantha Suen FCIS FCS(PE) introduced the Chartered Secretarial profession and the HKICS to the attendees. This was followed by a briefing by Institute Education and Examinations Director Candy Wong on the route to membership of the HKICS, including the Institute's exemption policies. Dr Susana Yuen, Associate Professor, Lee Shau Kee School of Business Administration of OUHK, and Gao Jianbao of ECUST explained the programme requirements and application procedures.



*Samantha Suen speaking at the information session*

The information session ended with a sharing session by three Institute members: Joanna Lau ACIS ACS, Lu Qiuhan ACIS ACS and Charlotte Xiao FCIS FCS, who are working in Mainland China. They talked about their study experiences and the career prospects of Chartered Secretaries in Mainland China.

*Programme details are available at the Institute's Chinese website: [www.hkics.org.cn/pages/OUHK\\_MCG\\_SH.html](http://www.hkics.org.cn/pages/OUHK_MCG_SH.html). The application deadline is Wednesday 31 August 2016.*

*Please relay the above information to your friends and contacts who may be interested in studying this programme in Shanghai. For queries about the programme, please contact Johnny Lui of OUHK at: (852) 2768 6930; or email: [jlui@ouhk.edu.hk](mailto:jlui@ouhk.edu.hk); or call Iona Li of the HKICS Beijing Representative Office at: (8610) 6641 9368 (ext. 228); or email: [bro@hkics.org.hk](mailto:bro@hkics.org.hk).*

## Listing regulation: joint consultation

The Securities and Futures Commission (SFC) and Hong Kong Exchanges and Clearing Ltd (the Exchange) jointly issued a consultation last month on proposed enhancements to the existing governance structure for listing regulation in Hong Kong. Under the proposals two new Exchange committees would be created, on which the SFC and the Exchange would be equally represented.

### 1. The Listing Policy Committee

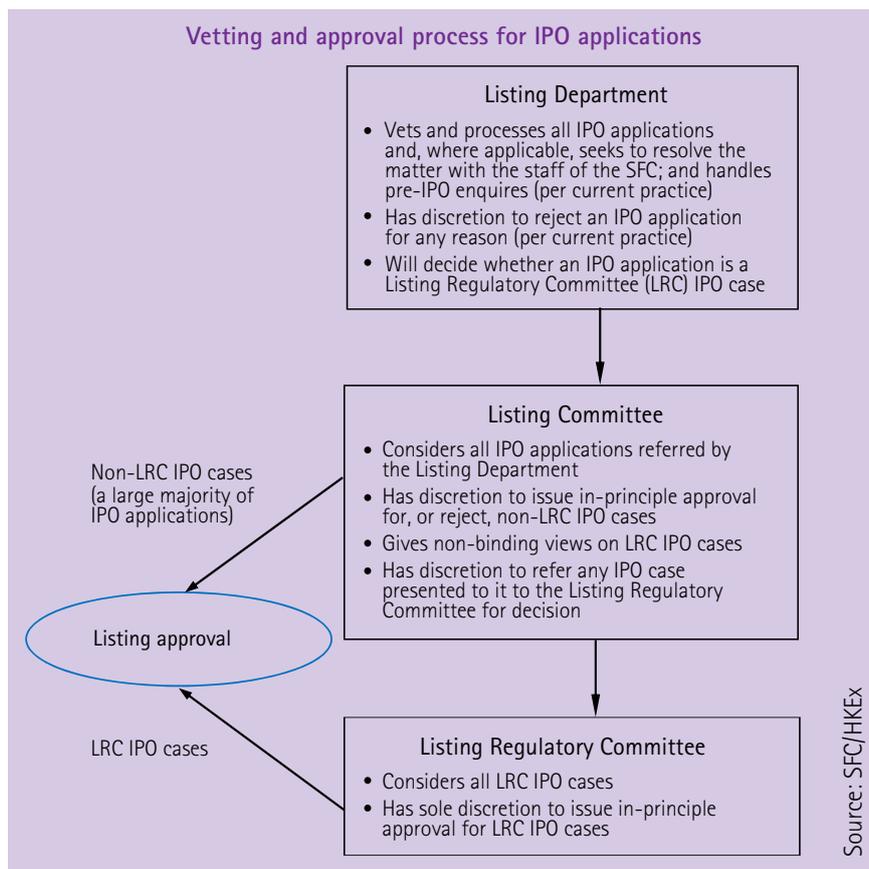
This committee would initiate, steer and decide listing policy. It would comprise representatives from the SFC and the Listing Committee, as well as the Chief Executive of the Exchange and the Chairperson of the Takeovers and Mergers Panel. The creation of this committee hopes to achieve closer coordination and cooperation between the SFC and the Exchange on listing policy formation and provide the SFC with earlier and more direct input on listing policy matters and listing regulation.

### 2. The Listing Regulatory Committee

This committee would be created to improve the processes for important or difficult listing decisions. It would allow the SFC to have earlier and more direct input on these decisions and to collaborate with the Exchange on decision-making. The committee will comprise representatives from the SFC and the Listing Committee.

### How the new structure will work

The Exchange's Listing Committee, together with the Listing Department, will continue to decide a large majority of initial listing applications and post-listing matters, and will continue to comprise representatives of investors, listed issuers and market



practitioners. The Chief Executive of the Exchange, however, will cease to be a member of this committee. The revised governance structure will mean that in future the Listing Committee will be able to refer any complex or sensitive cases to the newly formed Listing Regulatory Committee for its decision. The Listing Committee will provide a non-binding view to both the Listing Policy Committee and the Listing Regulatory Committee on their decisions.

To establish a clear reporting structure, it is proposed that the Listing Policy Committee will become the body responsible for oversight of the listing function and the Listing Department's performance in listing regulation.

The new governance structure would mean that the SFC will no longer, as a matter of routine, issue a separate set of comments on draft IPO prospectuses under the dual filing regime.

*The consultation document – 'Joint Consultation Paper on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation' – is available for download from the SFC and the Exchange websites: [www.sfc.hk](http://www.sfc.hk) and [www.hkex.com.hk](http://www.hkex.com.hk). The three-month consultation ends on 19 September 2016.*

# 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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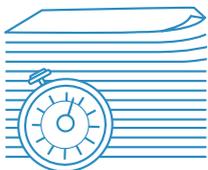
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