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August 2017

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The journal of The Hong Kong
Institute of Chartered Secretaries

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Good governance comes with membership

About The Hong Kong Institute of Chartered Secretaries

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of the Chartered Secretary in Hong Kong and throughout Mainland China. HKICS was first established in 1949 as an association of Hong Kong members of the Institute of Chartered Secretaries and Administrators (ICSA) of London. It became a branch of ICSA in 1990 before gaining local status in 1994. HKICS is a founder member of the Corporate Secretaries International Association (CSIA) which was established in March 2010 in Geneva, Switzerland to give a global voice to corporate secretaries and governance professionals. HKICS has over 5,800 members and 3,200 students.

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Associates: 5,203

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Ethics: the value of vigilance

This month our journal tackles an issue which goes to the heart of what our profession stands for. Given our audience in this journal, I'm sure I don't need to spend any time arguing why good ethics makes sense – achieving the benefits of high ethical and governance standards is, after all, one of the principal reasons members of our profession get hired. There is a question to answer, however, as to why ethical lapses occur – even sometimes among compliance and governance professionals themselves – and how best to guard against those lapses.

It may seem comfortingly simple to frame this as a battle between good and evil, but in real life scenarios – such as those elaborated in this month's cover story by the Independent Commission Against Corruption (ICAC) – the factors influencing poor ethical decisions can often be traced to very common biases and organisational pressures that can trip up the unwary. An obvious example is the pressure to conform and to show loyalty to our employer. Some employers, and even some fresh recruits to the company secretary role, may be under the misapprehension that our role is essentially an administrative one. If the CEO or the chairman of the board asks the company secretary to backdate the minutes or falsify information in a

corporate filing, he or she would have no choice but to follow orders, right?

Wrong. If we have learned one thing from the cases, fortunately relatively rare, where company secretaries are convicted of fraud or malpractice, it is that naivety is no defence. The ICAC's cover story this month quotes the trial judge in a recent bribery and fraud case who noted that the company secretary, one of the defendants in the case, may have joined the dishonest scheme out of loyalty to his chairman. The judge nevertheless pointed out that, whatever the motivation, the company secretary had a clear duty to oppose the fraudulent scheme.

The courts in Hong Kong are well aware of the duties and professional standards expected of company secretaries. These are set out in *The Essential Company Secretary* (October 2013 edition) – which serves as our code of ethics applicable to all members of our Institute. *The Essential Company Secretary* makes it clear that we cannot ignore cases of non-compliance with legislation or regulation that come to our attention, even if someone else has been made responsible for those matters. We have a duty to monitor these matters, regardless of the terms of our employment, and should draw such cases to the attention of the directors and advise them of their own and the company's duties and obligations.

The Essential Company Secretary sets a very public benchmark for our profession.

It has been cited during tribunal hearings in Hong Kong – for example by Justice Hartmann in a Market Misconduct Tribunal hearing in March 2015 – as evidence of the professional standards company secretaries are expected to maintain.

The key message I want to emphasise here is that we have a duty of loyalty to our profession as well as a duty of loyalty to our employers, and where the two are in conflict – for example, where we are asked to turn a blind eye, or even to participate, in malpractice – our professional obligations should triumph. We need to maintain a keen vigilance when it comes to ethics. Poor ethical decisions will not always come to us dressed up in horns and devil's tail – in fact they are more often than not rather beguilingly clothed. Cutting ethical corners may be presented to us as an acceptable means of achieving a corporate goal, such as higher profit, but allowing any level of moral disengagement is a very slippery slope. We need to maintain an independent mindset and trust in our own moral compass. We have many functions as company secretaries, but to do justice to our calling, we should always bear in mind that our most essential function is to be the 'conscience of the company'.

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

Ivan Tam FCIS FCS

保持警觉，坚守道德标准

今期刊探讨的课题，关乎特許秘書专业的本质。以本刊读者的背景，相信我不必费时说明良好道德操守的重要性：维持高水平的道德与管治标准，让所属的机构从中获益，正是聘任特許秘書的主要原因之一。这里要解答的问题是：为何即便是合规及管治专业人员有时也会出现道德违规的行为，以及如何能最有效地防范这种情况。

我们很容易把这现象简单地解释为正邪之争，但实际上，不符合道德的决定往往源于很常见的偏见及来自机构的压力，而这些因素都会让欠缺警觉性的人落入陷阱。本期的封面故事中，廉政公署举出实例说明这情况。其中一个很明显的例子，就是遵从惯例，向雇主显示忠诚的压力。有些雇主以至刚从事公司秘书工作的雇员，可能错误理解公司秘书的角色纯粹是处理行政工作。假如公司总裁或董事会主席要求公司秘书在会议纪录中写上较早的开会日期，或在公司档案中伪造资料，公司秘书就得按指示行事，别无选择，是吗？

错了。真实个案的教训，我们必须记取：假如公司秘书因欺诈或不当行为而被定罪，无知并非辩护的理由。幸好这些个案并不多见。本月份廉政公署的封面故事，引述最近一宗贿赂及欺诈案件中的法官判词，表示案中被告之一的公司秘书，可能是出于对主席的忠诚而参与不诚实的计谋。然而法官指出，不管动机为何，公司秘书有明确责任反对该项欺诈计划。

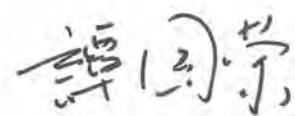
香港法院十分清楚公司秘书应有的责任和专业水准。这些职责和标准，载于《不可或缺的公司秘书》（2013年10月版）中；这是公会所有会员均应遵守的道德守则。《不可或缺的公司秘书》明确指出，假如留意到不合法或不合规的情况，即使该等事宜由其他人负责，公司秘书也不可视而不见。不管我们的聘用条件如何，我们都有责任监察这些事情，请董事注意这些个案，并提醒他们董事和公司的职责和责任。

《不可或缺的公司秘书》是特許秘書职责的公开指标，在香港仲裁处的裁

决中曾被引用；例如市场失当行为仲裁处于2015年3月一宗审讯中，夏正民法官就曾加以引述，以证明公司秘书应维持的专业水准。

这里想强调的是，特許秘書有责任对我们的专业效忠，也有责任对雇主效忠；两者如有冲突，例如有人要求我们对不当行为视而不见，甚至参与其中时，我们应以专业责任为先。在涉及道德的事宜上，我们应维持高度警觉。

不符合道德的决定，往往不会以魔鬼的面目呈现，反而通常会披上迷惑众人的外衣。在道德上走捷径，有可能被包装为企业追求更高利润等目标而可被接受的一种做法；然而，一旦与道德脱离，不管是任何程度的闪失，都会使道德水平越来越下滑。我们必须保持独立思考，相信自己的道德判断。公司秘书有许多不同的功能，但若充分发挥公司秘书的功用，必须紧记的是，我们最主要的职责是成为「公司的良心」。



谭国荣 FCIS FCS



Beyond compliance

The guardian role of company secretaries in ethics and governance



The Hong Kong Business Ethics Development Centre at the Independent Commission Against Corruption regards the company secretary as a trusted partner to achieve better ethical and governance standards in Hong Kong companies.

As part of the senior management team, the company secretary of listed companies plays a crucial role by acting as the board's professional adviser on governance matters. While every board is different in terms of its composition and the nature of the business, company secretaries face some common challenges when discharging their guardian role as the conscience of the company.

Encouraging active contribution of company directors at board meetings

It is important that every board member brings independent judgement to issues relating to the company's strategies, development, performance and risk management through their contribution at board meetings. Even where high-calibre executives with diverse industry expertise and experience have been recruited to the board, company secretaries may find it difficult to motivate directors to make an active contribution to the issues being

discussed or to show sufficient interest in the company's affairs. This may be because directors lack specific knowledge in the areas under discussion, or because the board lacks a culture of constructive challenge and debate. Acting as the key conduit for the free exchange of dissenting views and challenges between the board and management is never an easy task.

Advising the board to adopt best practices beyond regulatory compliance

It is not uncommon for listed companies to be reluctant to go beyond the minimum regulatory requirements and to 'do the right thing' – the pursuit of profit and business growth are often the prime concerns. Having the key responsibility to promote good corporate governance, company secretaries should encourage the board to invest in and adopt best practices beyond regulatory compliance – this will benefit the company's performance, manage risk

Highlights

- company secretaries have professional and fiduciary duties to safeguard the interests of the company and its stakeholders
- even where company secretaries are not directly involved in illegal activities, they can still bear criminal and civil liabilities where they have not fulfilled their professional and fiduciary duties
- company secretaries can contact the ICAC for advice on anti-bribery, corruption and corporate governance issues

effectively and protect the interests of different stakeholders in the long run.

Motivating company directors to attend training

Even where company directors are highly knowledgeable and experienced in their respective fields, continuous development is imperative to maintain their alertness to regulatory requirements and risk management issues. In addition to evaluating the corporate governance levels of Hong Kong listed companies, the *Corporate Governance Scorecard 2016*, published by The Hong Kong Institute of Directors, promotes the need for company directors to keep abreast of developments in corporate governance and in their relevant industries to perform their roles effectively.

The Corporate Governance Code under Hong Kong's listing rules requires directors to participate in continuous professional development to develop and refresh their knowledge and skills (see Paragraph A.6.5). The challenge posed to company secretaries is therefore to

motivate busy directors to attend training for the sake of their own self development as well as the success of the enterprises they direct.

Handling irregularities, non-compliance or misconduct

In cases of regulatory non-compliance or misconduct, especially when senior managers are involved, company secretaries face an ethical dilemma. They have a clear professional and fiduciary duty to take appropriate action against such cases, but past cases handled by the ICAC reveal that some company secretaries have chosen to stay silent about the malpractice rather than speaking out against it. In some extreme cases, some were even beguiled into joining the scams of corruption, fraud or other malpractices and were prepared to compromise their ethical standards for their own personal gain.

A recent ICAC investigation demonstrated the dire consequences for company secretaries who fail to recognise their guardian role to protect the interests of

the company when ethical challenges arise. In the case, an entrepreneur, a certified accountant, together with an executive director/company secretary of a listed company were convicted of bribery and fraud in relation to the acquisition of a Mainland plantation project by the listed company. The entrepreneur and the accountant had, with the assistance of the company secretary, offered the chairman of the listed company bribes amounting to HK\$180 million for acquiring the chairman's shareholding. In return, the chairman arranged his listed company to acquire the Mainland plantation project at HK\$500 million from an offshore company owned by the entrepreneur.

Consequently, the constitution of the listed company's board of directors was changed and the entrepreneur secured control of the company. The offenders defrauded the Stock Exchange, the listed company's existing shareholders and potential investors by concealing the corrupt scheme in the course of the acquisition. The company secretary not only failed in his duty as a corporate guardian, but even facilitated the wrongdoings, which subsequently cost him six years' imprisonment. The other offenders were sentenced to jail terms ranging from four years to seven years and nine months.

In sentencing, the judge remarked that corruption is a serious offence. He reprimanded the defendants for undermining the reputation of Hong Kong's financial industry and its honest business environment. Highlighting the guardian role of the company secretary, the trial judge commented that the company secretary 'was loyal to [the chairman], perhaps too loyal, so he joined the dishonest scheme. However, loyalty

How is bribery defined in law?

Section 9(1) of Prevention of Bribery Ordinance (PBO) states that any agent (for example an employee or a director of a company) shall be guilty of an offence if, without the permission of his principal (for example the employer or the company) or without any reasonable excuse, he or she solicits or accepts any 'advantage' for doing or forbearing to do any act in relation to his principal's affairs or business. It is also an offence under Section 9(2) of the PBO for any person who offers an advantage to an agent for the above purpose.

An 'advantage' refers to anything that is of value such as money, a gift, commission, loan, employment, or service and favour. 'Entertainment' is generally excepted where it involves the provision of food or drink for consumption on the occasion when it is provided, and any other entertainment connected with such provisions. The maximum penalty for an offence under Section 9 of the PBO is seven years' imprisonment and a fine of HK\$500,000.

“
even where company secretaries
are not actively involved in
corruption or fraud, they may
be liable for breach of duty
”



can only go so far and the judge pointed out that there is always the choice for the defendant to say 'no, Mr chairman, this is wrong, I will not do it'.

Anti-corruption laws in Hong Kong

The above case demonstrates how bribery can facilitate massive financial fraud and damage stakeholders' interests as well as Hong Kong's market integrity. Bribery in the private sector is governed by Section 9 of the Prevention of Bribery Ordinance (PBO) which aims to maintain fair play in the business environment and proscribe acts breaching agents' fiduciary duties to their principals. Section 9(1) of the PBO prohibits the solicitation and acceptance of advantage by an agent in connection

with his principal's business. Section 9(2) of PBO prohibits the offering of such advantage to an agent.

While business operations have become increasingly globalised, if any act of bribery – including promising, agreeing, soliciting or accepting advantages without permission – takes place within Hong Kong, the case can be pursued under the PBO enforced by the ICAC.

Are you personally liable?

Even where company secretaries are not actively involved in corruption or fraud, they may be liable for breach of duty in the same way that board members and senior executives are if

they fail to discharge their duties to protect the interests of the company as a whole – including those of the minority shareholders.

This can be best illustrated by a recent ruling of the Market Misconduct Tribunal (MMT) against the chairman and senior executives, including the company secretary/group financial controller, of a company listed on the Growth Enterprise Market (GEM) of the Stock Exchange of Hong Kong for accounting fraud. The MMT found that these parties had grossly overstated the company's net asset value in the company's annual reports and result announcements. Among others, the MMT found the company

“ company secretaries should encourage the board to invest in and adopt best practices beyond regulatory compliance ”



secretary culpable of market misconduct by negligently providing materially false and misleading information to the public. Though the company secretary argued that he did not have access to the financial records of the subsidiaries of the company, nor had he been able to monitor the subsidiaries' compliance with the appropriate financial standards, the MMT found him negligent in performing his professional duties as a qualified accountant by accepting the irrational arrangement limiting his ability to fulfil his duties, thereby enabling the chairman and senior executives to defraud the investing public.

In fact, both the Main Board and GEM listing rules recognise the important role of company secretaries in advising the board through the chairman and/or the chief executive on governance matters. The company secretary's role as a promoter of corporate governance is also highlighted by The Hong Kong Institute of Chartered Secretaries (the Institute) in its guide for members, *The Essential*

Company Secretary. In particular, the guide stresses that 'company secretaries cannot afford to ignore any cases of non-compliance with legislation or regulation that come to their attention, even if the directors have purported to make someone else responsible for those matters (Paragraph 3.5). They should also ensure that the board is fully aware of its responsibility to avoid engaging in any market misconduct practices, including not putting out or allowing the release of misleading information, or by engaging in a course of conduct which could amount to market misconduct (Paragraph 5.1.15).'

Disclosure of anti-corruption policy

To further enhance the corporate governance standard of listed companies and to ensure an orderly, fair and informed financial market in Hong Kong, the environmental, social and governance reporting requirements set out by the Stock Exchange have been strengthened with effect from the 2016 financial year. Among the changes was

the upgrade of the level of obligation of the disclosure of a listed company's anti-corruption policy from voluntary to 'comply or explain'. Furthermore, the requirements for risk management and key internal control measures have also been strengthened in the Corporate Governance Code. Listed companies are required to adopt a structured approach to risk management and internal control, as well as to conduct an annual review of the effectiveness of these systems. The related disclosures in the corporate governance reports of listed companies have also been upgraded from recommended best practice to 'comply or explain'.

Company secretaries responsible for preparing the corporate governance reports of listed companies can contact the ICAC for advice on promoting corporate governance. The ICAC provides assistance to listed companies in developing and effectively implementing their own programmes to prevent corruption, thereby facilitating the

meeting of their reporting requirements in respect of anti-bribery policy and corruption risk management.

The Ethics Promotion Programme for Listed Companies

In 2015, the Hong Kong Business Ethics Development Centre (HKBEDC) of the ICAC launched a three-year 'Ethics Promotion Programme for Listed Companies' in collaboration with relevant government departments, regulators, chambers of commerce and professional bodies, including the Institute, with the aim of bringing out the important roles of company directors and professionals in sustaining an ethical culture in listed companies. Apart from providing tailor-made corruption prevention and education services to listed companies, the HKBEDC has also developed a training package on business ethics for listed companies under the programme. The package consists of case studies, training videos and lessons to learn, featuring the ethical challenges faced by the company directors, senior executives and professionals during the pre-listing, daily operations and takeovers and merger stages of listed companies.

One hypothetical case scenario in the training package highlights the possible criminal and civil liabilities of a company secretary who fails to take action against suspected fraud during the pre-listing process. A company secretary is tasked to assist a company to become listed on the Stock Exchange of Hong Kong. In the listing process, he learns from the sponsor's due diligence unit that there are irregularities with respect to the company's bank loans and its land transactions in the Mainland. When he seeks clarification from the executive director/general manager

of the company, he is brushed off and reminded that any slippage in meeting the listing deadline would disappoint the founder of the company, whom he highly respects. Realising that the deadline is approaching, the company secretary does not pursue the issue further.

Although the company secretary in this scenario was not directly involved in the irregularities or illegal activities, he still bears possible criminal and civil liabilities on the basis of the breach of his professional and fiduciary obligations to safeguard the interests of the company and its stakeholders.

The training package will be launched at the *Conference on Business Ethics for Listed Companies – Corporate Governance: Compliance and Beyond* on 1 September 2017. Company directors, senior executives and governance professionals including company secretaries are encouraged to join the conference in which distinguished speakers from the government, regulators and professional bodies will discuss the latest regulatory developments relating to the governance of listed companies, as well as sharing their experience and skills in practising ethical governance from practitioners' perspectives. Participants will also gain a better understanding of the risks and corruption pitfalls relating to different aspects of the management of listed companies.

Trusted partners in upholding market integrity

For 23 consecutive years, Hong Kong has been ranked the freest economy by the Index of Economic Freedom released by the Heritage Foundation. As a leading international financial centre in the world, a level-playing

field for businesses that fosters fair competitions is instrumental to its success. Over the years, the ICAC has been sparing no effort in eradicating bribery and related malpractices that may impede the efficient operation and integrity of the financial market. In fact, Hong Kong has been consistently ranked among the cleanest places in the world with very low levels of corruption. In the TRACE Matrix 2016, a global index tracking business bribery risk developed by TRACE International in collaboration with the RAND Corporation, Hong Kong was ranked the fourth least corrupt jurisdiction among 199 economies around the world, and the best jurisdiction in Asia.

While the index further affirms the clean business environment in Hong Kong, it cannot be sustained without collective efforts and unwavering support from relevant stakeholders in the business community. The ICAC will continue to join hands with the business community to uphold high ethical standards in our financial market. The company secretary, as the guardian of corporate governance and 'conscience of the company', will always be the ICAC's most trusted partner to achieve this goal.

Hong Kong Business Ethics Development Centre

Independent Commission Against Corruption

More information on the 'Ethics Promotion Programme for Listed Companies' and the upcoming 'Conference on Business Ethics for Listed Companies – Corporate Governance: Compliance and Beyond' are available at: www.hkbedc.icac.hk/ic.

NGO governance

In an interview with CSj, Chua Hoi Wai, Chief Executive, The Hong Kong Council of Social Service, discusses the challenges facing NGO boards in Hong Kong.



Many thanks for giving us this interview – could we start by discussing what constitutes good governance for NGOs? Is it any different from that for commercial businesses?

'Good governance for NGOs is comprised of many factors, for example, high accountability; legal and regulatory compliance; sound and effective internal controls and risk management; and balanced composition of the board and committees including members' representativeness and differing expertise. However, what is particular to NGOs with regard to governance in contrast to commercial businesses is the one principle that underlies all of the above-mentioned elements – namely the need to ensure that the organisation efficiently lives out its mission which often serves the public interest. This contrasts starkly with the top priority of commercial businesses which tends to be the maximisation of profit for its shareholders.'

Is good governance just as important for NGOs as it is for commercial enterprises?

'Good governance might matter more for NGOs than for commercial enterprises, precisely because NGOs often have a public cause and provide services that have a direct impact on society. Public trust is the core element of an NGO's success, and good governance is the very foundation on which an NGO builds and maintains public trust – after all, no one is willing to donate to, or use the services of, an ill-governed NGO. This is borne out by the results of a survey we at The Hong Kong Council of Social Service (HKCSS) conducted in 2009, which identified 'good reputation' and 'high transparency' as the top reasons for donating to a specific charity. Bad governance leads to a lack of public trust, which hampers

an NGO's sustainability, both financially and overall!'

Are there differences in the types of governance challenges faced by commercial businesses and NGOs?

'Absolutely indeed. Despite the many commonalities in the contexts commercial businesses and NGOs respectively operate in, highlighted by the fact that many NGOs take the legal form of a company and are hence governed by the Companies Ordinance, surprisingly or not, the differences in their governance challenges are multifold. At the two NGO Directors' Luncheons organised by HKCSS earlier this year, we conducted a poll regarding the major challenges NGO boards face. The respondents ranked 'leadership continuity' as the biggest challenge, followed by 'financial sustainability for mission fulfilment' and 'meeting diversified stakeholders' demands.

On leadership continuity, NGO governors usually assume their stewardship roles on a voluntary basis – this contrasts the situation in commercial enterprises where directors are appointed by shareholders. A downside of this is that people often have less incentive to take up this meaningful but inevitably laborious work. Self-help organisations in particular often face great difficulties when recruiting

talent with diverse backgrounds – their 'self-help' nature often limits these organisations to recruiting only persons with the same disability or disadvantaged background.

The second and third ranked challenges are related, which speak to NGOs' unique economic model. In contrast to commercial enterprises that mainly run on earned revenue, a much higher proportion of NGOs sustain themselves by both earned and contributed income. Their earned income may include service fees and charity sales, whereas their contributed income includes donations and grants. This means that NGOs are hit particularly badly in times of economic hardship. While there seems to be no similar study in Hong Kong, research conducted in the US found that the recession following the global financial crisis of 2008 reduced total charitable giving by 7% in 2008, and another 6.2% in 2009. Of course, along with contributed income, earned income also goes down in a flagging economy but commercial enterprises not only have more revenue generating options but also the flexibility to scale down their businesses when needed. Hard economic times are especially difficult for NGOs because, on the one hand their income suffers from the reduced economic

Highlights

- good governance is crucial for NGOs precisely because they often have a public cause and provide services that have a direct impact on society
- bad governance leads to a lack of public trust, which hampers an NGO's sustainability, both financially and overall
- it would be difficult to satisfy the demands of all stakeholders at all times, but NGO boards are responsible for setting the NGO's priorities



“
public trust is the core element of an NGO’s success, and good governance is the very foundation on which an NGO builds and maintains public trust
 ”

Facing a mixed bag of demands from a wide range of stakeholders, it is probably useful for the board to set priorities for the organisation at large, and regularly review them to ensure such priority-setting is always aligned to the organisation's goals and mission while adapting to constant changes in society. It is almost impossible to satisfy the demands of all, but with good governance and high transparency backed up by thorough consultation and discussion, as well as fair processes of decision-making, the board's decisions will be able to stick. Keeping sight of the big picture, balancing demands, and making respectable decisions are, certainly, the responsibilities of the governing body.

growth, and on the other there may be an even higher demand for their services which necessitates more resources.

This means that the general public and funders are important stakeholders for NGOs, which in turn underlines the diversified stakeholder mix for the sector. Not only are the public and donors concerned about accountability issues, NGO staff also tend to be demanding when it comes to the transparency of the organisations they serve, as they are usually passionate about actualising their agencies' mission and values properly. Further, depending on the organisation's development stage, the founder and first generation board can have profound influence over the organisation, since they are the ones who lay down the vision and mission that defines the organisation and guides its development at the time of its establishment. Other crucial stakeholders include the government, volunteers, partners and service users, all of which have their own expectations of the organisation, and are critical for the organisation's operation, encompassing service

delivery, resource winning, buildup and maintenance of reputation, and most significantly the overall realisation of the organisation's goals.'

What can be done to overcome these challenges?

'Regarding leadership continuity, the board should recognise that leadership is a continuous process that requires ongoing conscious effort. It is unlikely that a perfect candidate would emerge at board election times, so strategic planning for succession – in particular early identification of potential candidates, conscious engagement of these candidates in various roles including leadership ones and induction of new board and committee members – will be key to getting the right talent. Some organisations have developed a board pipeline leadership scheme in which current-term board members, as well as senior management, seek to identify potential candidates as soon as they are engaged in the organisation, including those in volunteer roles, and groom them for future leadership.

As for financial sustainability, I am glad to see that more and more NGOs have begun to improve their business models. Apart from taking advantage of philanthropy, NGOs, especially sizeable ones, increasingly diversify their income streams such as by running social enterprises and self-financing services. As long as an NGO adheres to its social purpose, I believe there is huge benefit in cross-sector collaboration, in this case with the private sector.'

How does the HKCSS hope to promote better governance of NGOs in Hong Kong?

'The HKCSS launched its 'NGO Governance Platform Project' in mid-2016 to promote good governance practices in the social services sector. NGOs in Hong Kong are extremely diverse, not just in terms of their services and scale but also their history and traditions and this has given rise to distinct governance structures, the HKCSS acknowledges that it is impossible to introduce one standard set of rules of governance. Therefore, the approach taken is to enhance connections and

exchanges between NGO governors across the sector to facilitate mutual learning, as well as to strengthen ties between the sector and relevant parties such as The Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Certified Public Accountants, the Social Welfare Department, the Companies Registry, the Independent Commission Against Corruption and so on, through means of networking sessions, trainings and seminars.

We recently launched our governance knowledge portal: governance.hkcss.org.hk. There, NGO governors and leaders, as

well as the general public, can easily access useful information such as best practice manuals and guidelines published by governmental bodies and professional bodies.

Another strategy is conducting research. We will collaborate with scholars and research institutes to study NGO governance in Hong Kong, providing theoretical and empirical bases to promote better governance culture.

Without any doubt, public expectations of NGOs' transparency, accountability and service quality has become the highest

ever, and is bound to increase further. In response to this, sector capacity building – which focuses on the promotion of accountability and good governance – remains one of the five-year strategic objectives (2017–2022) of the HKCSS. Through these works, we at the HKCSS hope to continue adding positive momentum to the development of the social welfare sector and society at large! 📺

The new HKCSS governance knowledge portal is available at: governance.hkcss.org.hk. The recent Institute guidance note on public governance is available on the Institute's website: www.hkics.org.hk.


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HKICS Annual Dinner 2018

Ballroom, JW Marriott Hotel Hong Kong | Thursday, 18 January 2018

6.30pm Cocktail reception | 7.30pm Dinner

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The Hong Kong Institute of Chartered Secretaries 香港特許秘書公會 (Incorporated in Hong Kong with limited liability by guarantee)





Hong Kong Competition Ordinance: so far and what's next?

Since the Hong Kong Competition Ordinance took full effect on 14 December 2015, the Competition Commission has gradually shifted to a harder line enforcement style. Alastair Mordaunt, Partner; and Joy Wong, Associate; Freshfields Bruckhaus Deringer, look at the enforcement of the Ordinance so far and map out the likely future trajectory of competition compliance in Hong Kong.

The Hong Kong Competition Ordinance (Cap 619) (the Ordinance), which took full effect on 14 December 2015, is the first economy-wide competition law for Hong Kong and has already changed the way local companies conduct business.

Prior to the Ordinance's entry into force, some feared that the Hong Kong Competition Commission (the Commission) – the main agency charged

with enforcing the Ordinance – would be a toothless tiger. Indeed, in its early days, many questioned whether the Commission would have the resources, expertise and determination to vigorously enforce the Ordinance and doubted the merits of allowing competition law to interfere with business conduct in Hong Kong.

But the Commission has proven to be a serious enforcer. In its first 18

Highlights

- the Competition Commission aims to prosecute two to three cases every year
- expect the Commission to maintain its focus on cartel conduct (particularly bid-rigging) and resale price maintenance in consumer-facing markets
- a good competition compliance programme includes a 'top-down' culture of compliance led by senior management, and robust competition law policies and internal procedures

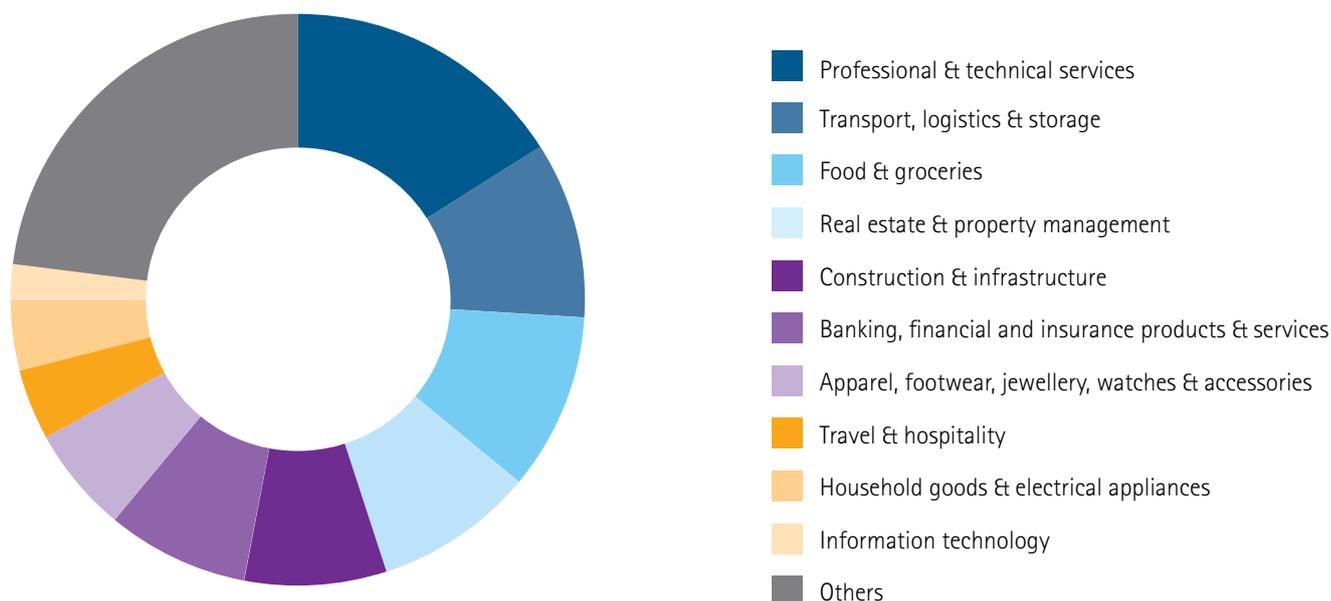
Key prohibitions of the Competition Ordinance

First Conduct Rule	
General prohibition on 'agreements' and 'concerted practices' which have the object or effect of restricting or distorting competition in Hong Kong	
What is an 'agreement'/'concerted practice'?	<ul style="list-style-type: none"> • Very broad meaning – a 'meeting of minds': <ul style="list-style-type: none"> o written or oral o formal or informal o explicit or implicit o legally binding or not o signed or unsigned • No need for the parties to physically meet – an exchange of emails or calls can constitute an agreement or concerted practice • Captures agreements between competitors and players at different levels of the supply chain
What are some examples of anti-competitive agreements/concerted practices?	<ul style="list-style-type: none"> • Cartel conduct: <ul style="list-style-type: none"> o Price fixing o Bid rigging o Market allocation o Output restrictions • Other potential infringements: <ul style="list-style-type: none"> o Resale price maintenance o Information exchange o Exclusive dealing o Other vertical restrictions

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 in the medium to longer term
 companies should expect an
 uptick in enforcement action
 ”

Second Conduct Rule	
Prohibition on undertakings with a 'substantial degree of market power' (SDMP) from engaging in 'abusive conduct' that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong	
How is SDMP determined?	<ul style="list-style-type: none"> • Market shares preliminary indicator of SDMP • No indicative threshold • Other factors to be considered: <ul style="list-style-type: none"> o Market concentration o Barriers to entry o Buyer power
Is it illegal to have SDMP?	<ul style="list-style-type: none"> • No – only the 'abuse' of SDMP is illegal
What are some examples of abuse?	<ul style="list-style-type: none"> • Predatory pricing • Tying/bundling • Margin squeeze • Refusal to deal • Exclusive dealing/rebates
Merger Rule	
No general merger control regime – limited to telecoms industry. Prohibits any merger in the telecoms industry that has or is likely to have, the effect of substantially lessening competition in Hong Kong	
What types of transactions are caught?	<ul style="list-style-type: none"> • Merger of previously independent undertakings • Acquisition of control • Creation of a 'full-function' joint venture
Who is responsible for enforcement of the Merger Rule?	<ul style="list-style-type: none"> • The Commission and the Communications Authority (CA) have concurrent jurisdiction, but the CA will typically take the lead

Sectors investigated by the Competition Commission



months of enforcement, the Commission has gradually shifted from a 'soft' enforcement approach – emphasising the importance of compliance to the business community – to a harder line enforcement style, including conducting a number of unannounced inspections (dawn raids) and bringing its first case to the Competition Tribunal (the Tribunal), Hong Kong's specialist competition court. Notably, Commission Chairman Anna Wu GBS JP has commented that the Commission aims to prosecute two to three cases before the Tribunal every year.

What does the Ordinance prohibit?

The key prohibitions of the Competition Ordinance are set out in the graphic opposite.

What are the Commission's enforcement priorities?

According to its enforcement policy published in November 2015, the

Commission will prioritise enforcement against conduct that clearly harms consumers, such as bid-rigging, resale price maintenance and certain exclusionary behaviour by companies with a 'substantial degree of market power'.

The Commission's statistics on types of conduct and sectors investigated

As at the end of March 2016, the Commission had conducted initial assessments of cases across the sectors set out in the graphic above.

By mid-December 2016, the Commission reported that the top two sectors for cases undergoing initial assessment were (i) real estate and property management, and (ii) professional and technical services.

At the end of February 2017, the Commission had already received more

than 2,000 complaints and inquiries, about half relating to the First Conduct Rule, 20% to the Second Conduct Rule and the remainder categorised as 'other'. Around 130 of these received initial assessment, of which 13% proceeded to in-depth investigation.

What have been the Commission's enforcement efforts so far?

The first Tribunal case

On 23 March 2017, the Commission brought its first case before the Tribunal, alleging that five companies rigged bids in a tender issued by the Hong Kong Young Women's Christian Association for the supply and installation of a new IT server system based on Nutanix technology.

The Commission is seeking from each defendant a pecuniary penalty and a declaration that it contravened the First Conduct Rule. While the case was brought

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in light of the Commission’s increasingly aggressive stance, companies should consider whether their compliance procedures are fit for purpose
”



before the Tribunal fairly quickly – just nine months from when the Commission received the complaint, the substantive hearing is not until spring 2018, creating a significant lag between the start of the investigation and the trial.

The shipping block exemption application

On 17 December 2015 – three days after the Ordinance came into effect, the Hong Kong Liner Shipping Association applied to the Commission for a block exemption from the application of the Ordinance for two types of liner agreements – vessel sharing agreements (VSAs) and voluntary discussion agreements (VDAs). VSAs allow carriers within a shipping consortium to operate a liner service along a specified route using a specified number of vessels (akin to an airline code-sharing arrangement). VDAs allow carrier members to exchange information, including certain information that may reduce competition in the market, for example supply and

demand forecasts and freight rates and surcharges.

In its statement of preliminary views, the Commission acknowledged that VSAs (subject to certain conditions) may generate sufficient pro-competitive benefits to justify a block exemption. However, the Commission asserted that VDAs should not benefit from the block exemption. Members of the liner shipping industry have criticised this view, warning that denying the exemption for VDAs could persuade shipping companies to move their operations to nearby ports, as such exemptions exist across various other Pacific Rim jurisdictions. At the time of writing, the Commission had not yet reached a final decision on this matter.

Market studies

The Ordinance stipulates that the Commission may conduct market studies into matters that affect competition in Hong Kong. To date, the Commission has conducted two market studies:

1. **Residential building maintenance and renovation.** Prompted by public concern over the increasing cost of building maintenance and renovation projects, the Commission initiated a market study of the residential building maintenance and renovation market, in particular allegations of bid-manipulation. Specifically, it analysed a number of project tenders, all of which pre-dated the Ordinance. In its May 2016 report, the Commission concluded that the tender data revealed patterns consistent with bid-manipulation and, going forward, similar data would very likely prompt further investigation.
2. **Auto-fuel.** Amidst public outcry over Hong Kong's high petrol prices, the Commission undertook a market study to analyse competition concerns, particularly the consistency of retail pump prices across retailers. In its May 2017 report, the

Commission stated that it had found no evidence of anti-competitive conduct among market players and concluded that petrol price consistency was due to 'parallel pricing' – which does not infringe the Ordinance. However, the Commission did identify some circumstances that could hinder competition and contribute to high prices, such as the availability of effectively only one single petrol product and the low visibility of pump prices. To address these issues, the Commission recommended the re-introduction of a second petrol type, an increase in the number of petrol filling station sites and more prominent displays of pump prices and walk-in discounts. The government is currently considering the Commission's recommendation for a different type of petrol, while noting that, due to the scarcity of land, it cannot commit to allocating more land for petrol filling stations.

Trade and professional associations

Prior to the Ordinance entering into force, the Commission launched its engagement and education programme for trade associations. In the months following, it worked closely with trade associations to encourage compliance and reviewed the published practices of 350 trade and professional associations in Hong Kong, identifying over 20 associations with practices potentially contravening the Ordinance. As at 1 September 2016, the Commission stated that it was aware of 19 trade associations which had removed their price restrictions or fee scales to comply with the Ordinance.

The Commission has warned that, after this initial soft enforcement period, non-

compliant trade associations and their members may face enforcement action.

What is the outlook for future enforcement?

While the Commission has only brought one case to the Tribunal, it has been quite busy on other fronts – handling complaints and queries, educating the public on the importance of compliance, assessing the shipping block exemption application and conducting two market studies.

Looking ahead, enforcement is likely to pick up as the Commission seeks to meet its stated target of taking two to three cases to the Tribunal each year. Recent recruits to the Commission's leadership team are also likely to invigorate enforcement.

- Brent Snyder will become the Chief Executive Officer, replacing Rose Webb, on 4 September 2017 for a term of three years. Snyder previously served as the Deputy Assistant Attorney General for Criminal Enforcement in the Antitrust Division of the US Department of Justice.
- Dr Lilla Csorgo, former Chief Economist of New Zealand's Commerce Commission joined the Commission as its Head of Economics & Policy in May 2017.
- Steven Parker, Chief Litigation Counsel with the Hong Kong Monetary Authority, is expected to join the Commission in July 2017 as the Executive Director (Legal Services).
- Jindrich Kloub, cartels official with the European Commission, is expected to join the Commission in October 2017 as the Executive Director (Operations).

This new leadership team, which combines impressive local and overseas experience in both antitrust and general law enforcement, is expected to take a more vigorous enforcement stance. There may be a short-term slowdown in case output as the team gets up to speed and integrated into the authority, but in the medium to longer term companies should expect an uptick in enforcement action. Expect the Commission to maintain its focus on cartel conduct (particularly bid-rigging) and resale price maintenance in consumer-facing markets as well as increase the use of its investigatory powers, in particular dawn raids, as it continues moving towards a harder-edged enforcement approach.

How to ensure/enhance compliance with competition law?

In light of the Commission's increasingly aggressive stance, companies should consider whether their compliance procedures are fit for purpose. A good compliance programme includes:

- a 'top-down' culture of compliance, led by senior management
- robust competition law policies and internal procedures
- regular training for managers and relevant employees, including dawn raid preparations, and
- regular monitoring and auditing of risk areas.

There's no time like the present to make sure your company is prepared!

Alastair Mordaunt, Partner
Joy Wong, Associate

Freshfields Bruckhaus Deringer

ACRU 2017 – your questions answered

The Securities and Futures Commission (SFC) responds to questions raised during the Institute's latest Annual Corporate and Regulatory Update seminar, held in June this year.

How does the SFC identify cases of misleading information disclosure? What standards should issuers be aware of regarding this issue?

'The SFC considers disclosed material versus other publicly available material and material it gathers in its investigations to determine whether information is false or misleading.

To avoid being accused of issuing false or misleading information, an issuer should not tell lies. It should also make sure information is complete and no material information is omitted. It should ensure that it has systems to bring all material and relevant information under its disclosure obligations to the attention of its board of directors and relevant officers who decide to disclose information on behalf of the issuer.'

Electronic filing of Disclosure of Interests (DI) notifications became compulsory in July 2017. Will there be any industry training, and if so, when?

'Training for members of The Hong Kong Institute of Chartered Secretaries was conducted by the SFC on 23 June. Hong Kong Exchanges and Clearing Ltd (HKEX) has uploaded training materials (including an interactive learning

programme, video tutorials, user guide and FAQ) to the HKEXnews website (<http://www.hkexnews.hk/di/dions.htm>):'

In recent years, there have been cases where the SFC directed suspension of trading and these companies remain suspended today. How is the SFC going to handle these cases? Will the SFC consider adopting a similar procedure as HKEX (for example, submission of a resumption proposal) to allow trading to resume in order to protect shareholders?

'The SFC does not comment on individual cases. The SFC suspends trading for the reasons set out in Section 8 of the Securities and Futures (Stock Market Listing) Rules, for example, when:

- there is false, incomplete or misleading information in any public disclosure
- it is necessary or expedient in the interest of maintaining an orderly and fair market
- it is in the interest of the investing public or in the public interest, or
- it is appropriate for the protection of investors.



Companies must apply to the SFC board for permission to resume trading or to resume trading subject to conditions, or else risk possible delisting. They must address the SFC's concerns that led to the suspension so that investors are trading in the company's shares with true, complete and not misleading information. The SFC will continue its investigations or other inquiries and, when they are complete, decide on whether enforcement or other regulatory action is warranted based on the evidence gathered and the public interest.'

Eugène Goynes, Senior Director, Enforcement, SFC, mentioned that INEDs or non-controlling directors should resign and disclose problems involving the controlling directors in their resignation announcements. How can they realistically do so given



that the listed company controls the content of announcements and there is a real risk of the listed company or controlling directors making defamation claims?

'The SFC is realistic about a resigning director's ability to control the content of a corporate announcement. Responsible directors should not abandon ship by resigning and claiming personal reasons, as this may amount to a dereliction of their directors' duties if they were aware of crime or misconduct or any warning signs of crime or misconduct. A more responsible course would be to report their suspicions to the auditor, audit committee and the authorities.'

Dissenting directors often have their duties suspended by the board and they no longer have access to the company's business or information. Is it better for them to resign, or to try to resume

their duties so as to have a chance to be involved and rectify the problems?

'Directors should seek to do what is reasonable and in the best interests of the company as a whole, as required by their directors' duties. This is highly dependent on the circumstances and there is no one-purpose-fits-all advice. If they are the sole director of their view,

or outnumbered by other directors who they know will vote down any measures they propose to take, their options are limited. They should consider reporting their suspicions to the auditor, audit committee and authorities.'

Regarding Rule 7 of the Takeovers Code, when a director seeks re-

Highlights

- where directors resign in response to warning signs of crime or misconduct, the notice of resignation should not claim that they are resigning for 'personal reasons'
- in such situations directors should report their suspicions to the auditor, audit committee and the authorities
- issuers in doubt about their compliance obligations under the Codes on Takeovers and Mergers and Share Buy-backs should consult the Takeovers Executive

“
[a listed issuer] should ensure that it has systems to bring all material and relevant information under its disclosure obligations to the attention of its board of directors and relevant officers
 ”



election, but subsequently his reappointment is voted down, is the company required to obtain a waiver from the Takeovers Executive?

'Once an offer period has commenced, the parties to the offer will be in frequent dialogue with the Takeovers Executive. Parties should consult the Executive in this regard.'

Is it a breach of the Takeovers Code if a monthly announcement is published slightly more than one calendar month after the last one? Are monthly announcements for a whitewash transaction always considered as 'documents' and do they have to be reviewed by the Takeovers Executive? For example, there may be other announcements under the listing rules.

'Apart from documents on the Post-Vet List (<http://www.sfc.hk/web/EN/regulatory-functions/listings-and-takeovers/takeovers-and-mergers/post-vet-list.html>), all documents (as defined in the Codes on Takeovers and Mergers and Share Buy-backs) must be filed with the Takeovers Executive for comment prior to publication and must not be published until the Executive has confirmed it has

no further comments on them. Update announcements should be issued on a monthly basis. If this is not possible, the parties should consult the Executive as early as possible to agree on the timing.'

A recent DI notice filed by a substantial shareholder indicates that its previous minority shareholder has become its 100% shareholder. Will this trigger a general offer obligation? And will the SFC surveillance team discover whether there is a general offer obligation?

'We do not comment on specific cases. In determining whether a mandatory general offer has been triggered, the Takeovers Executive needs to consider all the circumstances of the case, the Takeovers Code, and in particular Notes 1, 6 and 7 to Rule 26.1 of the Takeovers Code.'

How does the SFC know if a seller and a buyer have worked out the sequence of events under a private talk?

'If there are 'talks' taking place, an announcement is required to be issued in the situations set out in Rule 3 of the Takeovers Code. Parties should consult the Executive in case of doubt.'

If an H-share issuer also has unlisted domestic shares, is a PRC shareholder holding domestic shares subject to the takeovers obligations under the Takeovers Code? If yes, should this shareholders' voting rights be calculated based only on the number of domestic shares, or on the aggregate number of domestic shares and H shares?

'Shareholdings should be calculated as a percentage of the total issued shares of a company (that is, the aggregate of H shares and domestic shares)'. 

The Institute's 18th Annual Corporate and Regulatory Update seminar took place in the Hong Kong Convention and Exhibition Centre on 2 June 2017. ACRU provides an opportunity for participants to put questions to Hong Kong's major regulatory bodies. Questions from participants which are not answered during the Q&A discussion at the end of each session are sent to the relevant regulator and the responses are published in this journal.

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The Hong Kong Institute of Chartered Secretaries Prize 2017

Call for Nominations

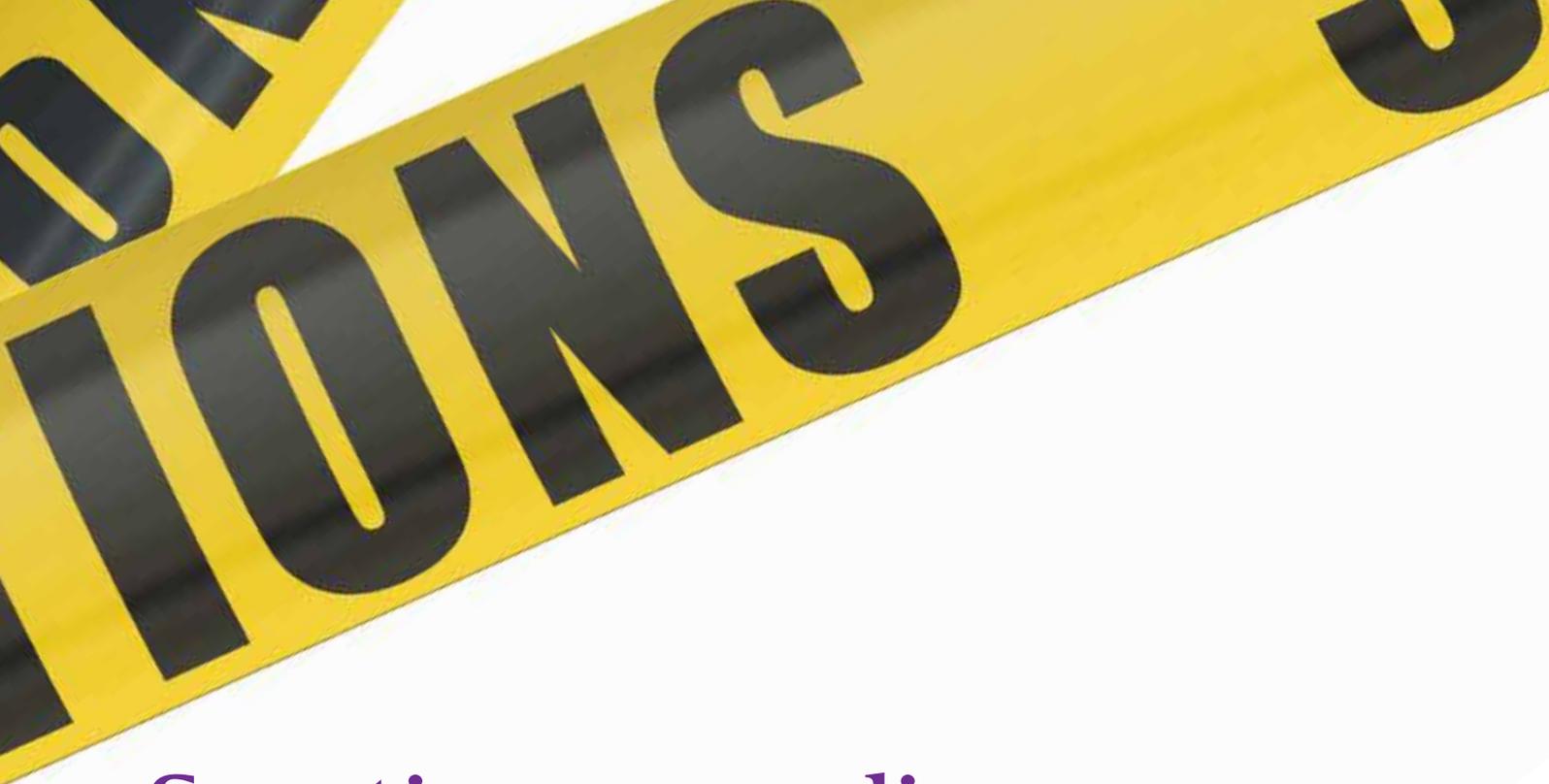
The Hong Kong Institute of Chartered Secretaries Prize will be awarded to a member or members who have made significant contributions to the Institute and the Chartered Secretarial profession over a substantial period.

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

The nomination deadline is Saturday, 30 September 2017.
Please visit www.hkics.org.hk or contact Louisa Lau at 2830 6008 or email to member@hkics.org.hk for details.

Please
act now!





Sanctions compliance

The bare minimum isn't enough

Eric Sohn, Director of Business Product, Dow Jones Risk & Compliance, New York, warns against trying to scrape by with a minimal sanctions compliance programme.

When faced with sanctions compliance requirements, many firms focus on 'requirements' so as to avoid regulatory scrutiny. However, *de minimus* efforts to 'tick the box' frequently fail to identify and address important aspects of regulatory expectations, as well as commercial concerns that can have a noticeable impact on a company's bottom line. While, ultimately, a firm may choose to establish lower standards of care for their international business, or to ignore requirements not reflected in sanctions listings, it is vitally important that such a decision is the result of proper due diligence, and not one created for reasons of expedience or purely to minimise the costs of compliance.

Companies should consider whether or not their sanctions compliance programme needs to contain the following elements:

- geographic place names in countries subject to comprehensive sanctions
- names of companies owned or controlled by sanctions targets, and
- sanctions lists from foreign jurisdictions in which business is conducted, as well as any data required by regulation and/or guidance.

Where in the world?

Sanctions regulations, once they expand beyond asset freezes of specific people, and begin blocking significant swaths of import and/or export to a particular country, require a heightened level of diligence. On a basic level, one must check every transaction containing a reference to these countries, or a location within them.

There aren't a lot of these comprehensively sanctioned countries. Most of them are

Highlights

- implementing a sanctions compliance programme may not be a legal necessity, but there are potentially dire consequences of breaching sanctions requirements
- in addition to monetary penalties, companies should consider the impact of the publicity surrounding any enforcement action
- companies need to understand the potential consequences of breaching sanctions requirements before making an informed risk-based decision on how comprehensive their sanctions compliance programme needs to be



“sanctions regulations, once they begin blocking significant swaths of import and/or export to a particular country, require a heightened level of diligence”

only sanctioned to that extent by the US, although other national regulators may impose targeted sanctions (for example non-comprehensive measures against specific targets). However, the United Nations imposes comprehensive sanctions against the Democratic People's Republic of Korea, so, technically, all firms need to have some level of geographic location screening.

The types of geographic locations a firm should search for include country and city names, airports and seaports (both the names and the standardised port codes), as well as the names of regions (for example Crimea, Macau) and free trade zones that may be used in normal commerce to identify a location. However, in order to not be swamped by the pure volume of such locations, consider how many people would live in a municipality large enough to house a company likely to do business internationally? While it is certainly possible that a village of 1,000 persons could be the location of an export/import company, it is not particularly likely.

Whose is this?

Both the US and European Union have issued regulatory rules stating that companies which are not listed on sanctions lists, but which are majority owned by individuals or firms that are, are themselves considered sanctioned. The US sanctions regulator, the Office of Foreign Assets Control (OFAC), issued a multi-million dollar civil penalty to a bank which did not properly comply with this '50% Rule'. Clearly, one ignores such generalised rules at one's peril.

Even if your domestic regulator does not have such rules, sanctions regulations often prohibit dealing in 'property or interests in property'. It is reasonable to assume that firms owned by those on sanctions lists would fall into that category. However, such prohibitions are only realistic for legal entities with which a company deals directly. For one's customers, suppliers and partners, it would be prudent to identify those who own or control those entities, and to consider declining the business if it is not possible to do so.

Over there...

Depending on the nature of the business a firm conducts with counterparties in a given jurisdiction (as well as other factors outlined in the final section of this article), it may be prudent to include that location's sanctions lists as well as the targets implied by regulations and guidance (for example those specified in the previous two sections) in a firm's sanctions compliance programme. While foreign regulators will not have legal jurisdiction, there are potentially both regulatory and commercial consequences of violating other countries' sanctions requirements. These are explained in greater detail below.

It is important to understand the variety of sanctions list and listing types. The type of sanctions list most familiar to firms are blocking lists. A transaction which violates a blocking list will result in monetary losses, as the transaction will be blocked and not executed. Additionally, there are not-blocking lists; transactions which violate these are returned to the

instructing customer. A firm can certainly decide, on a risk-based basis, to comply with any combination of the published lists, in order to appropriately manage that element of their regulatory and commercial risk.

Within sanctions lists, certain listings may specify that 'secondary sanctions' are attached. Secondary sanctions, as imposed by the US (the only country known to impose them), result in the imposition of restrictions on future business dealings in the country if a company conducts business dealings with the sanctions target (even if the business does not directly involve the US). The most notable of these secondary sanctions were those imposed on firms who did significant business with sanctioned Iranian banks or were involved with significant purchases of Iranian petroleum products.

Truth or consequences

Within a firm's home country, there are a range of consequences stemming from trying to scrape by with a minimal compliance programme.

Whether or not a less rigorous programme puts a company in regulatory jeopardy heavily depends on the enforcement philosophy of the domestic regulator. OFAC, in the US, is amazingly transparent in that regard. On their website, they provide access to their Enforcement Guidelines, which explain the range of penalties that can be imposed (from no enforcement action to the imposition of a civil monetary penalty), as well as the factors that are considered in making the decision and determining the size of any penalty. In addition, they provide a substantial archive of past enforcement actions, each of which (since 2012) explains

the details of the actions at issue, the penalties imposed and the factors (from the Enforcement Guidelines) which were considered in fixing any penalty assessed. In the absence of detailed guidance from other regulators, the OFAC Enforcement Guidelines provide a good baseline from which to start understanding a firm's regulatory exposure. However, it might be prudent to assume stricter enforcement and harsher penalties in environments where high-profile financial crimes (including money laundering, and bribery and corruption) have occurred recently.

When considering the level of domestic compliance beyond the minimum, note that OFAC's Enforcement Guidelines factor in the size and level of commercial sophistication of the offending person or company. Small firms, especially those with little international business, are not expected to be as far-reaching in their compliance efforts as larger firms with riskier business models.

Besides the obvious ability of a domestic regulator to impose financial penalties, companies should also consider the impact of the publicity surrounding the enforcement action, if any. It may cause defections from current customers, suppliers and business partners as well as create hurdles to acquiring new customers and working on new efforts with suppliers and partners.

Lastly, regulators can also specify changes to a firm's compliance programme as part of remediating the programme gaps. This can result in companies needing to expand staff, change policies and procedures, and hire consultants to do extensive lookbacks of older business transactions. Regulators can also require that a firm's compliance programme be

overseen by an independent monitor. This loss of control over how a firm conducts part of its business may, in fact, be the most significant, long-lasting consequence of regulatory enforcement.

Foreign affairs

As discussed earlier, international jurisdictions, even if they can't impose a civil monetary penalty, can take actions that impact a firm's access to that market. Financial services firms can have their business with US banks restricted or even terminated, under a number of statutes, including Section 311 of the USA PATRIOT Act, the Iran Sanctions Act, and the 31 CFR Part 561, which emanated from the National Defense Authorisation Act. Violations of the Iran Sanctions Act can also cause a number of restrictions to be imposed by the US to both financial and non-financial firms.

Non-financial companies should additionally identify the import/export restrictions a country can impose on a firm for activities which thwart their sanctions programme goals. In the US, for example, the Commerce Department can require the granting of an export licence in order to gain access to US-origin goods. This is, in fact, the sanction applied to ZTE Corporation when it shipped US-origin goods to Iran.

Cut to commercial

Even if a firm has no regulatory liability beyond its shores, there are still real-world implications of limiting one's sanctions screening programme to domestic requirements. Imagine, for example, that a financial services firm in the US makes a payment through an EU correspondent which ultimately credits a person subject to the sanctions imposed under the Guinea-Bissau programme. In



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efforts to ‘tick the box’ frequently fail to identify and address... commercial concerns that can have a noticeable impact on a company’s bottom line
”

the best case, the correspondent bank freezes the assets and the US firm is out the money. The company cannot rightly claim that the customer must bear the brunt of its error, as it had the capacity to intercept the transaction and return the funds to the customer. It therefore must make the customer whole, so they can re-attempt the transaction in a way that skirts the EU and any other countries which sanctions that party. If and when the sanctions are lifted from the target, the firm can attempt to get the frozen assets released. In the meantime, however, the US company’s bottom line has learned a potentially expensive lesson.

Unfortunately, that is the best outcome in such a case. A correspondent bank could certainly choose to terminate the correspondent relationship. In theory, this could leave the instructing bank without a correspondent in the currency that the affected transaction was denominated in. In such a case, the bank’s clients would not be able to effect international trade transactions involving that currency. It is also reasonable to expect that a global bank might blacklist such a correspondent, one who causes them to incur additional compliance costs and raises their profile with their regulator, on a global basis. Depending on the diversity of one’s

correspondent network, such an action might be catastrophic to one’s corporate services business.

Even international sanctions that do not involve asset freezes have commercial customer satisfaction implications. If an EU bank, for example, makes a payment through a US bank for a firm on OFAC’s Foreign Sanctions Evaders or Non-SDN Palestinian Leadership Council List, the originating customer will get their funds returned to them. However, that return of funds may not be same day. This can not only create the need to reimburse the customer for the use of their funds, but may affect their customer satisfaction for not having caught the reference to the sanctions target before it left the originating bank.

Decisions, decisions

Where firms choose to address international regulatory concerns, and their commercial knock-on effects, and where they do not, is ultimately a risk-based decision. That calculation should consider a number of factors related to both the type of business the firm is involved in and the jurisdiction involved:

- The total value of transactions conducted in a given country provides a sense of Value at Risk

(VAR). A country whose VAR is insignificant might present a more acceptable argument for ignoring their sanctions requirements.

- The total number of transactions conducted provides a sense of how likely one might be stopped for compliance concerns, while the average size of transactions can help a firm estimate the bottom line impact of a compliance issue.
- Identifying which clients transact in a given jurisdiction may inform a firm of the commercial impact of customer service issues arising from stopped items.
- As a purely actuarial matter, identifying the correspondent banks, and the location of their headquarters, can further inform the likelihood of those correspondents identifying, and acting upon, a sanctions violation arising from a less rigorous programme. For example, a foreign branch of a US financial institution is more likely to be diligent in its compliance requirements in a country not known for sanctions enforcement than a domestic institution from that jurisdiction.

- Companies can consider how different a foreign country's sanctions requirements are from their domestic requirements. If, for example, a jurisdiction's sanctions listings overwhelmingly mirror that of the United Nations, that may minimise the need for specialised processing for that country.
- A foreign country's history of enforcing sanctions regulations may also be a consideration, all other things being equal. If a foreign regulator does not impose penalties for sanctions violations, or for programme shortcomings, it makes it less likely that a firm in that country will monitor for sanctions violations and, therefore, a smaller

risk of an issue with transactions sent to that country.

Additionally, the risk-based decision on the amount of effort to comply with international sanctions requirements should be cognisant of a given country's strategic importance to a firm's strategic plans. Even if the current exposure is slight, the impact of having a presence in a particular jurisdiction, and a spotless reputation for adhering to local laws and regulations, may outweigh any potential savings from taking advantage of near-term shortcuts in daily compliance processing.

By the numbers

Technically, there are no laws that say one has to implement a sanctions

compliance programme, or how comprehensive that programme needs to be. But the laws, and the attendant regulations and guidance, do lay out the consequences. While ultimately a firm may or may not incorporate some of the above elements into their policies and procedures, it is essential from a risk management perspective to do the cost/benefit analyses relating to adopting or ignoring each additional extension to current compliance processes.

Eric Sohn

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Hong Kong's new beneficial ownership regime – an analysis



Dr Raymond Chan, Associate Professor; and Dr Angus Young, Senior Lecturer; Hong Kong Baptist University, take a look at Hong Kong's proposed beneficial ownership regime and its implications for governance professionals.

Anti-money laundering (AML) measures are critical to the integrity of Hong Kong's reputation as an international financial centre. To improve Hong Kong's AML defences, the government proposes to enable beneficiary ownership information of companies to be captured to allow law enforcement agencies to access such information. The rationale is to detect laundered proceeds of crime held through corporate nominees and obscure and sometimes impenetrable ownership structures designed to disguise the ultimate beneficiaries of funds.

Money launderers tend to target nations that have not made significant progress in developing AML statutes, or fail to effectively enforce their AML statutes. For this reason, Hong Kong has enacted four main pieces of AML legislation in the last three decades to combat money laundering activities. The latest enacted was the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO). The AMLO stipulates the customer due diligence (CDD) and record-keeping obligations of specified financial institutions. It also confers powers to the relevant authorities to supervise compliance with these requirements.

In performing their CDD duties, financial institutions are required to verify their customer's identity. This includes identifying any ultimate beneficiaries in relation to the customer. Section 2(1)(b) of the AMLO requires financial institutions to take 'reasonable measures to verify the beneficial owner's identity'. Where

the customer is a legal person or trust, financial institutions are required to investigate the ultimate beneficiaries of the legal person or trust.

However, the information gathered under the AMLO is not normally accessible to law enforcement agencies unless these agencies seek a court order to direct specific financial institutions to produce the relevant records. Application of this order is not only time consuming, but also requires the investigator to have knowledge of which financial institution has an established business relationship with the suspicious company.

The FATF requirements

The Mutual Evaluation of Hong Kong, China – 4th Follow-up Report issued by the Financial Action Task Force (FATF) in 2012 noted the deficiencies of the current provisions in the Companies Ordinance (Cap 622) requiring company registers to maintain information pertaining 'only to legal ownership/control, not so much to beneficial ownership' (see page 40 of

the report). Without this information, local law enforcement authorities cannot identify the beneficial owners of companies in a timely fashion.

FATF's Recommendation 24 requires member jurisdictions to take measures to ensure 'adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities' in order to prevent the misuse of legal persons for money laundering and terrorist financing.

In its third mutual evaluation report released in 2008, Hong Kong was placed in a regular follow-up process. The territory had fallen short of relevant measures to meet the objectives of the FATF's recommendations. Although some progress has been made since the 4th mutual evaluation report, a number of major deficiencies are still outstanding. To safeguard the integrity and stability of our financial system, the government has prioritised the fixing of all the major

Highlights

- under the government's proposed new beneficial ownership regime, companies incorporated in Hong Kong would be required to maintain a register of people with significant control over the company
- the proposal is designed to ensure compliance with the Financial Action Task Force (FATF) requirement that beneficial ownership information can be obtained by competent authorities
- the government hopes to have the new beneficial ownership regime in place before the next FATF mutual evaluation scheduled for late 2018

“ studies indicate that the controllers of many large companies in Asia use pyramid structures as a means to exercise their control



deficiencies mentioned in the latest mutual evaluation report before the next evaluation scheduled in late 2018. This was the driving force behind the recent consultation paper (see *Enhancing Transparency of Beneficial Ownership of Hong Kong Companies* on the Financial Services and the Treasury Bureau website: www.fstb.gov.hk), issued in January 2017 which proposed to introduce a statutory regime on the transparency of beneficial ownership of companies before the upcoming mutual evaluation, so as to improve the overall ratings of Hong Kong in the subsequent report.

The new beneficial ownership regime

The consultation conclusions, released in April this year, resolves to require all companies incorporated under Hong Kong's Companies Ordinance to keep a register of beneficial owners for at least six years from the date such individuals cease to be registrable individuals or registrable legal entities. This register is to be accessible by the authorities. To help the authorities in investigating beneficial ownership, companies are required to enter into the register an authorised person who will serve as contact point to assist law enforcement agencies. Companies have the flexibility to designate either a natural person resident in Hong

Kong or an external service provider (such as an accountant, solicitor or company secretary working for a trust and company service provider (TCSP) as the authorised person. Given that there are stringent disclosure requirements in place for listed companies under the Securities and Futures Ordinance (Cap 571), they are exempted from this proposal.

Companies have the status of 'legal persons' under the law and, according to FATF, a 'beneficial owner' is defined as a natural person who ultimately owns or controls the legal person, based on a threshold of having more than 25% direct or indirect shareholdings or voting rights. Individuals who can exercise significant control over the management or activities of the entity through other means (for example, via the right to appoint or remove a majority of directors), are also considered beneficial owners.

The government proposes to adopt a similar definition in Hong Kong's new beneficial ownership regime. Studies indicate that the controllers of many large companies in Asia use pyramid structures as a means to exercise their control through a complex ownership chain with many successive layers of intermediate holding companies. As such, the identification and registration of all entities with a complex ownership structure will increase the compliance burden of companies. On the whole, the concept of the beneficial owner is novel to the local business community in Hong Kong and it may be difficult for these regulatory requirements to be implemented in the initial stages.

Licensing DNFBPs

In tandem with the new beneficial ownership regime, the government is

bringing in a new licensing regime for professionals in the designated non-financial business and professions (DNFBP) sector, which includes trust or company service providers (TCSPs). Under the licensing scheme, TCSPs will be required to apply for a licence from the Registrar of Companies before they can carry on a trust or company service business in Hong Kong. This is also designed to fulfil the requirements of FATF, which recommends that DNFBPs should be subject to effective systems of monitoring to ensure their compliance with anti-money laundering and counter-terrorist financing (AML/CFT) requirements.

In January this year, the government consulted on the licensing regime proposals (see *Consultation on Enhancing Anti-Money Laundering Regulation of Designated Non-Financial Businesses and Professions* on the Financial Services and the Treasury Bureau website: www.fstb.gov.hk). The consultation conclusion, also issued in April this year, noted the large amount of written submissions from various stakeholders including various professional bodies and associations. The Estate Agents Authority together with respondents from the real estate sector were the most vocal in arguing that the sector should be exempted from the statutory CDD and record keeping requirements, due to the low AML risk as well as the limited role estate agents play in property transactions.

The government concluded that, 'We see no grounds to derogate from prevailing practice by offering exemption in the AMLO'. Other professionals in the DNFBP sector, such as lawyers and accountants, were equally keen to be exempted from

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 on the whole, the concept of the beneficial owner is novel to the local business community in Hong Kong and it may be difficult for these regulatory requirements to be implemented in the initial stages
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this regulation. The government did not see a convincing case to exempt them either. However, the government is mindful of the administrative burden and compliance costs associated with the proposal. The government has opted to make the Companies Registry the regulator responsible for implementing the new beneficial ownership and licensing regimes. This is despite the fact that the government acknowledges the wishes of some for The Hong Kong Institute of Chartered Secretaries to assume the role of licencing authority for the TCSP regime. The justification was that there are other professions in the TCSP sector (see page 28 of the consultation conclusions).

It has also opted to allow accountants, solicitors and professionals working for TCSPs to be exempt the requirement to apply for a licence from the Companies Registry. However it notes that, 'If accountants and solicitors operating TCSP business with persons not being accountants and solicitors (as the case may be), they will be required to obtain a TCSP licence from the Companies Registry. Under such circumstances, the non-accountant or non-solicitor directors/partners/ultimate owners

of the TCSP entities will be subject to the fit-and-proper test as well as disciplinary proceedings administered by the Company Registry, whereas their accountant/solicitor counterparts will continue to be subject to the conduct and disciplinary proceedings of the Hong Kong Institute of Certified Public Accountants and the Law Society' (see page 32 of the consultation conclusions).

Conclusion

The new AML/CFT regulatory proposals are the latest in a series of compliance-centred regulatory requirements. They are aimed at complying with FATF's expectations. The questions from the two consultation exercises had been somewhat confined to technicalities. The broader issues that relate to Hong Kong's business and social norms have not been given much attention beyond the territory's status as an international financial centre.

Regulatory compliance burdens are on the rise and individuals performing corporate governance roles have seen greater accountability demands. The proposed beneficial ownership regulatory requirements add to this trend. Over the last three decades the company secretary

role has evolved from an administrative into a strategic and advisory role. Furthermore, with the emphasis on better governance and the ever increasing quantity of compliance regulatory obligations, it is time for company secretaries to seek regulatory support like lawyers and accountants and be designated as governance professionals.

Dr Raymond Siu Yeung Chan

Head and Associate Professor at the Department of Accountancy and Law, Associate Director, MBA and MScBM programmes at the School of Business, Hong Kong Baptist University

Dr Angus Young

Senior Lecturer at the Department of Accountancy and Law, Hong Kong Baptist University, Distinguished Research Fellow at the German-Sino Institute of Legal Studies, Nanjing University and Adjunct Fellow at the School of Law, Western Sydney University

The government's consultation documents are available on the Financial Services and the Treasury Bureau website: www.fstb.gov.hk.

Professional Development

Seminars: June 2017

7 June

BVI and Cayman updates on corporate restructuring and insolvency



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

Speakers: Ian Mann, Partner; and Michael Snape, Associate; Harney Westwood Et Riegels

13 June

Company secretarial practical training series: how to review financial statements and MD&A



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

Speaker: Franki Lui, Director, BDO Ltd

15 June

SFC investigations



Chair: Polly Wong FCIS FCS(PE), Institute Education Committee Vice-Chairman, and Company Secretary and Financial Controller, Dynamic Holdings Ltd

Speaker: Sherman Yan, Managing Partner, Head of Litigation & Dispute Resolution, ONC Lawyers

19 June

Directors' liabilities and responsibilities – the new Companies Ordinance and beyond



Chair: Lydia Kan FCIS FCS(PE), Institute Director of Professional Development

Speaker: Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Institute Senior Director and Head of Technical Et Research

20 June

AML/CFT risks, compliance standards and tools



Chair Et speaker: Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Institute Senior Director and Head of Technical Et Research

Speaker: Richard Butler, APAC Director, Risk Et Compliance, Dow Jones Et Company

23 June

Training workshop: mandatory e-filing of disclosure of interests notifications under the SFO



Chair: Mohan Datwani FCIS FCS(PE) CAMS, Solicitor, Institute Senior Director and Head of Technical Et Research

Speakers: Alexandra Yeong, Director; and Joanne Lam, Senior Manager; Corporate Finance, Securities and Futures Commission

27 June

Company secretarial practical training series: handling a difficult AGM



Chair & speaker: Gillian Meller FCIS FCS, Institute Council member and Professional Development Committee member, and Legal and European Business Director, MTR Corporation Ltd
Speaker: Jason Webber, Partner, Slaughter and May

28 June

Listed companies: emerging from suspension



Chair: Ernest Lee FCIS FCS, Institute Council member and Membership Committee Vice-Chairman, and Director, Elito Investment Ltd
Speaker: Joseph Chu, Partner, Simmons & Simmons

Seminar fee discount for HKICS registered students

Effective from 1 January 2017, registered students of the Institute can enjoy a 30% discount on the Institute's regular ECPD seminars.

Seminar duration	Regular seminar rate	Discounted rate for registered students
1.5 hours	HK\$320	HK\$230
2 hours	HK\$400	HK\$280
2.5 hours	HK\$480	HK\$340

Online CPD (e-CPD) seminars

The Institute has launched a series of e-CPD seminars in collaboration with The Open University of Hong Kong (OUHK). Through the online learning platform of OUHK, members, graduates and students are able to easily access selected video-recorded seminars with any smart device anytime, anywhere. The launch of e-CPD seminars enables members, graduates and students to schedule their professional learning more flexibly.

Details and registration are available at the CPD courses section of the OUHK website: <http://ecentre.ouhk.edu.hk>. For enquiries, please contact the Institute's Professional Development section at: 2830 6011, or email: ecpd@hkics.org.hk.

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
31 August 2017	6.45pm – 8.15pm	M&A involving listed companies – reverse takeovers and extreme very substantial acquisitions	1.5
6 September 2017	6.45pm – 8.15pm	Roles of the company secretary and the board in AML compliance (re-run)	1.5
13 September 2017	4.15pm – 6.00pm	How to simplify ESG reporting and practical experience sharing	1.5
19 September 2017	6.45pm – 8.15pm	Change management (re-run)	1.5

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

Professional Development (continued)

CPD requirements

All members and graduates are reminded to observe the deadlines set out below. Failing to comply with the CPD requirements may incur an administrative penalty of HK\$3,000 payable upon the Institute's demand and constitute grounds for disciplinary action by the Institute's Disciplinary Tribunal as specified in Article 27 of the Institute's Articles of Association.

CPD year	Members and graduates who qualified on or before	CPD or ECPD points required	Point accumulation deadline	Declaration deadline
2017/2018	30 June 2017	15 (at least 3 ECPD points from the Institute's ECPD seminars)	30 June 2018	31 July 2018

Key update on the revised CPD policy (effective from 1 July 2017)

Revised CPD Policy	
Basic CPD requirements	All members/graduates are required to fulfil the minimum CPD requirements of at least 15 CPD hours per CPD year, at least 3 ECPD hours should be from the Institute's ECPD seminars.
Accredited providers of ECPD seminars	<p>The accredited providers of ECPD seminars are listed below.</p> <ul style="list-style-type: none"> • Companies Registry • Hong Kong Exchanges and Clearing Ltd • Hong Kong Institute of Certified Public Accountants • Hong Kong Monetary Authority • Independent Commission Against Corruption • Official Receiver's Office • Security Bureau • The Law Society of Hong Kong • The Securities and Futures Commission • Other organisations considered appropriate by the Professional Development Committee
Administrative penalty	<p>Where a relevant person:</p> <ol style="list-style-type: none"> a. fails to file the declaration under Clause 6.2 of the CPD Policy within one month of the end of the previous CPD year; and/or b. fails to supply to the Institute's satisfaction the requisite information required under any random check referred to under Clause 6.3 of the CPD Policy with the declaration; and/or c. fails, based on other grounds identified by the Institute as otherwise not having complied with the CPD Policy; <p>the relevant person shall incur an administrative penalty of HK\$3,000 payable upon the Institute's demand should the failure subsist as at the end of 90 days from the end of the previous CPD year, without prejudice to the right of the Institute to refer the matter to the Institute's Investigation Group in accordance with Clause 3 of the CPD Policy for commencement of discipline.</p>

For details of the revised CPD Policy, please visit CPD Policy under the CPD section of the Institute's website: www.hkics.org.hk.

Membership

Membership/graduateship renewal for the 2017/2018 financial year

The membership/graduateship renewal notice for the 2017/2018 financial year, together with the demand note, was posted to members and graduates in July 2017. Members and graduates should settle the subscription payment, as well as complete and return the personal data update form to the Institute as soon as possible, but no later than Saturday 30 September 2017. Failure to pay by the deadline will constitute a ground for membership or graduateship removal. Reinstatement by the Institute is discretionary and subject to payment of the outstanding fees, and with levies determined by the Council.

Members and graduates who have not received the renewal notice should contact the Institute's Membership section immediately at: 2881 6177, or email: member@hkics.org.hk. For details of the fee structure for the 2017/2018 financial year, please visit the Membership section of the Institute's website: www.hkics.org.hk.

New associates

Congratulations to our new associates listed below.

Chan Shun Cheong	Law Wai Yi	Siu Ching Hung
Chan Siu Tak	Lee Wai Yee	Siu Wai Bun
Chan To Kuen	Leung Hau Yan, Wendy	Tam Wai Sum, Joanne
Chan Yi Hang, Kristy	Leung Wai Han	Tang Pui Yan
Cheng Shing Yan	Li Kin Tung	To Wing Tung
Cheng Tsz Mei	Li Sin Ching	Tsai Hung Mei
Cheng Yeuk Nin	Li Wancheng	Tsang Pui Kwan
Choy Ngar Ling	Liu Pui Ching	Tsang Wing Sze
Chung Fung Ha	Lo Pui Yi	Tsang Yuen Yee
Feng Meijuan	Lo Wing Han	Tse Chi Cheung
Hon Ching Ki	Lui Wing Yat, Christopher	Tsoi Man Lai, Alice
Kao Chun Fai	Ma Ling	Wong Chi Kwong
Kung On Yee, Annet	Ma Yim Hung	Wong Kit Yan
Kwok Po Yee	Man Hung Kit	Wong Lai Loi, Connie
Kwok Suk Han	Man Wing Yan	Wong Ting Yan
Kwok Yuen Ting, Dorothy	Mok Wing Yee	Wong Yan
Kwok Yuk Ching	Ng Pui Yan, Carman	Wong Yik Ka
Kwong Wing Yan	Ng Sin Man	Woo Man Yi
Lam Yee Hang	Ng Tsui Yi	Yeung Dao Tsun
Lau Ka Wing	Ng Wing Yu	Yip Chun Fung
Lau Kin Tat, Terry	Ng Yuen Shan	Yip Shui Man
Lau Wing Man	Pang Hing Ting, Stella	Yu Wan Chi
Law Ka Yee	Qiu Minghao	Yung Yuen Ting

New fellows

The Institute would like to congratulate the following fellows elected in May and June 2017.

Choi Suet Ying FCIS FCS

Ms Choi is the Financial Controller of BOCOM International Holdings Company Ltd (Stock Code: 3329). She is responsible for overseeing the finance and accounting function of the Group. Ms Choi has over 15 years of experience in the financial industry through her roles in various securities houses and subsidiaries of Hong Kong listed companies. Ms Choi holds a bachelor's degree

in accountancy from The Hong Kong Polytechnic University. She is a fellow member of the Association of Chartered Certified Accountants and a member of the Hong Kong Institute of Certified Public Accountants.

Chow Wing Man FCIS FCS

Ms Chow joined China Everbright Greentech Management Ltd in July 2017, taking up the company secretarial role of the Company. She is responsible for company secretarial, corporate governance and compliance matters for the listed group. Ms Chow holds

Membership (continued)

a bachelor's degree in laws from the University of London and a master's degree in corporate finance from The Hong Kong Polytechnic University.

Huang Wensheng FCIS FCS

Mr Huang is the Vice-President, Secretary to the Board of Directors and Secretary for the Board's Auditing Committee of China Petroleum & Chemical Corporation (Stock Code: 368). He has been working at senior managerial level in China's energy industry for nearly 30 years. Mr Huang holds professional certificates in board secretaryship and has over 18 years of experience in financial management, corporate affairs, corporate governance and company secretarial areas.

Lee Ming Yin, Faith FCIS FCS

Ms Lee is the Deputy Company Secretary of DTXS Silk Road Investment Holdings Company Ltd (Stock Code: 620) and oversees corporate governance, company secretarial and compliance matters. She has over 20 years of experience in financial services, investor relations, corporate affairs and company secretarial areas. Ms Lee holds a master's degree in corporate governance from The Hong Kong Polytechnic University and a bachelor's degree in business administrative management from the University of South Australia. She is also a full member of the Hong Kong Investor Relations Association.

Lo Yat Fung FCIS FCS

Mr Lo is the Executive Director of Hopefluent Group Holdings Ltd (Stock Code: 733), which is one of the largest property agencies and consulting companies in China with 20,000 employees. He has over 25 years of experience in financial management and administration. He is a fellow member of the Institute of Chartered Accountants in England and Wales, and The Hong Kong Institute of Directors. Mr Lo holds a master's degree in science from the University of Oxford.

Wan Hau Kam, Cindy FCIS FCS

Ms Wan is the Senior Manager of BOC Hong Kong (Holdings) Ltd (Stock Code: 2388). She has over 25 years of experience in the company secretarial field working for listed conglomerates and prestige companies. She holds a master's degree in business administration in financial studies from the University of Nottingham and a bachelor's degree in laws from the University of London.

Dr Chan Hing Sang, Alexander FCIS FCS

Director, Shining International Holdings Ltd.

Chan Oi Yuk FCIS FCS

Finance Manager, Web Host Ltd.

Forthcoming membership activities

Date	Time	Event
26 September 2017	6.00pm – 9.00pm	Annual Convocation 2017 (by invitation only)

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

Members' activities highlights: June and July 2017

30 June

YCPG joint professional networking party 2017 – 'Jungle of Parties'



7 July

Members' Networking – dining etiquette workshop



15 and 22 July

Young Group – bowling interest group 2017



Advocacy

HKICS representatives interviewed by TVB

Institute President Ivan Tam FCIS FCS, Vice-President Paul Stafford FCIS FCS(PE), Chief Executive Samantha Suen FCIS FCS(PE), and other Institute members, were interviewed by TVB to showcase the work and career of Chartered Secretaries on its 'Success In Career' (职场制胜) programme. The interview will be broadcast on TVB J5 Channel on Friday 1 September 2017 at 9.30pm.

Advocacy (continued)



Minute taking – new best practice recommendations

The Institute has published a new report which looks at local practices in minute taking and makes best practice recommendations to assist companies in Hong Kong and Mainland China to improve this area of the corporate secretarial function. The report, titled *Minuting Board Meetings –*

Survey on Best Practices and Practical Suggestions, is a follow-up to the minute taking guidance note issued by The Institute of Chartered Secretaries and Administrators (ICSA) in September 2016. The ICSA's Thought Leadership Committee Chairman, Edith Shih FCIS FCS(PE), who is also Senior Vice-President of ICSA and Past President of the Institute, initiated a survey to ascertain how far the practices of Institute members match the global best practice recommendations issued by the ICSA.

The survey, carried out in April 2017, found that local practices in minute taking are largely consistent with the ICSA's guidance note recommendations. Some differences in local practice were highlighted by the survey, however, in particular the fact that only around a third of the respondents approached the chairman before the meeting to discuss relevant issues. The Institute's new report recommends that minute takers should discuss with

the chairman before the board meeting whether there are any procedural issues and/or support that the chairman requires. Other areas that could be discussed include whether there are any special purposes for the minutes such as tracking strategy and the allocation of roles and responsibilities.

The survey also indicated that there is no consensus among Institute members as to whether notes taken during the meeting and/or recordings should be destroyed after the preparation of the minutes. Many respondents made the point that there is no one-size-fits-all solution when it comes to minute taking – different organisations need to develop their own approach based on best practice recommendations and the specific organisation style, context and chairman/board preferences. The Institute's report recommends that companies develop an in-house style guide to provide a benchmark for the key issues to be considered in the preparation of minutes. These could include whether reported speech is to be used; the required level of details of the minutes; the need for the minutes to contain key points of discussions, decisions made, agreed actions, a record of delegated authority, with reasons for the decisions made, where necessary. The style guide could also highlight any relevant compliance requirements such as directors' fulfilment of statutory duties, consideration of shareholder/stakeholder risks and other required regulatory assurances expected under the minutes.

'Minuting Board Meetings – Survey on Best Practices and Practical Suggestions' is available from the Publications section of the Institute's website: www.hkics.org.hk.

'Road to IPO' seminar in Beijing Zhongguancun

On 18 July 2017, Hong Kong Exchanges and Clearing Ltd (HKEX) and the Administrative Committee of Zhongguancun Science Park jointly held a seminar titled 'Road to IPO' (上市之路研讨会) in Beijing Zhongguancun Science Park, attended by over 400 representatives from economic and financial service enterprises in Mainland China. The Chief Representative of the Institute's Beijing Representative Office Kenneth Jiang FCIS FCS(PE), as one of the delegates from Hong Kong professional bodies, was invited by HKEX to attend the seminar.

This inaugural seminar aimed to promote IPOs in Hong Kong among Mainland enterprises and strengthen their communications with HKEX for listing purposes. HKEX will organise a series of similar seminars in Mainland China to provide updates relating to IPOs to Mainland enterprises in the future.



At the seminar

HKICS and KPMG joint survey report on risk management

The Institute and KPMG China jointly launched a survey report, titled *Risk Management: navigating change in Hong Kong* at a press briefing on 6 July 2017. This is the second report on the topic of risk management jointly published with KPMG China since 2015.

The report focuses on the impact of new corporate governance requirements on risk management for Hong Kong-listed companies. The survey on which the report is based elicited 197 responses from Hong Kong-based senior executives, and reveals that the economic environment, cybersecurity and financial risks are among the top five risks in 2017 facing executives of Hong Kong-listed companies. The key themes emerging from the survey indicate that businesses need to refocus their risk resources in a more effective manner, and adopt a holistic and integrated approach to managing risk.

The Institute would like to thank the respondents who provided their views and insights to the survey. The report and press release are available on the Institute's website: www.hkics.org.hk.



From left to right: Institute Professional Development Director Lydia Kan FCIS FCS(PE); Associate Director, Risk Consulting of KPMG China Karan Kumar; Partner, Head of Financial Risk Management of KPMG China Jyoti Vazirani; Institute President Ivan Tam FCIS FCS; Institute Chief Executive Samantha Suen FCIS FCS(PE); and Institute Senior Director and Head of Technical & Research Mohan Datwani FCIS FCS(PE)

HKICS offers summer internships

The Institute supports the growth of young people through a number of projects and internship opportunities.

The Institute, which has been a member of The Hong Kong Coalition of Professional Services (HKCPS) since 2011, once again supported the HKCPS Yuen Long District Secondary School Students Internship Programme and arranged for two Form 5 students from the Yuen Long District, to work at the secretariat as summer interns for two weeks from 17 to 28 July 2017. The students found the exposure practical and valuable.



Samantha Suen FCIS FCS(PE) with the two interns

Cocktail reception for the 20th anniversary of the Office of the Commissioner of the Ministry of Foreign Affairs, Hong Kong

On 2 July 2017, Institute President Ivan Tam FCIS FCS attended a cocktail reception organised by the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China to celebrate the 20th anniversary of its establishment in Hong Kong.

Cocktail reception for the 10th anniversary of the Financial Reporting Council, Hong Kong

On 13 July 2017, Institute President Ivan Tam FCIS FCS and Chief Executive Samantha Suen FCIS FCS(PE) attended a cocktail reception organised by the Financial Reporting Council to celebrate the 10th anniversary of its establishment in Hong Kong.

Advocacy (continued)

HKICS AML/CFT Charter

New subscriber

On 1 July 2017, Corpag Services (Asia) Ltd was accredited as a new subscriber to the Institute's Anti-Money Laundering/Counter-Terrorist Financing (AML/CFT) Charter. At the accreditation ceremony, a certificate was presented to Maxim van Veluw, Director, Corpag Services (Asia) Ltd, by Institute President Ivan Tam FCIS FCS.

The Institute launched its AML/CFT Charter and guideline in May 2016 to set standards that converge to those for financial institutions which all corporate service providers may adopt in their AML/CFT fight, consistent with the requirements under the Financial Action Task Force Recommendations.



Ivan Tam presenting a certificate to Maxim van Veluw

Meeting with BOC representatives

On 17 July 2017, the Institute arranged a meeting between its AML/CFT Charter members and Bank of China (Hong Kong) Ltd (BOC). Present at the meeting was Arthur Chan, BOC's Deputy General Manager, Business Compliance & Control, PB Risk & Integrated Management, and other department heads. During the meeting there were discussions about the compliance regime under the AML/CFT Charter, and BOC's approach to the opening of bank accounts. The meeting achieved a level of understanding of relevant issues for the mutual benefit for all parties.

For details of the Institute's AML/CFT Charter and guideline, please visit the 'HKICS AML/CFT Charter' section of the Institute's website: www.hkics.org.hk.



At the meeting

HKICS President interviewed by OUHK

An interview with Institute President Ivan Tam FCIS FCS is available on the 'Open for Learning' programme of TVB Pearl and social media channels including BrightRoll, ViuTV, Yahoo and Youtube until the end of August 2017. The interview, arranged by The Open University of Hong Kong (OUHK), introduces the Institute, the Chartered Secretarial profession and OUHK's Master of Corporate Governance (MCG) programme, one of the Institute's collaborative courses. The interview is part of OUHK's video promotion campaign designated for professional bodies in Hong Kong.

To view or download the video, please visit the News section of the Institute's website: www.hkics.org.hk. For details of the MCG programme and other collaborative courses of the Institute, please visit the Studentship section of the Institute's website: www.hkics.org.hk.



Ivan Tam

International Qualifying Scheme (IQS) examinations

December 2017 diet schedule

	Tuesday 5 December 2017	Wednesday 6 December 2017	Thursday 7 December 2017	Friday 8 December 2017
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 2017.

IQS study packs go green

The Institute launched an online version of four IQS study packs on 9 January 2017. This new service, which is free to all registered students, enables students to schedule their professional learning and studies more flexibly, economically and in an environment-friendly manner. Students are highly encouraged to activate their online account and obtain access to the study packs for examination revision as soon as possible. Detailed arrangements have been sent to students for information via email.

For further information regarding the online study packs, please contact Karin Ng at: 2830 6010, or Ruby Ng at: 2830 6006, or email: student@hkics.org.hk. For technical questions regarding the PrimeLaw account, please contact Wolter Kluwer's customer service: HK-Prime@wolterskluwer.com.

Syllabus update – Corporate Secretaryship

The topic, titled *Environmental, Social and Governance Report*, will be included in the syllabus of Corporate Secretaryship under the field of Corporate Compliance effective from the December 2017 examination diet. For details of the syllabus, please visit the Studentship section of the Institute's website: www.hkics.org.hk.

Studentship

Corporate Governance Paper Competition and Presentation Award 2017

The Institute's Corporate Governance Paper Competition has been organised every year since 2006 to raise awareness and promote business ethics and corporate governance among undergraduates of local universities. This year, a total of 36 teams from local universities enrolled for the competition. This year's competition will conclude with an award presentation ceremony on 21 October 2017. Six finalist teams will compete for the Best Presenter Award, and this award, together with the award for the winning paper of the Corporate Governance Paper Competition, will be presented.

Date:	Saturday 21 October 2017
Time:	9.45am – 1.00pm
Venue:	United Conference Centre, 10/F, United Centre, 95 Queensway, Admiralty, Hong Kong
Fee:	Free of charge
Accreditation:	2 CPD points

Members, graduates and students who wish to attend this event, please provide your full name and membership number to Karin Ng at: 2830 6010, or Ruby Ng at: 2830 6006, or email: student@hkics.org.hk for enrolment by Friday 13 October 2017.

Studentship (continued)

Student Ambassadors Programme (SAP) 2017/2018 – recruitment of mentors

The Institute's SAP promotes the Chartered Secretarial profession to local undergraduates and provides a platform for student ambassadors to enhance their skills and career prospects. Members are invited to contribute as mentors to share their working experience, professional knowledge and provide career guidance to the student ambassadors. A tea reception for mentors and mentees will be arranged on 7 October 2017 to launch the 2017/2018 programme.

For enquiries and enrolment, please contact Eva Cheung at: 2830 6019, or email: eva.cheung@hkics.org.hk.

Policy – payment reminder Studentship renewal

Students whose studentship expired in June 2017 are reminded to settle the renewal payment by Saturday 26 August 2017.

Exemption fees

Students whose exemption was approved via confirmation letter in May 2017 are reminded to settle the exemption fee by Monday 28 August 2017.

Postgraduate Programme in Corporate Governance in Shanghai

The 2017/2018 intake of the Postgraduate Programme in Corporate Governance (PGPCG) offered by The Open University of Hong Kong (OUHK) in Shanghai is available for registration. Intensive weekend classes will be held at the East China University of Science and Technology (ECUST/上海华东理工大学) in Shanghai. This programme aims to equip candidates with a sound knowledge and competency in corporate governance and corporate secretaryship. Upon successful completion of all prescribed courses of 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 exemptions from the Institute's International Qualifying Scheme examinations. Students achieving distinction-grade performance may be awarded a scholarship at the end of the programme. The PGPCG application deadline is Thursday 31 August 2017. Please share this information with your friends and contacts who may be interested in studying this programme in Shanghai.

For queries about the programme, please contact Dr Nigel Leung of OUHK at: (852) 2768 6926 or email: ccleung@ouhk.edu.hk; or Iona Li of the Institute's Beijing Representative Office at: (8610) 6641 9368 (ext. 228), or email: bro@hkics.org.hk.

IQS information session

At the IQS information session held on 24 July 2017, Rebecca Yu FCIS FCS(PE), Company Secretarial and Legal Affairs Manager, Hop Hing Oil Group, shared her professional work experience with the attendees interested in pursuing a career in the Chartered Secretarial profession. Information on the IQS examinations and career prospects for Chartered Secretaries was also provided.



At the information session

Bulletin Board

Resolution regime for financial institutions commences operation

The resolution regime established under the Financial Institutions (Resolution) Ordinance (Cap 628) (the Ordinance) commenced operation last month. Under the Ordinance, the resolution authorities (the Monetary Authority, the Insurance Authority and the Securities and Futures Commission) are vested with a range of necessary powers to effect orderly resolution of non-viable systemically important financial institutions in Hong Kong such that risks posed by the non-viability to the stability and effective working of the Hong Kong financial system, including the continuity of critical financial services, can be mitigated while losses are imposed on the institution's shareholders and creditors, thereby minimising risks posed to public funds. The Ordinance commenced operation on 7 July 2017, with the exception of certain provisions which will commence operation pending the making of the relevant rules. Following the commencement, the government, along with the resolution authorities, will maintain close liaison with the industry and the relevant stakeholders in the formulation of regulations and rules to be made under the Ordinance as well as on the implementation of resolution planning requirements.

More information is available on the Financial Services and the Treasury Bureau website: www.fstb.gov.hk.

New financial resources rules proposals

The Securities and Futures Commission (SFC) has published consultation conclusions on the proposed regulatory capital regime for licensed corporations engaged in over-the-counter derivatives activities and other proposed changes to the Securities and Futures (Financial Resources) Rules (FRR).

After carefully considering the comments received, the SFC will proceed to implement the proposed regime subject to certain modifications, which include reducing the minimum capital requirements for fund managers' central dealing desks which meet certain conditions and extending the transitional period for full compliance with the new FRR requirements from six months to one year. The SFC will also introduce into the FRR an internal models approach benchmarking to the latest standards set by the Basel Committee on Banking Supervision.

To reflect recent market developments, the SFC seeks to further consult on a number of modified and additional FRR proposals, such as adding four Mainland commodity exchanges to the list of specified exchanges under the FRR to facilitate licensed corporations' participation in those markets and recognising credit ratings issued by Fitch Ratings. The consultation period ends on 23 August 2017.

More information is available on the SFC website: www.sfc.hk.

Exchange launches new publication

The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), has published its first *Enforcement Newsletter*. The newsletter will be published twice a year, and will include news and updates on the enforcement work undertaken by the Exchange. The first issue covers the first six months of 2017 and includes: enforcement statistics; disciplinary actions completed and published; and compliance highlights – compliance issues observed during the Exchange's investigation of suspected breaches of the listing rules.

The Exchange has also launched its second series of director training webcasts. The new series covers topics such as risk management, internal control systems and environmental, social and governance issues from an investor's perspective. Webcast

speakers Nicholas Charles Allen, Chairman, Link Asset Management Ltd (manager of Link REIT); Philip Chen, Chief Executive Officer, Hang Lung Properties Ltd; Dr Kelvin Wong JP, Immediate Past Chairman, The Hong Kong Institute of Directors; and Marina Wong JP, Independent Non-Executive Director, Kerry Logistics Network Ltd; share the valuable experience and perspectives they have acquired from their directorships. The other speaker, Dr Christine Chow, Associate Director, Hermes Investment Management, adds an investor's perspective. The Exchange would like to thank the speakers, The Chamber of Hong Kong Listed Companies and The Hong Kong Institute of Directors for their support on the webcast.

More information is available on the HKEX website: www.hkex.com.



Company Secretarial Professionals

We are looking for company secretarial professionals to join our Corporate Services Division as Officers / Supervisors / Managers to cope with our fast growing practice.

Requirements:

- ▶ Degree holder;
- ▶ Registered Student or Member of HKICS;
- ▶ At least 4 years' working experience in handling company secretarial matters of Hong Kong-listed companies, preferably with sizeable professional firms or listed companies;
- ▶ Basic knowledge of Hong Kong listing rules and other relevant regulatory requirements for both listed and non-listed companies is essential;
- ▶ Self-motivated, well-organized and detail-minded;
- ▶ Excellent command of spoken and written English with fluent spoken Mandarin;
- ▶ Computer literate. Knowledge in ViewPoint will be an advantage;
- ▶ Candidates with relevant experience will be considered for a position commensurate with experience.

We offer to successful candidates:

- ▶ 15-day annual leave (20-day for managers)
- ▶ 5-day work, study / examination leave
- ▶ Qualifying premium upon completion of HKICS examinations
- ▶ Excellent job exposure and career prospects

Applicants should send their full C.V. and expected salary to:

Human Resources Department
Level 54, Hopewell Centre,
183 Queen's Road East, Hong Kong or by
email to: hr@hk.tricorglobal.com or
by fax to 2543-7124.

Please quote reference: "Company Secretarial Professionals" on your application.

Personal data provided by job applicants will be used strictly in accordance with the employer's personal data policies, a copy of which will be provided immediately upon request.

A bird's eye view

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

- regulatory compliance
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- board support
- investor relations
- business ethics
- corporate social responsibility
- continuing professional development
- risk management, and
- internal controls



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