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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, 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 was a branch of ICSA in 1990 before gaining local status in 1994 and has also been ICSA's China/Hong Kong Division since 2005. HKICS is a founder member of Corporate Secretaries International Association (CSIA), which was established in March 2010 in Geneva, Switzerland. In 2017, CSIA was relocated to Hong Kong where it operates as a company limited by guarantee. CSIA aims to give a global voice for corporate secretaries and governance professionals. HKICS has over 5,800 members and 3,200 students.

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最近一次的公会董事会秘书圆桌会议，刚于今年一月在港顺利召开，演讲嘉宾和与会者集中讨论了香港和内地上市企业董事和高级管理人员，该如何应对更严格的法规和责任要求。

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New year, new prospects

I hope you all enjoyed a good Chinese New Year break. At this time of new beginnings, I would like to devote my President's Message to the new initiatives of The Institute of Chartered Secretaries and Administrators (ICSA) and the plans of both the ICSA and our Institute here in Hong Kong for the years ahead.

From 31 January to 8 February, David Venus FCIS, ICSA International President, visited Hong Kong, Taipei and Beijing. His visit – which is covered in detail in the Institute News section of this month's journal – was an excellent opportunity both to broaden the ICSA's understanding of the work our Institute has been doing in Hong Kong, Mainland China and the region, and to update our members, graduates, students and stakeholders about the ICSA's new initiatives and future plans.

There has been a lot of interest locally in the implications of the ICSA's new initiatives – in particular the roll-out of the new Chartered Governance Professional (CGP) designation. We could not of course pass up on the opportunity to have David share his views on this and other developments with this journal, and in this month's In Profile article he discusses the modalities of the new initiatives and the rationale behind them. He emphasises, first and foremost, that the initiatives are permissive but not

mandatory. It is up to each ICSA division to decide whether to adopt the new CGP designation and/or the new intermediate-level membership category of Affiliated Members. He points out that these initiatives are intended to be tools to be used where appropriate.

In Hong Kong we propose to roll out the new CGP designation, bundled with the Chartered Secretary designation, to improve the public recognition of the role of our members as both Chartered Secretaries and Chartered Governance Professionals. This is also the approach proposed by the UK, Republic of Ireland and the Associated Territories division, as well as the Malaysian and Singaporean divisions. At this stage we don't propose to introduce the category of affiliated membership.

Regarding the rationale behind the ICSA's new initiatives, we are fully supportive of the goal to build a stronger and more inclusive profession. The ICSA is the leading global qualifying body for governance professionals and we are already seen as the natural home for corporate secretaries, but the new CGP designation will help to broaden our membership to all those carrying out roles in the wider world of governance.

So what will all of this mean for us here in Hong Kong? Welcoming David to Hong Kong at the cocktail reception we held on 31 January, I spoke about the opportunity we now have to build on our success in the past decades, and to grow our membership and influence here in Hong Kong, Mainland China, the region and internationally. Since the reforms to the ICSA's governance structure in 2012, the international Institute has set itself on a much more outward-looking course. Adding to that is the new clarity of purpose to build a stronger and more cohesive profession under the

governance banner, for which the future looks increasingly bright.

There is a lot of work ahead of us to achieve these goals. But I believe that here in Asia we can be the flag bearer for the global profession. David was impressed by the respect we have built up for our governance roles in Hong Kong, Mainland China and around Asia. The demand for governance professionals in the region continues to rise and the network of peer governance institutes continues to expand – David visited the newly launched Governance Professionals Institute of Taiwan during his visit to Taipei, for example. We have also been working closely with our peer institutes in Singapore, Malaysia, Indonesia and Thailand – fellow members of the ASEAN Corporate Secretaries Network that was formed in 2016.

With these many different strands coming together, I look forward to an acceleration in our progress towards our strategic goals in the Year of the Dog.

A handwritten signature in black ink, appearing to read "David Fu".

David Fu FCIS FCS(PE)

新年新气象

刚过去的春节假期，希望大家都过得舒适愉快。新年伊始，本文谨在这里介绍英国特许秘书及行政人员公会(ICSA)的新项目，以及ICSA和本会未来数年的计划。

1月31日至2月8日期间，ICSA国际会长David Venus FCIS到访香港、台北及北京，详情在今期月刊的公会消息一栏有详尽报道。这次访问，让ICSA有很好的机会加深了解本会在香港、中国内地和亚太区的工作，也让公会会员、毕业学员、学员和利益相关方得知ICSA的最新工作及未来计划。

本港会员很有兴趣了解ICSA的新举措所带来的影响，尤其是引入特许管治专业人员新称号的措施。我们抓紧机会，请David在本刊阐述他对这项措施及其他新发展的看法。在本月份的In Profile文章中，他讨论了各项新措施的详情及背后的理念。首先，他强调新措施并非强制性，ICSA各分部可自行斟酌执行，决定是否采纳新的特许管治专业人员称号及／或新增中等程度的「联席会员」会籍。他指出，这些措施的用意，是为各分部提供工具，供适当使用。

香港建议推出新的特许管治专业人员称号，结合特许秘书称号，务求公众人士承认公会会员同时作为特许秘书及特许管治专业人员的角色。英国、爱尔兰及相关属土分部、马来西亚

及新加坡分部也是采取这个做法。在现阶段，我们不打算设立联席会员类别。

ICSA各项新措施的理念方面，我们完全支持建立更强大、更包容的专业的目标。ICSA是全球颁授管治专业人员资格的主要团体，已被视为公司秘书必定参与的组织，新的特许管治专业人员称号更有助我们扩大会员基础，涵盖所有在更广阔层面的管治界别工作的人士。

这些发展，对香港会员来说有何意义？在1月31日欢迎David到港的酒会上，我谈到现在我们有机会以过去数十年的成就为基础，在香港、中国内地、亚太区和国际层面吸纳更多会员，扩大影响力。自从2012年改革ICSA的管治架构后，ICSA国际公会已采取较外向型的路向。现在的目标更为清晰，要在管治的旗帜下建立更强大、更团结的专业，前景亦越来越明朗。

要达到这些目标，前面还有许多工作。相信我们能为这个全球专业在亚洲区充当持旗手。我们在香港、中国内地和亚洲地区提倡良好管治，获各界尊崇，令David印象深刻。区内对管治专业人员的需求不断增加，各地的管治机构网络持续扩充，例如David在台北期间，就往访了新成立的台湾管治专业人员公会。我们亦一直与新加坡、马来西亚、印尼和泰国的公会紧

密合作，大家同是2016年成立的东协公司秘书网络的成员。

在这种种发展配合下，期望我们能在狗年加速向我们的策略目标进发。

傅溢鸿

傅溢鸿 FCIS FCS(PE)

Securing data in a new cyber reality

Building and executing a cybersecurity strategy rooted in identity and data access governance, argues Harry Wang, Senior Manager, PricewaterhouseCoopers Consulting, will help companies devise effective means to protect data, detect threats and ultimately reduce the risk of data breaches.



Whether it's intellectual property, client lists, personal information or behavioural analytics, data is oftentimes a company's most valuable asset. However, it's not just the companies who find it valuable; 'threat actors', both from outside and within, may also be looking to gain at the company's expense. The latest PricewaterhouseCoopers (PwC) 21st CEO Survey finds that the most common concern for respondents (comprising 1,293 CEOs from around the world) is the cyber threat to their businesses. Despite increasing cyber awareness and the investments companies are making in their security programmes, threat actors are continuing to find ways into networks and extracting sensitive data. Also, changes in how we use data, the adoption of cloud-based services and the

increased sophistication of threat actors all contribute to the rising number of attacks.

Behind nearly every data breach is an identity that commits them, regardless of whether it is an insider within the network or an external party who has gained unauthorised access, or even due to employee negligence. Companies are now finding the need to shift from a perimeter or 'endpoint' defence approach to 'data-centric' security with a focus on identity – this means not only monitoring and securing data directly, but also understanding who and how users are interacting with data.

The rise of massive data breaches

According to PwC's *Global State of Information Security Survey* (GSISS) 2018,

Highlights

- many companies don't have control over their unstructured data – they don't know where data is stored or what data is sensitive
- IT security programmes that focus primarily on keeping attackers out of the network are no longer sufficient
- companies need to shift to a governance-based approach to security with a focus on not only monitoring and securing data itself, but also the identity of the users of that data



an annual report which draws on the responses of 9,500 executives in 122 countries and more than 75 industries, 75% of respondents from China and Hong Kong experienced cyber attacks in 2017.

Last year (2017) saw some of the most significant data breaches in history. Nearly 145 million records were compromised in a single incident, where personally identifiable information, such as social security numbers, birth dates, addresses and driver's licenses of nearly every American adult were compromised. Movies, TV shows and scripts at a major entertainment company were breached prior to release and held ransom by hackers. Millions of healthcare records were breached at a major insurance company. Even security firms have been breached. The list goes on.

Regulators are weighing in

Regulators from around the globe are recognising the changing security landscape by enforcing new industry-sweeping cybersecurity and privacy regulations and fining companies along the way. A large US-based insurance company was ordered to pay US\$115 million for a data breach that occurred in 2015, where they compromised nearly 80 million personal records including birthdays, medical IDs/social security numbers, street addresses, email addresses, employment information and income data. Regulations such as Europe's General Data Privacy Protection Regulation has fines of up to 4% of global annual turnover while China's Cybersecurity Law and the Philippines' Personal Data Protection Act include not only hefty fines, but hold operators personally liable and could result in jail time.

Data breaches have real consequences

Data breaches are impacting organisations in a big way, including loss of trust, brand degradation and impacting the company's bottom line. Of the GISS 2018 respondents from Hong Kong and China who experienced cyber attacks, 35% reported brand reputation compromise and 38% experienced financial losses.

Customer records were the most compromised according to the survey. Compromised data such as government-issued identification numbers, physical and email addresses, health records, and personal analytical data is especially damaging as it is unlikely to change over time. Victims of these types of breaches are continually at risk of identity theft or fraud due to the nature of data.

The relationship between user and data has changed

In the past, IT security programmes focused primarily on the perimeter – network firewalls, intrusion detection systems and antivirus software – were designed to keep attackers out of the network. When the typical IT infrastructure consisted of laptops, desktops, central critical applications, and the network traffic in between them, this was a manageable approach. Within the enterprise and purview of IT teams, enterprise applications, such as enterprise resource planning and customer relationship management systems, stored most of a company's most sensitive information in databases. Data stored in databases is often referred to as structured data, as it is formatted in a relational and predictable model.

Today, endpoints extend to mobile devices, Internet of Things (IoT) and other interconnected devices and

“ users are storing data where it can be accessed most conveniently and, oftentimes, this may not be the most secure location ”

services, including third-party vendors. The enterprise has struggled to keep up, as mobile device exploits were the most common causes of security incidents. Furthermore, now more than ever, information is being extracted from critical systems and stored across the enterprise as unstructured data. Unstructured data includes any form of data that does not fit a structured model and can exist as documents, spreadsheets, presentations and reports, and are typically stored in individual files.

Research and advisory firm Gartner estimates that unstructured data accounts for over 80% of all data within an enterprise and that this proportion is growing. Users are storing the data where it can be accessed most conveniently and, oftentimes, this may not be the most secure location. Monthly financial reports, strategic roadmaps and client lists can be extracted from critical systems and shared with users through cloud-shared drives, SharePoint team sites and emails. With threat actors increasingly targeting



unstructured data as low-hanging fruit, this introduces a new set of challenges and questions, including:

- ***Where is my data, especially my sensitive data?*** Many companies don't have control over their unstructured data. They do not know where data is stored or what data is sensitive.
- ***Who owns the data and what are they doing with the data?*** Companies do not have visibility into who the data owners are, who is accessing the data or what are they doing with the data.
- ***Who is responsible for unstructured data?*** Sensitive data is stored within and beyond the enterprise and users are now the ones who own unstructured data.

Given so many file storage options and data owners, securing data can become an unmanageable task.

A changing of the IT guard

With an increasingly complex web of endpoints, the proliferation of unstructured data and attack vectors, acknowledging a cyber attack will likely occur is perhaps the first step to becoming more cyber resilient. Just because an attack occurs doesn't mean it will result in a data breach and companies are deploying security enforcement tools to better protect their data.

- ***Encryption.*** Encryption, the process of encoding information in such a way as to keep unauthorised users out, is a highly effective security mechanism. Data owners are able to identify how and where sensitive data are stored within databases, and encryption can be applied to sensitive fields and databases where only authorised users are able to view the data. Although encryption has been around for decades, the headlining of data breaches has spurred companies to action. Also, real-time encryption across formats was impractical given

the processing power required at the time was not readily available. Today, power is less of an issue and encryption is becoming more prevalent, extending to applications, hard drives and file shares to include unstructured data.

- ***Access management.*** Requiring authentication methods such as username/passwords and multi-factor authentication (one-time passwords, biometrics, etc) help control and limit access to encrypted data. Rights are granted through a series of access requests and approvals.
- ***Data loss prevention (DLP).*** These technologies typically monitor the network and prevent sensitive data from leaving the premises. They have been around for years and are effective in establishing rules to prevent certain file types and files containing key words from leaving the network.

“ visibility into where data is and the ability to identify relationships between users and data will be critical to creating a more cyber-resilient organisation ”



- **Privileged access management (PAM) tools.** Managing privileged user access is a critical part of keeping data secure. With elevated rights, attackers can more quickly gain access to critical systems, compromise additional accounts and also hide their tracks more easily. PAM tools include capabilities such as the ability to enforce segregation of duties, track and monitor each command executed by the user, and a check-in/check-out password management system where the password can be changed with each login.

The insider threat

While security enforcement tools lessen the risk of unauthorised access, these mechanisms alone are not enough. Applications are still susceptible to other attacks, such as insider and insider-related threats. Insiders are difficult to detect and can go unnoticed for months because these attacks typically use legitimate accounts to access data, and can cause some of the most harm to a company. For example, current or former employees

have legitimate access to sensitive data and can abuse this privilege by downloading terabytes of structured and unstructured data before their termination date. Insider-related incidents in China and Hong Kong are the highest in the world, where 42% of respondents reported former employees as a source of incidents.

Insider-related threats also include external threat actors who have compromised legitimate accounts. External attackers can use accounts to gain access to critical applications. Despite securing the database, once authenticated, attackers can view data through the application unencrypted, rendering encryption useless. A global travel technology company experienced such a breach when attackers compromised an account, which ultimately compromised thousands of records containing payment card information, reservation details and personal customer information.

Establishing a governance-based approach to securing data

At its core, there are only two actors to

every data breach: (1) the sensitive data and (2) the identity used to access them. Establishing governance for both identities and data access just makes sense. Identity governance adds insight to security risks through the constant monitoring and management of users and their activities and helps companies answer the following questions.

- Who currently has access?
- Who should have access?
- How are people getting access?

Understanding who has access to applications and files, whether they should have access, and how individuals obtain access greatly reduces the attack vectors and the time attackers have at their disposal. These solutions, when properly deployed, can accomplish this via the following routes.

- **Automating provisioning/deprovisioning.** Without identity solutions, creation, updates and

removal of accounts can be highly manual, error prone and delayed. Attackers can compromise old or unused accounts, or even create new accounts undetected within the network. These accounts are often not linked to any active user and are regarded as 'orphaned' accounts. Identity governance solutions constantly monitor active accounts and can automatically remove accounts when an employee leaves, or flag accounts without ultimate owners.

- **Managing access rights.** During employees' tenure, they accrue access rights over time when they change job functions, which can lay the foundation for an effective insider ex-filtration of data. Also, a common tactic for hackers who have already infiltrated the network is to escalate their privileges. Deploying identity governance solutions gives visibility to whether these rights make sense, simplifies the recertification process and automates remediation.
- **Managing privileged users.** PAM tools manage user activity, but do not manage the users themselves. Leaving a company's most powerful user accounts unmanaged greatly

increases the risk of a compromise going undetected. Identity governance complements PAM in this regard.

Similar to managing identities, data access governance solutions are designed to extend identity governance tactics to govern unstructured data through a number of different mechanisms.

- **Finding your data.** Discovery of unstructured data is vital to minimising security risks and regulatory compliance. This can help companies identify where unstructured data is stored on file stores and team sites across the enterprise, both on-premises and in the cloud.
- **Taking action on sensitive data.** Once sensitive data is found, companies can immediately perform remediating activities, moving these files to secure locations or removing them from the network.
- **Identifying data owners.** One of the biggest challenges for unstructured data is identifying who the owners are. Empowering data owners to self-govern access to files encourages a security-aware work culture.

- **Using identity context to manage data access.** Combining identity governance and identity governance for files under a single pane of glass provides a holistic picture of how the identity and the data relate and whether data abuse is occurring.

By supplementing governance across identities and data with the likes of DLP and access management, companies will find these security tools to be more effective in the long run. In fact, Gartner has stated that 'by 2021, organisations with complimentary/integrated identity governance and data access governance capabilities will suffer 60% fewer data breaches'.

Concluding thoughts

As we continue the shift into a more interconnected world, companies have a duty to protect their client, stakeholder, and business data and should view security as a business transformation enabler if they are to build and maintain consumer trust. In this new reality, where companies must assume a constant state of compromise from external and internal forces, visibility into where data is and the ability to identify relationships between users and data will be critical to creating a more cyber-resilient organisation. While there is no single technology or suite of technology solutions that can guarantee the prevention of a cyber attack, building and executing a cybersecurity strategy rooted in identity and data access governance will help companies devise effective means to protect data, detect threats and ultimately reduce the risk of data breaches.

Meet the author

Harry Wang is a Cybersecurity professional at PwC and has over 10 years of experience helping large corporations and government agencies manage cybersecurity risks, addressing issues around enterprise identity governance, access control, privileged management, and insider threat. Working in both public and private sectors, he has developed and led enterprise security strategy and security-focused technology implementations to over a dozen Global 500, Fortune 100, and US federal agencies across banking, insurance, manufacturing, entertainment, hospitality, information technology, military, health and intelligence sectors.

Harry Wang, Senior Manager
PricewaterhouseCoopers Consulting

Governance and strategy



David Venus FCIS, International President, The Institute of Chartered Secretaries and Administrators (ICSA), discusses how the ICSA and the profession globally is re-aligning itself to reflect the new focus of the corporate secretary role on governance and strategy.

Thanks for giving us this interview. Could we start by discussing your visit to Hong Kong, Taipei and Beijing – what's your view of developments relating to the profession in this part of the world?

'First of all, it has been wonderful to be here and to see the enthusiasm of members and to see how respected the Institute is here in Hong Kong, Taiwan and Beijing. It is clear that regulators, directors and others in this region respect what the Institute stands for and its message. When you think of the limited resources that the Institute has, it is amazing what it has achieved and is a credit to all staff and members.'

Do you think that, since the structural reforms of 2012, the ICSA has become a more outward-looking and international body?

'It has always been a global body. Until 2012, there was a built-in majority for UK members but if you grow as we have – we have members in 100 countries and 70% of our members are not in the UK – it makes absolute sense to have full democracy so that everybody comes to the table with equal rights.'

That issue was resolved in 2012 and we now have a coherent message and purpose throughout the institution. We are still a unitary body, but it has to be recognised that each of the nine divisions has its own interests, its own market and its differences. So quite sensibly we realised that the decisions the international ICSA makes, apart from the standards of the exam – it is absolutely paramount that this has to be across the board – have to be permissive and not mandatory. Therefore, regarding our new initiatives – the new designation of Chartered Governance Professional and the intermediate level of membership for affiliates – it is up to each division whether they adopt them, when they adopt them and how they adopt them.

All we are doing is providing the tools and hopefully there will be more of them. We are saying: use these tools when you want and how you want in the best interests of the members in your division. Now I understand that in Hong Kong/China there is no appetite at the moment for an intermediate form of membership for affiliates, but in South Africa, Zimbabwe, the UK and other divisions, there most certainly is. I think it is an excellent example

of how we are all working together that those divisions who didn't want affiliate membership, Hong Kong/China included, nevertheless saw that other divisions needed it, so for the good of the Institute they voted in favour of it.'

Could we talk about the rationale behind the new designation of Chartered Governance Professional? Is this about maintaining the relevance of the profession in the future?

'There is no question of the Institute not being relevant because corporate secretaries will always be required. But do we wish to become a niche organisation with limited membership, or do we wish to capture the world of governance – after all, we are the leading international body for governance professionals. There are many people with the same values, ethos and training as we have who don't see themselves as company secretaries. They may be working within government or in education or working for a charity, but we should be welcoming these people as members because this is their natural home.'

This was the logic behind creating the new designation of Chartered Governance Professional, but there is also a very good by-product of this. The word "secretary" can create difficulties because of the connotations of the word. If you have 10 seconds to tell someone what do you do, the so-called "elevator pitch", they may look at you blankly if you tell them you are a Chartered

Highlights

- the corporate secretarial role is becoming more focused on strategy and governance
- the new designation of Chartered Governance Professional will open doors and allow members of the Institute to take up roles that they might not be considered for at the moment
- no one is going to lose the 'Chartered Secretary' name – the intention is that members can become Chartered Governance Professionals in addition to being Chartered Secretaries

Secretary, or they might think you are a typist. If you tell someone you are a Chartered Governance Professional, they won't necessarily know what you do, but they will know what governance is.

The world is changing and there is more of a focus on governance. By introducing this new designation, and particularly by qualifying members as both Chartered Secretary and Chartered Governance Professional, they will be able to call themselves either or both of these things depending on their role and audience. I see this as a win-win for attracting new members and for our existing members and students.'

What would you say to those members concerned about losing the investment the profession has put into the term 'Chartered Secretary'?

'I understand that concern and we must move carefully. I will make a number of points. First of all, there will be a consultation on this across all divisions. Members will be consulted, as well as individual councils and executives. Moreover, if we do change our name, it will only be the international body. Again, this will be permissive not mandatory. So those divisions who feel that they have invested so much in their branding and that it's not the right time to change would be able to stay the same.'

My personal view is that, as an international body, we should reflect our focus on governance and our name at the moment doesn't do that. My feeling is that it will open doors. We have found that to be the experience in the UK, which is now ICSA – the Governance Institute. It has undoubtedly also been the case in Australia. So I feel that it will be a huge benefit.

Another point to make, however, is that no one is going to lose the "Chartered Secretary" name. Our members will still qualify as Chartered Secretaries. The intention here in Hong Kong and in many other divisions, is that they will also be qualified as a Chartered Governance Professional.'

Can we talk about the proposed changes to the Institute's International Qualifying Scheme (IQS)?

'The changes to the IQS are being driven by research that found our roles are becoming more strategic – we still have our administrative functions but our roles have become more focused on strategy and governance – and our exams don't necessarily reflect that shift so we needed to cater for that.'

We also found that in some divisions the pace of change towards

governance was much stronger and faster than in others. So we have to recognise that and that's part of the reason for having the two designations. Originally they were envisaged as being separate, so you would take exams for the Chartered Secretary stream or for the Chartered Governance Professional stream. Now, I am very pleased that many divisions (Hong Kong/China included) have opted to bundle the two streams to enable people to qualify as both.'

The other driver is that we need to look at and update our exams from time to time. This is the time for that review and the new syllabus will be coming out next year.'

Could you also talk about the proposed changes to the work of the Professional Standards Committee (PSC)?

'The work of the PSC is the cornerstone of the international Institute; it's our *raison d'être*. The PSC ensures a common exam standard throughout the nine divisions of the international Institute and that gives our qualification a unique feature – its portability. There are very few institutes where you have that portability of qualification.'

Currently, after the exams have been taken, the PSC reviews the exam papers and reports to council on its findings. In future, the PSC will still set the common exam standard throughout the divisions, but it will also give accreditation. It will look at each division's syllabuses, processes and exam questions, and it will give, where appropriate, a stamp of approval. The accreditation process will need to be quite rigorous because you are giving the division the authority to go ahead and set exams, but it seems sensible to me to do it this way because it will be proactive rather than reactive.'

How often will the accreditation need to be renewed?

'This is still to be confirmed, but my personal view is that every three to five years would be about right.'

Could you tell us about your personal background?

'I have had a wonderful career as a company secretary. I was lucky because, like many people, I chanced upon the career and found that I was ideally suited to it. I didn't go to university. I went to a good school but I wasn't the greatest student. I didn't know what I wanted to do but I took a business studies course and was taught by a lecturer in company and commercial law who was a Chartered Secretary. He told us about his career and what he did, and that caught my interest.'

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it is clear that regulators, directors and others in this region respect what the Institute stands for and its message

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So I took the exams and I qualified when I was 22. I initially worked for subsidiaries of Nestlé and ITT and then, when I was 29, I set up my own company secretarial practice, working from my backroom. I headed the company for 35 years and grew it from mostly sub-contracting work to working with over 10 of the FTSE 100. I was also, unusually, company secretary for a number of pop groups, including Pink Floyd. Then, at the end of my career, I was company secretary of an £8.6 billion government fund set up to finance the decommissioning of the UK's nuclear power stations. Having failed physics O-level, I was visiting nuclear power stations and talking to nuclear scientists! You can only have that sort of career as a company secretary. I have worked for government, for pop groups and for big and small companies – and the same basic disciplines apply to each. I had to advise on company law in all of these organisations.

Also, I was in boardrooms at the age of 29 – no other job would give you that access. The career also often leads to doing things that you would never thought you would do. While working for Pink Floyd, for example, the band was getting more and more requests to use their music for advertising jingles and the like. They needed someone to deal with the approval of these requests, so for 20 years I did that as well as the day job!

You mentioned that you didn't have a degree. Do you think that the profession should be open to non-degree holders?

'Absolutely. I understand the reason behind the degree requirement in some divisions, but there are many people who are late developers so I am an advocate for open entry. Of course, there has to be a foundation course – you couldn't expect someone to go straight into the profession.'

What makes a good company secretary?

'I focus on three things – integrity, attention to detail and tenacity. There are also three stages to becoming a company secretary: the administrative, governance and leadership phases.

If you have a successful career, you are going to pass through those three stages and will need the three qualities I mentioned and many more. Those who get to the leadership phase, though, will also need well-developed soft skills. That's something I am really keen on promoting. I would like to see us train students and examine them in soft skills. This is some way off, it isn't a specific subject in the IQS but I think in due course we will be doing our students a service by having emotional intelligence training and examinations in soft skills. I had to feel my way, and all my contemporaries had to feel their way, but I think we should be doing more. The softer skills can definitely be taught.'

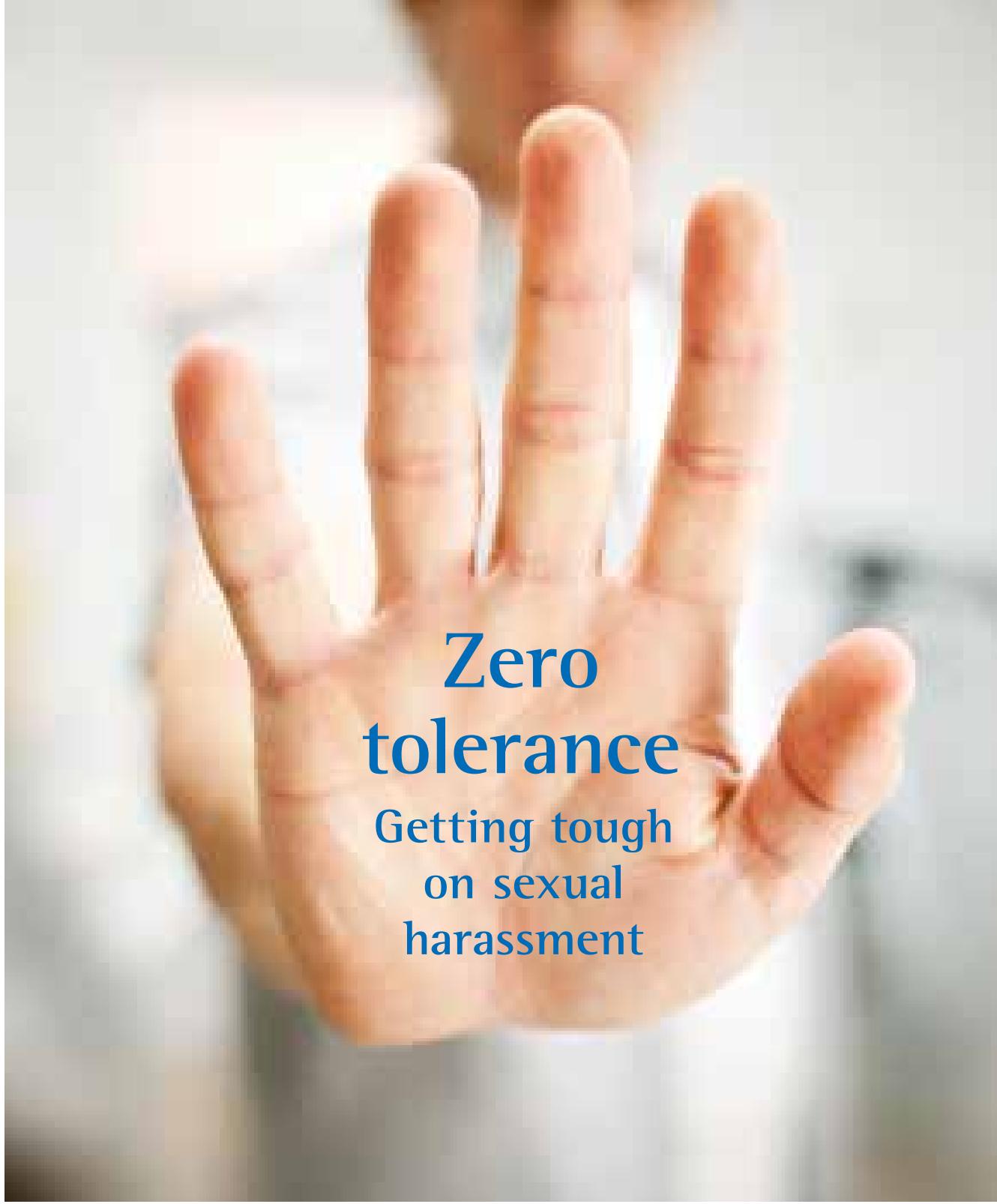
Could we end with your thoughts on the future of the profession?

'An American study recently estimated that roles in governance around the world will double by 2021, so our future has got to be bright. Our profession is already highly regarded by other professionals but beyond that too few know about it. The new designation of Chartered Governance Professional will help with that. I am sure it will open doors and allow our members to take up roles that they might not be considered for at the moment.'

It is our members who will make the future. One point I would like to make is that in the past our members have been backroom people who had been content not to shout about what they do. We need our members to go out and proselytise. We need them to go out and say: we are the experts in governance. The role is becoming much less of a backroom role than it used to be. Certainly, when you start in the profession you will have an administrative role, but you will become more strategic as your career develops, and governance is at the heart of strategy.

There are good signs, though not across all the divisions, that student numbers are growing. They are growing in the UK for example. It takes time to convert students to members so our growth will be slow but steady. I think our influence and reputation has grown immensely in recent years. Certainly I can measure that in the UK. The Institute there has been asked to contribute to the Combined Code and recently to the new code coming in for private companies that's being introduced in September. We work very closely with regulators. We are highly regarded and respected and I have seen that to be the case here in Hong Kong and in other divisions. So I believe our future will be bright.'

David Venus FCIS was interviewed by CSj Editor Kieran Colvert.



**Zero
tolerance**
**Getting tough
on sexual
harassment**

Sexual harassment in the workplace is not harmless play but an offensive and unlawful act. Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research of the Institute, and Member, Equal Opportunities Commission, highlights the need for organisations in Hong Kong to adopt anti-sexual harassment policies.

The Equal Opportunities Commission (EOC) is a statutory body dealing with sex, disability, family status and race discrimination in Hong Kong. The EOC aims to eliminate related discrimination, harassment and vilification, including sexual harassment under the Sex Discrimination Ordinance (SDO) Parts 3 and 4. The largest number of complaints that the EOC receives on a recurrent basis relates to sexual harassment. These include sexual harassment at the workplace. The recent media attention in the US and elsewhere will no doubt precipitate an increase in sexual harassment complaints by harassed persons, including at the workplace, as they learn of their rights from high-profile events.

For an organisation where allegations of sexual harassment at the workplace takes place, this can tarnish its hard-earned reputation. This is especially the case in this age of instantaneous social media where bad news travels fast. There are also potential vicarious monetary liabilities, which can be especially harsh on small and medium-sized enterprises. It is therefore in the interests of an organisation, whether large or small, from a risk perspective, to adopt an anti-sexual harassment (ASH) policy and to enforce it. The EOC will soon be launching a promotion campaign urging companies to adopt ASH policies. The company secretary as governance adviser can advise the board to recognise this trend as this is also an

environmental, social and governance (ESG) concern.

What is sexual harassment?

The EOC explains the concept of sexual harassment under the SDO in its 'Know Your Rights (Sexual Harassment in the Workplace)' guidance. It dispels the common misconception that sexual harassment only applies to harassers within an organisation, for example, a boss or a co-worker. In fact, the concept also applies to external harassers, including service providers and customers. Conduct that could amount to sexual harassment extends to the following.

- The harasser saying something sexual to the victim as to the way the victim looks which is offensive or intimidating to the person concerned.
- The harasser touching the victim sexually when this is not wanted.

- The harasser acting in a sexual manner unwelcome to the victim.
- The harasser making sexual jokes or doing things to or around the victim that is not liked.
- The harasser showing or putting up pornographic pictures which embarrasses the victim at work.
- The harasser harassing the victim while providing the person with goods, facilities or services.

It should be mentioned that if two persons are involved in a consensual relationship, then there is no issue of sexual harassment. The difficulty is that when the relationship sours the consensual relationship can end. This situation can be a grey area and lead to allegations of sexual harassment. There are people choosing to leave the workplace before commencing a sexual relationship, or to seek to transfer to

Highlights

- the largest number of complaints that the Equal Opportunities Commission receives on a recurrent basis relates to sexual harassment
- there needs to be a clear statement in organisations' anti-sexual harassment policies that sexual harassment will not be tolerated
- the company secretary, as governance adviser, can advise the board on the need for an anti-sexual harassment policy as this is also an environmental, social and governance (ESG) concern

another department to avoid the issues arising from being too close within the same workplace. However, it is for the parties to consider their own best interests. For the organisations, from a governance point of view, they may need to put in place arrangements where two members of staff enter a relationship, for example where they are both bank authorised signatories. The organisation will need to maintain proper risk management procedures.

What is the legal position?

From a legal perspective, under the SDO, there are two limbs to the definition of sexual harassment. The first limb refers to unwelcome sexual advances or requests for sexual favours to another person; or engagement in conduct of a sexual nature in relation to that other person where a reasonable person having regard to the circumstances would be offended, humiliated or intimidated. This first limb relates to situations where there is a specific targeted person. The second limb extends to conduct of a sexual nature which creates a hostile or intimidating environment, including where there is no specific targeted person. For example, if a group of colleagues make dirty jokes in the office and everyone enjoys that, this is not unwelcome and there would be no sexual harassment under the first limb. However, if another member of staff in the office overhears the jokes, even though the jokes were not directed at that member of staff, he or she can lodge a complaint of sexual harassment under the second limb in respect of the statements of a sexual nature.

A victim of sexual harassment may seek the EOC's conciliation and legal assistance where that fails. At all times, the victim can, with the help of the EOC

or otherwise, directly make a civil claim at the District Court, including for a declaration as to the unlawful nature of the act; claim for loss or damages, which can include damages as to injury in feelings; reinstatement and promotion; and punitive or exemplary damages (see SDO, Section 76). These are in addition to any criminal complaints to the police.

In *Yuen Sha Sha v Tse Chi Pun* [1991] 1 HKC 731, videotaping without consent during undressing was found to be sexual and unwelcome conduct under the SDO. In *Insitu Cleaning Co Ltd v Heads* [1995] IRIL 4, a manager who greeted an employee with 'Hiya Big Tits' was found to be engaged in sexual harassment, as with *Aldridge v Booth* [1988] 80 ALR, where an employee tolerated sexual intercourse for fear of being dismissed.

In *L v David Roy Burton* DCEO 15/2009, numerous sexual advances were made against the victim, and when rejected, the victim was forcefully grabbed and bruised at the wrist. The court found sexual harassment under the SDO and awarded approximately HK\$200,000 in damages, including injury to feelings of \$100,000; loss of earning at around \$80,000; and exemplary damages of \$80,000. The refusal to settle or to apologise during EOC conciliation was taken into consideration by the court for an award of cost in favour of the victim.

Drafting an anti-sexual harassment policy

As part of good governance, the company secretary should recommend that the organisation concerned adopt an ASH policy. As there is 'no one-size fits all' for policy documents, the EOC has not provided sample policies, but rather

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it is therefore in the interests of an organisation, whether large or small, from a risk perspective, to adopt an anti-sexual harassment (ASH) policy and to enforce it

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the framework for creating such policies. The EOC's 'Preventing Sexual Harassment in the Workplace Formulating Corporate Policy on Sexual Harassment' makes it clear that sexual harassment is not harmless play but an offensive unlawful act. The consequences can be costly, and lead to emotional stress, anxiety and even depression for the victim. Also, not only the harasser, but the organisation can be vicariously liable under the SDO. The process of formulating an ASH policy can provide organisations and management with a deeper understanding of anti-sexual harassment measures, and proper consultation with employees can enhance the buy-in to the ASH policy. The ASH policy, which company secretaries can help their organisation adopt, should include the elements listed below.

1. **Zero tolerance for sexual harassment.** The policy needs to state that everyone has the right to be respected and be equally treated, and that sexual harassment is



discriminatory and unlawful. Sexual harassment may lead to disciplinary measures by the organisation and may also entail civil liability and even criminal consequences. Once an act of sexual harassment has occurred, any person in the organisation has a right to lodge a complaint. The determination of the organisation to eliminate and prevent sexual harassment should be clearly conveyed – there needs to be a clear statement that sexual harassment will not be tolerated in the organisation.

2. **Punishment.** The policy should state the specific disciplinary measures to which sexual harassment acts could lead and what the maximum penalty is, for instance making apologies, attending counselling sessions, paying compensation, being dismissed, etc. Actions that could be taken by the organisation should also be stated. For instance, if the case involves

criminal offences, the organisation will report it to the police.

3. ***Objectives and responsibilities of the employer and management.*** The objectives of the policy should be listed so that all parties in the organisation have a clear understanding of them. These include creating a safe and sexually hostile-free environment, requiring training; establishing channels to lodge complaints and to handle them in a fair, impartial and confidential manner; and providing protection to complainants.
4. ***Obligation and responsibility of employer and all employees.*** The policy should make it clear that the management and employees all have the obligations and responsibilities to eliminate sexual harassment, including to respect the will and feelings of others, refusing to tolerate sexual harassment, and supporting co-workers to take reasonable steps to stop sexual harassment. When any sexual harassment is witnessed, it should be reported.
5. ***Rights of the victim and various actions to be taken.*** The policy should explain that every person has the right to lodge a complaint relating to sexual harassment and to take the actions outlined below.
 - Speak up at the time to tell the harasser that his/her act is unwelcome and should be stopped immediately.
 - Keep a written record of the incidents, including the dates, time, location, witnesses and nature (what the harasser has said or done) and the victim's own response.
 - Tell someone the victim trusts and ask for emotional support and advice.

- Lodge a formal or informal complaint to the employer/management.
- Lodge a complaint with the EOC and request investigation or conciliation (see 'Contacting the EOC' box text for contact information). In case conciliation fails, the complainant may request the EOC to provide legal assistance.
- Consult a lawyer, report to the police or file a civil law suit against the harasser.

It should be clearly stated that the complaint handling procedure does not affect the complainant's lodging complaints with the EOC, reporting to the police or filing a lawsuit in the District Court.

6. Principles of handling sexual harassment complaints.

The policy should detail the matters outlined below.

- **Fairness.** Enquiries and complaints should be handled in a just and impartial manner to ensure that the complainant and the alleged harasser are fairly treated, and both parties have chances to present their case.
- **Confidentiality.** Assurance should be given to all employees that all information and records related to a sexual harassment complaint must be confidential and only be disclosed to relevant staff on a need-to-know basis. Since the

alleged harasser is a key person in the case, under the principle of natural justice, he/she should be informed about the details of the allegation.

- **Avoiding any delay.** Complaints should be handled promptly because both the complainant and the alleged harasser are under pressure. The employer/management or the person in charge of handling complaints should deal with the case without any delay.

- **Transparent procedures.** Companies should incorporate the handling procedures related to sexual harassment complaints in their complaint policy/sexual harassment policy and make them known to all staff and other workers in the organisation.

- **Protection for complainants and witnesses.** Complainants and witnesses should be protected against victimisation (which is an unlawful act of discrimination under Section 9 of the SDO) because of the complaint case.

- **Avoid conflict of interest.** If the employee who handles the enquiry/complaint case is closely related to the complainant or the alleged harasser (for instance, relatives), or the alleged harasser is the person in charge of handling sexual harassment complaints, the case should be handled by another person.

- **Anonymous complaint.** Whether the complaints are anonymous or not, companies may need to make inquiries or to conduct an investigation. If the complainant is a minor, the case should be handled more discreetly.

- **Handling cases discreetly.** Measures to ensure that the complainant is not unnecessarily distressed or humiliated should include: showing empathy to the feelings of complainants; avoiding asking the complainant to repeat his/her painful story; and appointing investigators of the same sex to interview the complainant. Complaint cases should be handled discreetly so that related parties are not unnecessarily distressed.

7. Mechanism for handling sexual harassment complaints.

- The policy should establish other informal and formal complaint handling mechanisms for sexual harassment complaints. If the primary concern of the complainant is to stop the acts of sexual harassment as soon as possible by way of taking informal action (for example, sending a clear message to the alleged harasser) instead of investigating his/her case, the complaint will be handled informally. The informal complaint handling mechanism is suitable for handling minor and single incidents rather than

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the process of formulating an ASH policy can provide organisations and management with a deeper understanding of anti-sexual harassment measures
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serious and repeated acts of sexual harassment.

- If one party does not accept the investigation result, as a principle of natural justice, appeals to senior level of management should be allowed.
- Sexual harassment acts may also amount to criminal offences such as indecent assault and distribution or display of indecent and obscene articles. The organisation may consider referring those cases to the police.

8. ***Time bar for lodging a complaint.***
The policy should explain that if the person who is sexually harassed intends to lodge a complaint with the EOC, he/she should act within 12 months after the incident occurred. Otherwise, the EOC will not handle the case unless there are justifiable reasons for the delay. Any decision to take legal proceedings to the District Court should be made within two years after the incident occurred.
9. ***Definition of sexual harassment.***
There should be a definition of sexual harassment, and clear

statements that sexual harassment can take place regardless of gender; intention is irrelevant.

The above is a high-level summary of the complex areas relating to sexual harassment. It is hoped that organisations can seriously consider adopting an ASH policy based on the facilitation by the company secretary as a governance professional, and the EOCs resources.

Mohan Datwani FCIS FCS(PE)

Senior Director and Head of Technical & Research of the Institute, and Member, Equal Opportunities Commission

More information is available on the Equal Opportunities Commission (EOC) website: www.eoc.org.hk. The EOC's 'Preventing Sexual Harassment in the Workplace Formulating Corporate Policy on Sexual Harassment' is available at: www.eoc.org.hk/eoc/upload/2013116173927302019.pdf.

Contacting the EOC

Victims of sexual harassment have a right to lodge a formal or informal complaint with their employer, and/or with the Equal Opportunities Commission (EOC). The EOC can be contacted:

- by telephone: 2511 8211, or
- via the EOC website: <http://www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx>

Governance's role in future proofing sustainability development

Dr Glenn Frommer and Theodora Thunder, Principals, The Sustainability Partnership, offer advice on how governance can play a central role in shaping organisational sustainability.



Using current corporate governance practices, we build supervisory systems that ensure compliance with regulatory issues and internal policies. However, with growing investor and stakeholder pressure to commit to sustainability, how would one need to evolve governance practices to be future proof? That is, how can governance manage such issues as stakeholder engagement and the co-generation of value, which are the hallmark practices for sustainability development? Compliance becomes a moot point at this level of management.

In shaping this future-proof scenario, governance has the opportunity to take a strategic role. It is through the ability to establish strong policies and practices that governance can embed sustainability aspirations and create the structured follow-through to create the business case for sustainability development.

Optimising the governance role in sustainability development

From the governance perspective, sustainability development broadly follows two pathways – internal compliance and external socio-economic pressures on management. Internal compliance focuses principally on regulatory issues and the strategies that oversee the rigours of operating efficiency, transparency, ethics and defined roles and responsibilities. Socio-economic pressures commonly encompass management issues that are beyond compliance – such as stakeholder expectations; the social, economic and environmental (SEE) context of operations; growth opportunities; and, the voluntary alignment with industry norms. For sustainability to develop, these pathways must be recognised and managed as two sides of the same coin.

With internal compliance, governance serves as the codifier-in-chief, translating the corporate vision and goals into policy and practice. It keeps the vision and goals alive through the establishment, supervision and monitoring of the tools and processes that control risks, brings order and efficiencies to operations and stabilises growth. It oversees the framework for corporate behaviour at all levels, including regulatory compliance, ethics, product responsibility, reporting and communications. This traditional role relies on the competencies and skill sets used for compliance-based/business systems governance.

When managing business risks posed by socio-economic (non-financial) issues, the dynamics of an organisation's social systems come into play, often with the need to develop internal competencies (think qualitative) further for effective management. This starts with retooling the purpose and procedures for stakeholder engagement. Engagement practices, for example, should be planned and proactive. Constructive engagement can be used to map stakeholders and their interests into a formal hierarchy of influence on the business. This mapping serves as an essential tool to the enterprise risk management

strategy and is critical to identifying and prioritising risks.

As a simple means to illustrate the two pathways' influence on sustainability development, we identify their driving presence in commonly recognised core practices of leading sustainable organisations.

Long-term thinking and goals orientated (internal compliance)

Long-term thinking is reflected in the corporate sustainability vision that assumes the aspirations of business continuity and goals over time. The board entrusts this to management, which is tasked with developing the appropriate business strategy to execute aspirations. This positions the strategy along a multi-year trajectory and ensures that policies and system markers (or targets) that measure progress are in place and that they maintain purpose and relevance.

Active and organic risk management (internal compliance)

Active risk management stewards sustainability development in similar ways to the development of the business strategy. The internal directive from senior management establishes the risk appetite with governance acting as supervisor of

Highlights

- stakeholder engagement has been propelled into hyper-drive by the power of social media, societal expectations to share value and the increased regulatory and investor scrutiny across national boundaries
- the culture of ethics and accountability starts and ends at the board level with governance being the conduit for policy and procedure
- visible ethical behaviours that link organisational purpose to action promote trust and engender a strong corporate reputation

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make sustainability fundamental to the business case
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the risk management process. Further, governance has the obligation to keep senior management apprised of efficacy and any potential impact to ensure timely mitigating actions.

However, with the proliferation of non-financial risks, the ground rules are shifting, leading to a volatility that affects the entire ecosystem of risk and the bandwidth of mitigation management. With non-financial risk issues (often resulting from socio-economic pressures) in the mix, tools such as scenario planning and proactive stakeholder engagement add to the understanding and prioritisation of risk and its potential consequences. Thus, risk management, while an internal issue, necessarily takes into account the added dynamics and pressures of the external environment and society.

Resilience to the SEE context (socio-economic)

SEE context is time and event sensitive and generally reflects external socio-economic pressures. Similar to risk management analysis, context is unique to the company's purpose, its stakeholders and its operating footprint. Notably, context includes externalities such as geopolitical events, climate change impact, social disruptions, technology innovation and activities that depend on external supply chains and resources. Resiliency to context is the timely and continuous ability to observe, analyse

and leverage such events to manage the potential consequences/opportunities generated as well as any potentially unforeseen events that may arise.

The concept of context is also pivotal to the understanding of materiality in risk exposure and the development of mitigating actions. Customers, for example, are increasingly aware and vocal about the quality and safety of products and services. As well, global supply chains are under increasing public scrutiny for their use of natural resources and human rights violations (for example, conflict materials). And, climate change should, if not already, assume a major position on the risk radar for its increasing impact on supply chains and the potential of damaged, redundant or stranded assets.

Engaged and inclusive (socio-economic)

Stakeholder engagement relies heavily on a company's social systems for management and execution. Stakeholders are a valuable source of information and insight into corporate performance and expectations. They influence risk and reputation management strategies, shape product/services development and delivery, and, ultimately, can lead to competitive advantage opportunities.

Stakeholder engagement requires resilience and agility in social system competencies to be effective in the operating environment. Engagement today is propelled into hyper-drive by the power of social media, societal expectations to share value and the increased regulatory and investor scrutiny across national boundaries. With the appropriate tools, governance can foster the development of needed internal competencies to manage such demands

and work with a more challenging and inclusive universe of stakeholders and their influence.

Ethical and accountable (socio-economic)

Visible ethical behaviours that link organisational purpose to action promote trust and engender a strong corporate reputation. Accountability assigns these behaviours to management and commits to transparency of actions. Best practice companies manage such behaviours through specific and strong internal ethical codes underpinned by a defined accountability structure, populated by tactical committees and groups and supervised at the very top levels of management. The culture of ethics and accountability starts and ends at the board level with governance being the conduit for policy and procedure.

Taking action

When strategising the future proof, one must realise that evolving the governance framework is a 'marathon, not a sprint' and requires patience and diligence. The following points provide some guidance as to where and how to take step changes in governance to assume its central role in future proofing organisational sustainability.

- Secure the active commitment and direction from the board and senior management to establish clear goals and parameters for sustainability development. Follow this with a relevant company policy.
- Make sustainability fundamental to the business case. Develop efforts that integrate and add value to the business strategy. Ensure that policy implementation is included in

“enhance governance to identify and guide internal competencies development so that sustainability practices at the operating level are productive and relevant”



- committee terms of reference, job description and employee training.
- Establish a material risk assessment protocol that encompasses the SEE context and ranks risk as a collective reflection of this as well as the material company and stakeholder interests. Allocate capital to risk treatment and its management and implement and make visible the risk appetite.
- Establish a stakeholder engagement policy and platform that is resilient, respectful and productive in purpose. Similar to managing accountability, engagement operates under a strong structure of defined responsibilities and reporting. Notably, the most effective engagement programmes are developed to include the SEE context and with the view to achieve the sustainability goals established by the board.

- Enhance governance to identify and guide internal competencies development so that sustainability practices at the operating level are productive and relevant. Clearly articulated goals, lines of responsibility and metrics are essential to this process.
- And lastly, take steps to embed sustainability as the corporate culture through active engagement, training and collaboration. A hierarchy of management accountability measured through science-based targets presents a structured model to embed such a culture. Existing programmes such as safety, energy and supplier management can be modified to this end with lines of reporting under the governance purview. Achievement of targets should be tied to individual/committee performance reviews and compensation.

Overall, it is clear that combining the internal compliance and socio-economic pathways into a formalised framework and system for management provides optimal governance capabilities. In the current climate of sustainability expectations and reporting, the visibility of such a governance structure enhances trust, reputation and, importantly, investor interest.

Dr Glenn Frommer and Theodora Thunder, Principals

The Sustainability Partnership

The Sustainability Partnership advises companies on the end-to-end management of ESG issues and their reporting. Materiality assessments, reporting strategy and fulfilment and the comparative analysis of industry and peer ESG performance are amongst the services provided. For further information contact: Thunder@streeter.com.hk.

Rising expectations

Heightened expectations and liabilities for directors and senior executives working for companies in Hong Kong and Mainland China was the focus of the Institute's latest Company Secretary/Board Secretary Roundtable meeting.

The Institute holds five Company Secretary/Board Secretary Roundtable meetings every year in Hong Kong and cities in Mainland China. These forums are designed to assist Institute members and Affiliated Persons from both the Mainland and Hong Kong to keep up to date with the fast-changing regulatory environment in which they work. The latest Roundtable, held on 18 January in Hong Kong, focused on the theme 'The Board Secretary Practices under the Tightened Regulations on Directors and Senior Management'.

Institute President David Fu FCIS FCS(PE) gave the welcoming address, reiterating the Institute's commitment to the continuous promotion of best corporate governance practices and training of professional company secretaries as both the quantity and quality of listed companies, particularly those from the Mainland, continue to rise. He was followed to the podium by two distinguished speakers who shared their insights and experience with board secretaries representing various Mainland companies listed in China and/or Hong Kong SAR.

The first speaker, Poon Chiuk-kwok FCIS FCS(PE), Executive Director, Vice-President and Company Secretary of Huabao International Holdings Ltd, who is also

a member of the Institute's Professional Development Committee, talked about the latest rules and regulations regarding directors' and senior executives' liabilities, as well as the tougher approach to listed company misfeasance taken by regulators in Hong Kong.

His presentation was followed by that of Zhu Xu, Board Secretary at China Vanke Co Ltd, who shared with the audience her recommendations on how to ensure directors perform their duties to the best of their abilities and in compliance with applicable rules and regulations. She also discussed the benefits and challenges of Vanke's decentralised ownership structure.

Listing regime reform in Hong Kong

In 2015, Hong Kong turned down a proposed bid by e-commerce giant Alibaba to list in Hong Kong with a voting structure for board nominations that would have violated the one-share-one-vote principle. Alibaba eventually opted to list in New York, depriving, Mr Poon pointed out in his Roundtable presentation, Hong Kong investors of an opportunity to buy into the company.

'The dual-class structure, whether it's for better or worse, proposed by Alibaba and increasingly other "new economy" firms has been an ongoing debate. But that has



become a catalyst for review and change, which is now driving a change in Hong Kong's listing regulatory regime,' he said.

After months of debate and an industry-wide consultation, Hong Kong Exchanges and Clearing Ltd (HKEX) and its subsidiary The Stock Exchange of Hong Kong Ltd proposes to add two new chapters to the Main Board Listing Rules to allow the listing of:

- i. biotech issuers that are pre-profit and/or pre-revenue, and
- ii. issuers from emerging and innovative sectors that have weighted voting rights (WVR) structures, subject to additional disclosure and safeguards.

Companies with WVR structures would be required to have a minimum expected market capitalisation of HK\$10 billion and, if below \$40 billion of market capitalisation, would need to meet a higher revenue test of \$1 billion in the full financial year before listing. Pre-revenue companies listing under the



new biotech chapter would be required to have a minimum expected market capitalisation of \$1.5 billion.

Front-loaded regulation in Hong Kong
Another major development discussed by Mr Poon was the adoption of a 'front-loaded' regulatory strategy by the Securities and Futures Commission (SFC). This will, among other things, impose more direct liabilities on directors and senior management, Mr Poon explained.

According to the May 2017 issue of SFC's newsletter *Enforcement Reporter*, the market watchdog said there have been disturbing cases involving corporate fraud, misleading financial statements, serious conflict of interest and failure to disclose inside information. To combat this trend, the SFC has been conducting a large number of investigations into such cases – many of them involving serious allegations and dereliction of duty on the part of directors and senior executives.

The SFC's investigations have highlighted the need to address the following issues:

- outright fraud by powerful directors or senior executives who are usually company controllers
- company controllers putting their own interests before those of the company and its minority shareholders, without understanding that the company is an independent entity with its own interests
- other directors or senior executives deferring to a dominant company controller by relinquishing their responsibilities or accepting compromised roles that prevent them from properly discharging their own duties
- non-executive directors (NEDs) not acting as a check and balance on executive directors and failing to be sceptical and diligent in discharging their duties and to thoroughly question whether proposals are commercially sound and in the interests of all shareholders, and

Highlights

- directors and senior executives face higher liabilities in performing their duties as a consequence of the tougher regulatory environment and the SFC's strengthened oversight of board governance
- it is important to recruit well-qualified, experienced independent directors, especially those recognised as having integrity and credibility
- company/board secretaries need to ensure effective communications with directors, in particular keeping them informed of important and urgent matters they should be aware of

- boards and senior executives not having proper controls that ensure the board is aware of inside information and to disclose it appropriately as soon as reasonably practicable.

Mr Poon warned that the SFC's new approach will strengthen regulatory oversight of board governance, and will inevitably increase the risks faced by directors and senior executives in performing their duties.

The SFC recommends that directors and senior executives not only ensure profits but also care for minorities; and that they should be inquisitive, professional and diligent, and while bearing in mind the basic rules and the key nature of directors and duties.

It further suggests directors act in good faith and in the best interests of the company and its shareholders as a whole; exercise due and reasonable care, skill and diligence; exercise independent judgement; exercise their powers for proper purposes and avoid actual or potential conflicts of interest; and refrain from making undisclosed profits.

For independent non-executive directors, the SFC recommends that they supervise management and protect shareholder interests; express disagreement; and wherever they choose to resign, they should provide substantial reasons.

Citing various regulations under the Securities and Futures Ordinance (SFO), in particular Sections 213, 214, 258, 307N, and 390, Mr Poon said the SFC holds the senior management of a listed company accountable under its regulatory powers.

“

So beware, whenever the SFC's enforcement department approaches you, it means that an investigation file has been opened against your company, directors or senior management. Be co-operative and honesty is the best policy.

”

Poon Chiu-kwok FCIS FCS(PE), Executive Director, Vice-President and Company Secretary, Huabao International Holdings Ltd

'So beware, whenever the SFC's enforcement department approaches you, it means that an investigation file has been opened against your company, directors or senior management. Be co-operative. Honesty is the best policy,' he reminded the Roundtable audience.

He further cited four recent cases as a testimony of the SFC's authority and commitment to bringing fraudsters to justice. In 2015, the SFC won a landmark battle to force the Hong Kong-listed China Metal Recycling Holdings Ltd into provisional liquidation, alleging evidence of accounting fraud.

In 2016, the Market Misconduct Tribunal found that the former Chairman and Chief Executive Officer of Greencool Technology Holdings Ltd, Gu Chujun, and four former senior executives (including its former financial controller) disclosed false or misleading information inducing transactions, and so engaged in market misconduct.

Last year, the SFC successfully disqualified the former chairman and four directors of

Hanergy Thin Film Power Group to act as directors for up to 15 years through a court order under Section 214 of the SFO.

The Hanergy case shed light on the use of shelf companies by Hong Kong small-caps and the conflicts of interest between Hong Kong-listed businesses and the Mainland parent companies that channel financing from the Hong Kong market without proper disclosure.

Similarly, the SFC commenced legal proceedings under Section 214 of the SFO to disqualify 10 former executives and NEDs of Freeman FinTech Corporation Ltd on the grounds that they failed to act in good faith and in the best interests of Freeman in the purchase and sale of a stake in Liu's Holdings Ltd.

Towards the end of his presentation, Mr Poon made mention of the recent guidance issued by the SFC on directors' duties and a circular to financial advisers regarding valuations in corporate transactions, together with a statement on the liability of valuers for disclosure of false or misleading information.



The regulator also noted that front-loaded regulation would be used to tackle problematic Growth Enterprise Market initial public offerings, which many commentaries have acknowledged were becoming dysfunctional and were harming Hong Kong's reputation. Ashley Alder JP, the SFC's CEO, said the SFC was able to tackle the problem by joining the corporate finance and enforcement teams together to coordinate a plan of action.

The pros and cons of having a diversified shareholding

Ms Zhu, Board Secretary for China Vanke, began her presentation with a brief review of the history of Vanke, which commenced in 1984 as a small, diversified business entity. It switched to real estate development in 1993 and focused on real estate as its core during 2001–2012. In 2012, the conglomerate bought a 74% stake in the Hong Kong-listed Winsor Properties, now renamed as Vanke Property (Overseas), and since then has positioned itself as an integrated developer and community builder with a

diversified real estate portfolio in China, Hong Kong and abroad.

'Vanke has long had a decentralised ownership structure. Real estate development is a capital-intensive business activity. With a well-diversified shareholding structure, and without a single dominant shareholder, it takes effort and time to get the consensus of the majority of shareholders on major decisions, such as financing, connected transactions and class voting,' she said.

The board makes decisions on a broad range of important issues, such as profit-sharing schemes, project shareholding, financing and conversion of B-shares to H-shares. In 2001, Vanke introduced independent directorships and, since 2002, its board has reshuffled every three years. In each term, the number of internal directors cannot exceed one-third of the board. The number of independent directors should consist of more than one-third of the board. At least one independent director should be an accounting professional, Ms Zhu said.

How to get the best out of your directors

Ms Zhu cited four ways to ensure directors perform their duties to their best abilities and in compliance with applicable rules and regulations.

'As a start, it is important for us to identify and recruit well-qualified, experienced independent directors, especially those recognised as having integrity and credibility. Over the years we have had a number of prominent independent directors on our board, such as Charles Li, Chief Executive, HKEX; Zhang Liping, Senior Managing Director and Chairman, Greater China, Blackstone; and The Honourable Paul Chan Mo-po GBM GBS MH JP FCIS FCS, HKSAR Financial Secretary.'

Equally important is a structured training programme for all incoming and existing independent directors, right from induction to internal training, site visits and external training. She added that email alerts regarding such issues as trading windows and policy changes, classified by importance and urgency, would be sent to all directors.

“with a well-diversified shareholding structure... it takes effort and time to get the consensus of the majority of shareholders on major decisions, such as financing, connected transactions and class voting”

Zhu Xu, Board Secretary, China Vanke Co Ltd



'On very special occasions that demand their immediate attention, such as announcing trading suspension the very next morning, email alerts are marked as being of the utmost urgency. Not only that, as the board secretary, I also have to make sure they read the notice, by text or call or whatever, beforehand, no matter when or where they are, as all board directors have to sign in the name of the company in a collective manner,' she noted.

Ms Zhu also said sufficient communications with directors and distributing detailed documents to them all prior to meetings is also effective in enabling them to make informed decisions regarding the matters to be discussed in the meetings.

Two examples she cited included the internal review of the company's 2016 financial report by the audit committee prior to disclosure, and the discussion of the introduction of a performance benchmarking system based on

the economic value added system recommended for state-owned enterprises by the State-owned Assets Supervision and Administration Commission in 2010.

An additional measure Vanke implements to ensure the effectiveness of the independent directors' governance role is purchasing an independent directors' liability insurance policy for each of them as a liability safety net.

'We feel proud to say that neither the company's directors nor senior executives have been accused of major violation of laws, administrative regulations and compliance rules, in both the Mainland and Hong Kong, over the years, thanks to an effective exercise of corporate governance. Independent directors have also spoken out for minority shareholders as many as seven times.'

The Q&A discussion

During the open discussion session after the presentations,

Dr Gao Wei FCIS FCS(PE), Institute Vice-President, applauded Vanke's use of a notification system, classified by importance and urgency, that allows the board secretary to send out text, email or phone alerts to directors, suggesting that this could also be considered by other companies.

Audience members also exchanged their views on the recruitment and selection of qualified and truly independent directors through the nominating committee, as well as practical ways to avoid perceived or potential conflicts of interest, especially if a candidate is a good friend of the company's chairman.

Jimmy Chow
Journalist

The Institute's Company Secretary/Board Secretary Roundtable meeting was held at the Admiralty Conference Centre, Hong Kong, on 18 January 2018.

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任更重道更远

最近一次的公会董事会秘书圆桌会议，刚于今年一月在港顺利召开，演讲嘉宾和与会者集中讨论了香港和内地上市企业董事和高级管理人员，该如何应对更严格的法规和责任要求。



每年，香港特许秘书公会均会在香港及内地城市举办五次公司秘书／董事会秘书圆桌会议，旨在跟来自内地和香港的公会会员与联席成员，更新最新的法规和政策信息。最近一次的圆桌会议，以“强化董事与高管责任及其监管下的董秘实务”为主题，刚于今年一月十八日在港召开。

会会长傅溢鸿FCIS FCS(PE)在致欢迎辞时表示，随着香港上市公司数目继续增长，特别是有更多内地企业来港上市，公会将继续致力于在内地和香港推动最佳企业管治实务，继续为董秘提供专业培训。随后，两位演讲嘉宾先后分享了最新的法规和监管发展情况，以及他们出任董秘的实务经验。

第一位演讲嘉宾是华宝国际控股有限公司执行董事、副总裁兼公司秘书潘昭国FCIS FCS(PE)，他也是公会专业发展委员会成员之一。他讲解了针对董事和高级管理人员责任的最新法规，特别是香港监管机构对上市公司的违规行为所采取的强硬态度。

万科企业股份有限公司董事会秘书朱旭的演讲则从董秘的角色切入，跟与会者分享了如何确保董事尽司其职和守法守规的可行方法，她还讨论了万科分散股权结构的好处与挑战。

香港上市制度改革

二零一五年，香港拒绝了电子商务巨头阿里巴巴，以双重股权结构形式在港上市的申请。证监会认为，建议违反了“一股一票”的原则。阿里巴巴最终选择于纽约上市，而香港投资者也失去了投资该公司的机会。

“阿里巴巴和其他新经济企业再三提出以同股不同权的形式在港上市，孰好孰坏，一直以来争论不断。不过，阿里巴巴当年选择到美国上市的决定，肯定是一个重要契机，令上市和

监管机构重新检视现行上市架构和规则，以容纳同股不同权。”

香港交易及结算所有限公司（香港交易所）及其附属公司香港联合交易所有限公司经过数月的辩论和行业咨询后，就拓宽香港上市制度拟定发展方向之咨询总结，当中包括容许不同投票权架构（同股不同权）的新兴及创新产业发行人，在作出额外披露及制定保障措施后在主板上市。

它们建议在主板上市规则中增加两个新的章节，以允许上市的：(i) 预先盈利和／或预收益的生物技术发行人，以及(ii) 来自具有同股不同权架构的新兴和创新产业的发行人，但须另加披露和保障。

同股不同权公司的预期最低市值须达100亿港元，若市值低于400亿港元，须通过于上市前的完整财政年度录得10亿港元收入的较高收入测试。未有收入公司若根据《主板规则》新增的生物科技公司适用章节申请上市，预期最低市值须达15亿港元。

前置式监管

证监会明言，今后将采用“前置式”的监管策略，也就是如潘先生所言，尽量把违规行为“消灭于萌芽之中”。他坦言，更积极进取的监管手段，将肯定对董事及高理人员施加更直接的责任。

摘要

- 有见监管环境更为严峻，证监会加强了对董事会治理的监督，董事和高级管理人员在履行职责时，须承担更高的责任风险
- 招聘合资格、富经验的独董，尤其具诚信和公信力的独董，十分重要
- 公司／董事会秘书须与董事保持有效沟通，适时向通报他们该知道、重要和紧急的事项

证监会在《执法通讯》2017年5月号指出，近来多了涉及公司诈骗、误导财务报表、严重利益冲突、以及未披露内幕消息的个案。为了应对这些敝病，证监会一直就这些个案进行大量调查，其中不少涉及董事及高级行政人员的严重指控及失职行为。如指控属实，将可能对投资者造成庞大损失。

据证监会透露，这些案件中的主要问题包括：

- 势力强大的董事或高层人员（通常是公司的控制人）公然欺诈；
- 公司控制人以他们个人而非公司及其少数股东的利益为先，不明白公司是一个有其本身利益的独立实体；
- 其他董事或高层人员为了顺从具主导地位的公司控制人的意愿，放弃履行本身的职务，或接受妥协，扮演有碍他们恰当地履行责任的角色；
- 非执行董事未有发挥对执行董事的制衡作用，在履行职责时警觉性及勤勉不足，以及没有彻底查问各项建议在商业上，是否稳健和是否符合所有股东的利益；以及
- 董事局及高层人员没有制订适当的监控措施，以确保董事局知悉

“
当证监会的执法部门接洽你的时候，就代表已对你的公司、董事或高级管理人员立案调查了。务请大家合作，如实交待。
”

华宝国际控股有限公司执行董事、
副总裁兼公司秘书潘昭国FCIS FCS(PE)

内幕消息及在合理地切实可行的
范围内尽快而适当地作出披露。

潘先生警告，证监会的新做法将加强对董事会治理的监管，将无可避免地增加董事和高级管理人员履职的风险。证监会建议，董事及高级行政人员不但要确保利润，还要照顾少数股东利益。他们应当主动求知、专业、勤勉、牢记董事和职责的基本规则和关键性质。

总括来说，董事及高级行政人员应当：

- 真诚地以公司及其股东的整体最佳利益而行事
- 以适当及合理水平的谨慎、技能及勤勉行事
- 作出独立的判断
- 为恰当目的而行使权力
- 避免实际或潜在利益冲突
- 严禁赚取未经披露的利润

就独立非执行董事的责任，虽然他们不会参与公司的日常管理，但证监会建议他们发挥监督管理作用，维护股东利益，敢于表达不同意见。无论他们选择辞职，都应该提供充分的理由。

潘先生引述《证券及期货条例》（特别是第213、214、258、307N及390条）的各项规定，重申证监会拥有监管上市公司高级管理人员的法定权力。

“所以说，当证监会的执法部门接洽你的时候，就代表已对你的公司、董事或高级管理人员立案调查了。务请大家合作，如实交待。”他说。

他回顾了近年四宗大案，说明证监会有能力付诸行动，将违法人士绳之以法。二零一五年，证监会赢了一场甚具意义的官司，将在港上市的中国金属再生资源（控股）有限公司清盘，指控为欺诈性交易和会计违规行为。

二零一六年，市场失当行为审裁处指出，格林柯尔科技控股有限公司前主席兼首席执行官顾雏军及其他四名公司前行政人员（包括前财务总监），曾披露虚假或误导性信息引致交易，裁定这是市场失当行为。

去年，证监会引用《证券及期货条例》第214条，成功取消汉能薄膜电力集团前董事长及四名董事出任董事的资格，限期长达15年。汉能案揭露香港小型股公司，利用空壳公司来掩饰香港上市公司和内地母公司之间的利益冲突违法行为。它们在没有适当披露的情况下，将资金转移到内地母公司。

同样，证监会引用《证券及期货条例》第214条展开法律程序，取消了民众金融科技有限公司（民众）前任高管和非执行董事的资格，理由是他们没有真诚地为民众的最大利益而购买和出售刘氏集团股份有限公司。

在演讲结束前，潘先生还提及到证监会最近就董事责任发出指引，以及另一份致财务顾问的通函，连同一份有关估值师须就披露虚假或具误导性的资料承担法律责任的声明。

证监会指出，部分上市公司以不合理的高价收购资产或以被大幅低估的价值出售资产的情况。股东权益因此类可能受到劣质建议的交易而被损害。该指引提醒董事身为上市公司资产的监护人，应确保妥善考虑及查证收购目标的状况。

证监也提到，将特别利用前置监管以更有效纠正创业板IPO的一些乱象，免得损害香港声誉。证监会行政总裁欧达礼(Ashley Alder JP)补充说，前置式监管的意义在于有问题就前期处理，并会协调企业财务和执法团队共同行动。

公司股权结构分散的利弊

万科董秘朱女士简要回顾了万科的历史。在1984年刚成立时，万科为一家业务多元化的小民企。1993年，公司开始涉足房地产开发，并于2001-2012年期间全面转营以房地产为核心业务。

2012年，该集团收购了香港上市的Winsor Properties Holdings Ltd(现更名为万科置业(海外)有限公司)74%的股份。自此之后，万科晋身成为一家拥有多元化房地产业务的综合型发展商，除中国内地外，在香港及海外建造和经营不同的房地产项目。

“多年来，万科一直都是股权高度分散的混合所有制公司。房地产开发是典型资本密集型的行业，在股权相对分散、没有大股东的情况下，唯有获得各类股东和董事会的支持，才能实现业务的快速发展。协调需要努力和耐心。”她说。

万科董事会会就各项重要事务进行决策，例如：经济利润奖金、持投制度、

“

在股权相对分散、没有绝大股东的情况下，唯有获得各类股东和董事会的支持...才能就各项重要事项进行讨论和决策，如融资、关联交易、分类投票等。协调需要努力和耐心

”

万科企业股份有限公司董事会秘书朱旭



融资、B转H股等事宜。2001年，万科引入独董制度。自2002年，董事会每三年换届一次。每届董事由内部管理人员担任董事的数量不超过董事总数的三分之一。独董人数占比超过董事总数的三分之一。至少有一位董事是会计专业人士。

如何确保董事各司其职

朱女士提出了四种具体方式，确保董事能够尽其所能履行责任，同时遵循规章制度和适用法律。

“我们先要确保有一套严谨的董事遴选和招聘制度。独董最好由有经验、有信誉的专业人士出任，尤其是那些被行业认为具高度诚信的人士。多年来，董事会曾邀得多位杰出独董出任，包括现任香港交易所行政总裁李小加、黑石集团现任高级董事总经理兼大中华区董事长张立平、现任香港特区财政司司长陈茂波GBM GBS MH JP FCIS FCS。”

同样重要的是，万科还会为新入职和现职独董提供系统化的培训，更新他们的法规法律和风险知识。措施包括外部培训、内部培训、实地考察等。此外，董秘会定期电邮提醒，如董事进行证券交

易的交易窗口、重要变更等等，邮件会以事情的轻重缓急分成各个等级，提醒独董准时回覆。

“在某些特殊情况，例如第二天早上公司须宣布停牌，给董事的通知会以最高级别发送。不仅如此，无论何时、无论董事身处何地，董秘都有责任以手机讯息、亲自致电通知董事，使其知悉。”她说。

当然，董秘日常职务须与董事进行充分的沟通，特别是在议案前作充分沟通，向他们分发详细的文件，让他们能就议案作全面分析和客观决定。她列举了两个例子，说明议案前沟通的重要性，包括于2016年，公司先将财务报告提交予审计委员会审阅后，才正式发布；以及于2010年，万科参照了国资委倡导的基于经济增加值的考核体系，引进了优化的表现基准评核系统。

为确保独董能发挥独立监察功能，万科会也采取各项保障措施，包括为董事购买责任保险，让董事在履行责任时，能为因其职责或决定所引致的诉讼或损失，提供保障和赔偿，有助于他们更安心履行职责。

“我们最感到自豪的是，这些年来公司的董事和高级管理人员都没有重大的违规事件，证明了公司董事会治理获得广泛认可。而独董也曾发声多达次，维护中小股东的利益。”

讨论环节

在演讲结束后的讨论环节，公会副会长兼圆桌会议主席高伟博士FCIS FCS(PE)，高度赞扬万科按照议案重要性和紧迫性的通报系统，在紧急情况下，以手机信息、致电等各种形式让各董事知悉事件，建议其他公司董秘参考这个做法。

其后，与会者还就提名委员会就独董招聘、选拔、资历，专业资格等、以及如何确保独董的独立性交换了意见；并讨论该如何在聘用独董时，避免潜在利益冲突，如候选人是董事长的好朋友。

**Jimmy Chow
记者**

二零一八年一月十八日，公会公司秘书 / 董事会秘书圆桌会议，假座香港金钟会议中心顺利举行。

AML/CFT compliance update

Company secretaries and governance professionals play an important role in maintaining best practice in anti-money laundering and counter-terrorist financing (AML/CFT) compliance. Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research of the Institute, reviews the Institute's initiatives to promote this aspect of its members' work.

Two major pieces of legislation came into force on 1 March 2018 to enhance Hong Kong's international reputation in this year's Financial Action Task Force (FATF) mutual evaluation by other FATF member countries as to Hong Kong's anti-money laundering and counter-terrorist financing (AML/CFT) efforts.

The Companies (Amendment) Ordinance (CO Amendment) introduces a new regime relating to disclosure of ultimate beneficial ownership (UBO) over Hong Kong private companies. This is through requiring all Hong Kong private companies to create and retain a verified significant controllers register (SCR). A significant controller is in

general the person and/or member of the Hong Kong private company who holds over 25% interest or otherwise exercises significant control (significant controller) over the company. During the legislative process, the Institute's call for the SCR to be only open for competent authority searches, instead of being publicly available, was heard and enacted.

The Anti-Money Laundering (Financial Institutions) (Amendment) Ordinance (AMLO Amendment) extends the due diligence and record-keeping requirements of financial institutions to designated non-financial businesses and professions (DNFBPs). It also creates a licensing regime

over trust and company service providers (TCSPs) within the DNFBP sector. The Institute's long-standing calls for the Companies Registry to be the regulator over the TCSP sector was adopted. Also, the Institute's call for certain additional timing for verification to onboard clients under the Companies Registry's AML/CFT Guidelines to facilitate TCSP business was adopted under the guidelines.

The Institute's AML/CFT Charter

The CO and AMLO Amendments are intended to comply with Hong Kong's international obligations as to UBO and DNFBP regulation, including over the TCSP sector, required under FATF Recommendations 22 and 24 to enhance Hong Kong's mutual evaluation results. These topics became international focuses following the Panama Papers in 2014 where a number of prominent politicians and businesspeople found using offshore companies were alleged to have hidden ill-gotten gains. The Institute became a pioneer in Hong Kong on TCSP regulation with the launch of its AML/CFT Charter initiative in 2016. With the Companies Registry issuing its own

Highlights

- the Institute became a pioneer on TCSP regulation with the launch of its AML/CFT Charter initiative in 2016
- the Institute believes that professional qualifications and/or experience with a TCSP firm should be required under the fit and proper test for TCSPs
- the Institute will continue to provide training to support its members and to work with the Companies Registry and the government on AML/CFT issues



**“
the Institute will continue
to work with the Companies
Registry and the government
to promote the role of
its members in ensuring
compliance with the new AML/
CFT regime in Hong Kong
”**

AML/CFT Guidelines, the Institute will adopt these guidelines. An organisation subscribing to the Institute's AML/CFT Charter can assert that it is accredited by the Institute as complying with official AML/CFT standards following an independent audit for brand differentiation.

The meaning of 'fit and proper'

This ties in to the issue that under the current AMLO Amendments anyone over 18, subject to a certain minimal 'fit and proper' test, can seek a licence and become personally, as a partner or director, involved in the running of a TCSP business. The Institute submitted to the Legislative Council (LegCo) Bills Committee studying the draft legislation that professionalism and/or experience with a TCSP firm should be required under the fit and proper test in line with requirements of our major competitors. In a LegCo report relating to the passage of the legislation, the government made it clear that at this stage it will not be considering professional requirements. However, this is not a closed topic. As such, the Institute will continue to raise the issue at an opportune time after Hong Kong's mutual evaluation, which is

the priority for now. In the interim, Institute members can consider using subscription to the Institute's AML/CFT Charter to demonstrate requisite professionalism and experience in TCSP business.

Promoting knowledge and recognition
The Institute will continue to lobby for better recognition of the Institute's members, in particular to allow company secretaries to become to be specifically named a designated representatives to provide regulatory support as to SCR compliance, especially in group situations, as well as to be listed as a specified intermediary under Schedule 2 of the AMLO, which already extends to licensed TCSPs. This is intended as further recognition of the Institute's members.

As both sets of legislation impact our profession, the Institute has conducted three seminars on the new AML/CFT landscape and will be making a course available online soon. The Institute will continue to provide further training to support its members. The Institute is also collating questions raised by members and will be providing these to the Companies Registry for its consideration, to

the extent that these raise general issues relating to the legislation.

The Institute will continue to work with the Companies Registry and the government to promote the role of its members in ensuring compliance with the new AML/CFT regime in Hong Kong. A technical issue that the Institute is currently working on is the need for clarification on whether a sister company carrying out TCSP activities for other members within a group and/or affiliates is doing this 'by way of business'. In this regard, some indication as to what amounts to being 'by way of business' will be useful in the context of the issue. The Institute believes that the legislative intent behind TCSP licensing may be relevant to the issue and awaits the Companies Registry's clarification.

The Institute has also submitted to the government the need for future legislative amendments to allow due diligence to stop where listed companies are involved. The current narrow exemption relates to Hong Kong-listed entities as a direct member of a Hong Kong private company.

Mohan Datwani FCIS FCS(PE)

*Senior Director and Head of
Technical & Research of the
Institute*

*For details of the Institute's AML/
CFT Charter please visit the
Institute's website: www.hkics.org.hk, or contact the author. The
Institute would like to acknowledge
the efforts of Natalia Seng FCIS
FCS(PE); Samantha Suen FCIS FCS
(PE); Paul Moyes FCSI FCS (PE);
Edith Shih FCIS FCS(PE); Anthony
Rogers GBS QC JP FCIS FCS; and Dr
PM Kam FCIS FCS, on its AML/CFT
Charter initiative.*

Professional Development

Seminars: January and February 2018

9 January

Company secretarial practical training series: due diligence in an IPO from senior management perspective



*Chair: Dr Davy Lee FCIS FCS(PE), Institute Past President, and Group Company Corporate Secretary, Lippo Group
Speaker: CK Poon FCIS FCS(PE), Institute Professional Development Committee member, and Executive Director, Vice-President and Company Secretary, Huabao International Holdings Ltd*

11 January

The development of AEOI and CRS in Hong Kong



*Chair: Jerry Tong FCIS FCS, Institute Education Committee member, and Financial Controller and Company Secretary, Sing Lee Software (Group) Ltd
Speaker: Chan Ka Ho, Director, Tax Services, RSM Tax Advisory (Hong Kong) Ltd*

19 January

Governance for innovation; innovation in governance

Chair: Edith Shih FCIS FCS(PE), Institute Past President; Senior Vice-President & Executive Committee member, ICSA; and Executive Director & Company Secretary, CK Hutchison Holdings Ltd

Speakers: The Honourable Fanny Law Fan Chiu-fun GBM GBS JP, member of the HKSAR Executive Council, and Chairperson of Hong Kong Science and Technology Parks Corporation; James Fok, Head of Group Strategy and Project Management, Hong Kong Exchanges and Clearing Ltd; Jamie Allen, Founding Secretary General, Asian Corporate Governance Association; Hubert Yang, Managing Director and Senior Counsel, Legal Department, Goldman Sachs (Asia) LLC; and Maggie Lee, Partner, KPMG China

23 January

Legality and regulation of cryptocurrencies and other digital tokens



Chair: Philip Miller FCIS, Institute Technical Consultation Panel member, and Senior Assistant Company Secretary, The Hongkong and Shanghai Banking Corporation Ltd

Speakers: Ben Yates, Senior Associate; and Jessica Wong, Associate; Reynolds Porter Chamberlain LLP

25 January

Directors and senior executives liabilities – SFC's new regulatory approach



Chair: Professor CK Low FCIS FCS, Institute Technical Consultation Panel member, and Associate Professor in Corporate Law, CUHK Business School

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



29 January
How to resolve shareholder disputes in the case of deceased shareholders



*Chair: Dr Eva Chan FCIS FCS(PE), Institute Treasurer and Education Committee Chairman, and Head of Investor Relations, CC Land Holdings Ltd
Speaker: Alfred Ip, Partner, Oldham, Li & Nie Lawyers*

31 January
New connected transactions rules



*Chair: Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd
Speaker: Daniel Wan, Partner, Addleshaw Goddard (Hong Kong) LLP*

1 February
Development of data privacy law in the PRC



*Chair: Nancy Tau FCIS FCS, Deputy Company Secretary, Yuexiu Enterprises (Holdings) Ltd and Yuexiu REIT Asset Management Ltd; and Manager, Yuexiu Real Estate Investment Trust
Speaker: Machiuanna Chu, Partner, Deacons*

Online CPD (e-CPD) seminars and CPD requirements

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

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
20 March 2018	6.45pm – 8.15pm	Understanding equity-based incentive plans and related Hong Kong salaries tax implications	1.5
11 April 2018	6.45pm – 8.15pm	How to implement effective governance for charitable trusts in Hong Kong	1.5
12 April 2018	6.45pm – 8.15pm	Essential corporate insolvency law and practice for business managers	1.5
16 April 2018	6.45pm – 8.15pm	Hong Kong-listed, offshore-incorporated: shareholders at war	1.5
25 April 2018	4.00pm – 5.30pm	Structuring a private investment fund and the latest development	1.5

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

Membership

New graduates

Congratulations to our new graduates listed below.

Chan Chun Hei	Chin Hei Yin	Li Man	Shiu Chi Tak, Titus
Chan Hiu Yi	Chiu Sze Wan	Li Man Wah	Sit Po Ling
Chan Man Hei	Hu Yi	Li Yee Ching	So Chi Ho
Chang Wai Yee, Rowena	Kong Wai Hang	Ng Ho	Wong Kei Lai, Gary
Chen Ka Ying	Kwok Siu Ying, Sarah	Ng Ka Ki	Wong Wai Ching
Cheng Ka Kit	Lee Wing Yan	Ng Yee Ling	Wu Mei Kei
Chiang Yuen Ying	Lee Yin Yee	Pak Ka Yee	Yan Lok Hang, Walras

New fellows

The Institute would like to congratulate the following fellows elected in January 2018.

Ma Jinru FCIS FCS

Ms Ma has been the Vice-President, Board Secretary and Company Secretary of Xinjiang Goldwind Science and Technology Company Ltd (Stock code: 2208) since 2010. She leads the corporate counsel and internal auditor team of the company and has over 10 years' experience in handling complex company secretarial, corporate governance, compliance matters, investor relations and media affairs for the listed companies. Ms Ma is a qualified senior economist and holds an executive master's degree in business administration from China Europe International Business School and master's degrees in engineering from Jilin University and in law from Dalian Maritime University.

Wu Enlai FCIS FCS

Mr Wu is currently the Secretary to the Board of Directors of PetroChina Company Ltd (Stock code: 857). He is a professoriate senior engineer and has been working in the China oil industry for over 35 years. He has extensive experience in oil refining and the petrochemical industry, overseas project operation, M&A transactions and listed company management. Mr Wu obtained

a master's degree in business administration from University of Calgary, Canada, and a master's degree in management science and a bachelor's degree in oil refining and petrochemical engineering from China University of Petroleum. He also acts as Vice-Chairman of China Association for Public Companies, and was awarded the 'Best Board Secretary of Listed Company' at the China Securities' 7th Golden Bauhinia Hong Kong Summit and Awards Presentation Ceremony 2017.

Zhang Jingyan FCIS FCS

Ms Zhang is currently the Board Secretary and Company Secretary of Tong Ren Tang Technologies Co Ltd (Stock code: 1666). She is responsible for information disclosure, investor relations, capital market financing, corporate governance and compliance matters for the listed group. She has over 20 years' experience in compliance matters of H-share listed companies and A-share listed companies. Ms Zhang holds a master's degree in economics from Peking University and an executive master's degree in business administration from Tsinghua University. She also holds a bachelor's degree in traditional Chinese medicine from Beijing University of Chinese Medicine and is a member of the Beijing Association of Licensed Pharmacists.

Members' activities highlights: February 2018

3 February

Fun & Interest Group – indoor war game



10 February

Fellows Only – guided tour at Hong Kong Observatory



Forthcoming membership activities

Date	Time	Event
3, 10, 17 and 24 March 2018	3.30pm – 5.30pm	HKICS dragon boat team training sessions
24 March 2018	2.15pm – 5.00pm	Fun & Interest Group – latte art workshop
18 April 2018	6.45pm – 8.30pm	Members' Networking – grooming for professionals

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

Member and graduate discipline

The Institute requires its members and graduates to comply with the highest standards of professional conduct and the Institute's regulations. From year 2017/2018 and as of 1 March 2018, the penalty of removal from membership/graduateship was imposed by the Disciplinary Tribunal on the following members/graduates:

1. Professional misconduct

Date of removal	Name
9 February 2018	Ip Wing Lun
9 February 2018	Chan Ka Yan

2. Continuing Professional Development (CPD) non-compliance

Date of removal	Name
28 February 2018	Law Chui Yuk
28 February 2018	Chu Siu Pui

For details of member and graduate discipline, please visit 'Discipline' in the Membership section of the Institute's website: www.hkics.org.hk.

Advocacy

ICSA International President's visits to Hong Kong, Taipei and Beijing

From 31 January to 2 February 2018, the International President of The Institute of Chartered Secretaries and Administrators (ICSA) David Venus FCIS visited Hong Kong, Taipei and Beijing. The main purposes of Mr Venus' visit were to provide an update on the latest developments of ICSA's new initiatives and its future plans to regulators, as well as members, graduates and students of the Institute; and to support the Institute in its work and development in this part of the world.

On 31 January 2018, Mr Venus attended a networking luncheon hosted by the Institute with representatives of the Government of the Hong Kong SAR and major regulators in Hong Kong (see below). Institute President David Fu FCIS FCS(PE); Institute Past President and Senior Vice-President of ICSA Edith Shih FCIS FCS(PE); Immediate Past President Ivan Tam FCIS FCS; Vice-President Paul Stafford FCIS FCS(PE); senior member Peter Greenwood FCIS FCS and Institute Chief Executive Samantha Suen FCIS FCS(PE) participated. They discussed and shared information on the latest developments relating to the Chartered Secretarial profession, as well as the role of company secretaries locally and internationally, and the launch of the new Chartered Governance Professional designation.

Officials of the Government of the Hong Kong SAR and major regulators who attended the luncheon (listed in surname alphabetical order) were:

- The Honourable Chow Chung-kong GBS JP, Chairman, Hong Kong Exchanges and Clearing Ltd
- Ada Chung JP, Registrar of Companies, Companies Registry
- Brian Ho, Executive Director, Corporate Finance, the Securities and Futures Commission
- Phyllis McKenna, Official Receiver, Official Receiver's Office
- Chris Sun JP, Deputy Secretary (Financial Services)1, Financial Services and the Treasury Bureau, the Government of the Hong Kong SAR

That evening, the Institute held a cocktail reception to welcome Mr Venus. Institute Council members, past presidents and over 120 members, graduates and students participated. Institute President David Fu welcomed Mr Venus to Hong Kong and indicated that with the dedication of the Institute's Council, committees and all members, as well as those of ICSA, the Institute would build on its success in the past decades and continue to grow its membership, influence and professional status and recognition in Hong Kong, Mainland China, the region and beyond. Since the Institute will be celebrating the 25th anniversary of its establishment and the 70th anniversary of ICSA's presence in Hong Kong in 2019, a special ceremony to unveil the 'Towards 25th & 70th Anniversary Celebration' was officiated by Mr Venus and Ms Shih as representatives of ICSA, and Mr Fu and Mr Stafford as representatives of the Institute.

A series of activities will be held by the Institute in the year ahead in the lead-up to the celebration of this double anniversary next year. Please stay tuned.

During the visit to Taipei on 1 February 2018, the Institute's delegation, comprising Mr Venus, Ms Shih, Mr Tam, Mr Greenwood and Ms Suen, visited National Chengchi University (NCCU), Taiwan Stock Exchange (TWSE) and Governance Professionals Institute of Taiwan (GPIT).

At NCCU, the delegates met with NCCU's Vice-President Dr Chen Shu-heng; Dean of the College of Law Professor Wang Wen-chieh; Professor of the Department of Accounting and the College of Commerce Dr Sheree Shiau-ru Ma; and Associate Professor of the College of Law Claire Chu Te-fang. They discussed the possibility of NCCU offering a master's degree programme in Corporate Governance in Taiwan.

At TWSE, the delegates met with representatives of the Corporate Governance Department (CG Department) of TWSE, namely Senior Vice-President Joe Cheng Tsun; Vice-President Yuan Cheng-hua and Associate Tracy Y Chen. During the meeting, the Chartered Secretarial profession, the role of the corporate secretary in board functions and how they can enhance the corporate governance standards in a corporation, as well as the latest developments of ICSA and the Chartered Secretary and Chartered Governance Professional qualifications were shared with the TWSE's representatives. The delegates also learned about the

latest developments and the work of the CG Department of TWSE. Both parties will continue the dialogue and explore collaboration opportunities.

Institute delegates then attended a meeting of the Council members of GPIT and participated in a networking luncheon with them. Both parties discussed the Chartered Secretary and Chartered Governance Professional qualifications of ICSA and the Institute, as well as the development of the profession and good corporate governance practices in both Hong Kong and Taiwan.

When in Beijing on 2 February 2018, Institute delegation was joined by the Chief Representative of the Institute's Beijing Representative Office Kenneth Jiang FCIS FCS(PE) and Senior Manager Carrie Wang. They visited State-owned Assets Supervision and Administration Commission (SASAC) and Zhongguancun Science Park Administrative Committee (ZSPAC).

At SASAC, Institute delegates met with SASAC's Deputy Inspector of Enterprise Reform Bureau Tang Zujun and other representatives. Mr Venus shared with the SASAC representatives the wider recognition of the Chartered Secretarial profession in Hong Kong and the Mainland, as well as internationally, and the latest developments of the new initiatives of ICSA. In regard to the previous meeting with SASAC's representatives in November 2017, a detailed co-operation plan between both parties was discussed.

At the inaugural meeting with ZSPAC, Institute delegates met with ZSPAC's Deputy Director Wang Rufang and other representatives of its International Affairs Department, as well as Zhongguancun Listed Companies Association. Both parties shared their own background and missions. They also discussed the opportunities for co-operation in the future, including the launch of a joint pre-IPO training to member companies of ZSPAC who are planning to list overseas.

The delegation also visited the Institute's Beijing Representative Office and had a chat with the secretariat team working there.

On the same evening, Institute delegates hosted a dinner for Institute members, students and Affiliated Persons in Beijing. Mr Venus and Ms Shih shared the latest developments of ICSA and the Institute, in particular the roll-out of the Chartered Secretary and Chartered Governance Professional qualifications worldwide. The participants also shared their views about the potential developments of both qualifications in the Mainland.

The Institute would like to express its appreciation to all the officials, parties, Institute members, graduates, students and Affiliated Persons with whom Mr Venus and Institute delegates have met during the visits in Hong Kong, Taipei and Beijing for their time, support and valuable views.



David Venus at the Hong Kong cocktail reception



Institute delegates and Beijing members, students and Affiliated Persons

Advocacy (continued)



At Hong Kong's networking luncheon



At Hong Kong's cocktail reception



At NCCU



At TWSE



At GPIT



At SASAC



At ZSPAC



At the Institute's Beijing Representative Office

Lunch with the Chief Executive of HKSAR

On 9 February 2018, a luncheon with the Honourable Carrie Lam Cheng Yuet-ngo GBS JP, the Chief Executive of the Government of the Hong Kong SAR, was jointly organised by Hong Kong Professionals and Senior Executives Association and The Association of Hong Kong Professionals; with the Institute as a supporting organisation. Institute President David Fu FCIS FCS(PE) and Immediate Past President Ivan Tam FCIS FCS attended the luncheon at which the latest developments and possible collaborations in the Hong Kong professional sectors were discussed.



At the luncheon

Earth Hour 2018



The WWF Earth Hour 2018 will take place at 8.30pm on Saturday 24 March 2018. The Institute will continue to support this initiative in environmental protection and caring for our planet. As pledged, the Institute Secretariat offices in Hong Kong and Beijing will switch off all lights in the offices for the designated hour. Members, graduates and students are also invited to support the event and switch lights off for the designated hour.

For details, please visit: www.earthhour.org.

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

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

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

To advertise your vacancy in the Careers section, please contact us at: enquiries@ninehillsmedia.com

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International Qualifying Scheme (IQS) examinations

June 2018 diet examination enrolment

The enrolment period for the June 2018 examinations is from 1 to 29 March 2018. All entries must be received by the secretariat by 6.00pm on Thursday 29 March 2018, and, if by post, with a post-mark on that date. No late applications will be accepted under any circumstances. To avoid postal errors or delays, students are recommended to submit their applications in person or by registered mail. No change can be made to the subject(s) and examination centre selected after the examination application has been submitted.

For details of IQS study packs, recommended reading list and other news related to the June 2018 examinations, please visit the Studentship section of the Institute's website: www.hkics.org.hk. For enquiries, please contact Ally Cheung at: 2830 6031, or Ruby Ng at: 2830 6006, or email: student@hkics.org.hk.

IQS examination pass rates (December 2017)

Subject	Pass rate
Part I	
Strategic and Operations Management	28%
Hong Kong Corporate Law	30%
Hong Kong Taxation	34%
Hong Kong Financial Accounting	59%

Subject	Pass rate
Part II	
Corporate Governance	31%
Corporate Administration	31%
Corporate Secretaryship	24%
Corporate Financial Management	28%

Subject prize and merit certificate awardees

The Institute is pleased to announce the following awardees of subject prizes and merit certificates from the December 2017 examination. The subject prizes were awarded by The Hong Kong Institute of Chartered Secretaries Foundation Ltd. Congratulations to all awardees!

Subject	Subject prize awardees
Corporate Governance	Ku Ka Wai
Hong Kong Corporate Law	Chow Fuk Wai Li Ka Hung Yang Tsz Sheung

Subject	Merit certificate awardees
Hong Kong Financial Accounting	Cheng Hor Sze Cheung Long Ching, Terry Lam Man Hei Law Wai Yan, Grace Law Wing Ka Li Suet Ying Lo Sin Ying, Joyce
Strategic and Operations Management	Cheng Hor Sze
Hong Kong Taxation	Chan Xiyu, Evelyn Lam Sheung Yan, Stella
Hong Kong Corporate Law	Cheung Yan Yan Ho Meei Ying Lau See Heng Lui Kwun Yiu Yang Xueyan
Corporate Administration	Pau So Yi Tong Ka Ki
Corporate Governance	Chan Tszy Yu Chan Yuk Kwan Law Kiu Yan Lee Siu Kwan Pang Siu Cheung, Victor Tang Pak Yan Tse Kit Ying Wan Pui Hin, Gladys Zhang Le
Corporate Secretariship	Wong Ka Yan
Corporate Financial Management	Ho Ting Ting Qiu Xiaolei

Studentship

Student Ambassadors Programme

Summer Internship 2018

Members who are interested in offering summer internship positions to local undergraduates under the Institute's Student Ambassadors Programme this year from June to August 2018 for a maximum period of 8 weeks, please visit the News section of the Institute's website. For details, please contact Eva Cheung at: 2830 6019, or email: student@hkics.org.hk.

Policy – payment reminder

Studentship renewal

Students whose studentship expired in January 2018 are reminded to settle the renewal payment by Friday 23 March 2018.

Exemption fees

Students whose exemption was approved via confirmation letter in December 2017 are reminded to settle the exemption fee by Saturday 24 March 2018.

New students orientation

Students registered since September 2017 are invited to attend an orientation on Tuesday 20 March 2018 to learn more about the Institute and meet with other students. Recent IQS examinations subject prize awardees will share examination preparation tips at the event.

The enrolment form is available at the Events section of the Institute's website: www.hkics.org.hk. Please complete and return the reply slip to the Institute Secretariat by email: student@hkics.org.hk. For enquiries, please contact Ally Cheung at: 2830 6031 or Eva Cheung at: 2830 6019.

Date: Tuesday 20 March 2018

Time: 7.00pm – 8.30pm

Venue: School of Continuing and Professional Education (SCOPE), 8/F, United Centre, Admiralty, Hong Kong

IQS information session

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

Date: Monday 26 March 2018

Time: 7.00pm – 8.30pm

Venue: School of Continuing and Professional Education (SCOPE), 8/F, United Centre, Admiralty, Hong Kong

HKICS professional seminars

Hang Seng Management College

The Institute organised a professional seminar at Hang Seng Management College (HSMC) to introduce the Chartered Secretarial profession to its BBA undergraduates on 1 February 2018. Institute member Anna Kong ACIS ACS gave a presentation to the students on the company secretary role and corporate governance.



Anna Kong at HSMC

The Hong Kong Polytechnic University

Institute Education Committee member

Rachel Ng ACIS ACS gave a presentation on 'How do directors and company secretaries enhance ethics and corporate governance in the corporate world?' to over 240 BBA undergraduates at The Hong Kong Polytechnic University (PolyU) on 5 February 2018.



Rachel Ng at PolyU

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Join us to explore
what a career in
Chartered Secretary
and Governance
profession can offer.

- Insights of Chartered Secretaries
- Interview preparation workshop
- On-site interviews
- Networking and refreshments
- Lucky draw

Open to undergraduates of all degree disciplines and
HKICS registered students

Chartered Secretaries Preview Day

Saturday, 17 March 2018 | 1.30pm–5.00pm

Salon Rooms, 5/F, Harbour Grand Hong Kong,
23 Oil Street, North Point, Hong Kong
(MTR Fortress Hill station, Exit A)

Free Admission

For registration and enquiries, please
contact Ally Cheung or Ruby Ng at
2881 6177 or student@hkics.org.hk.

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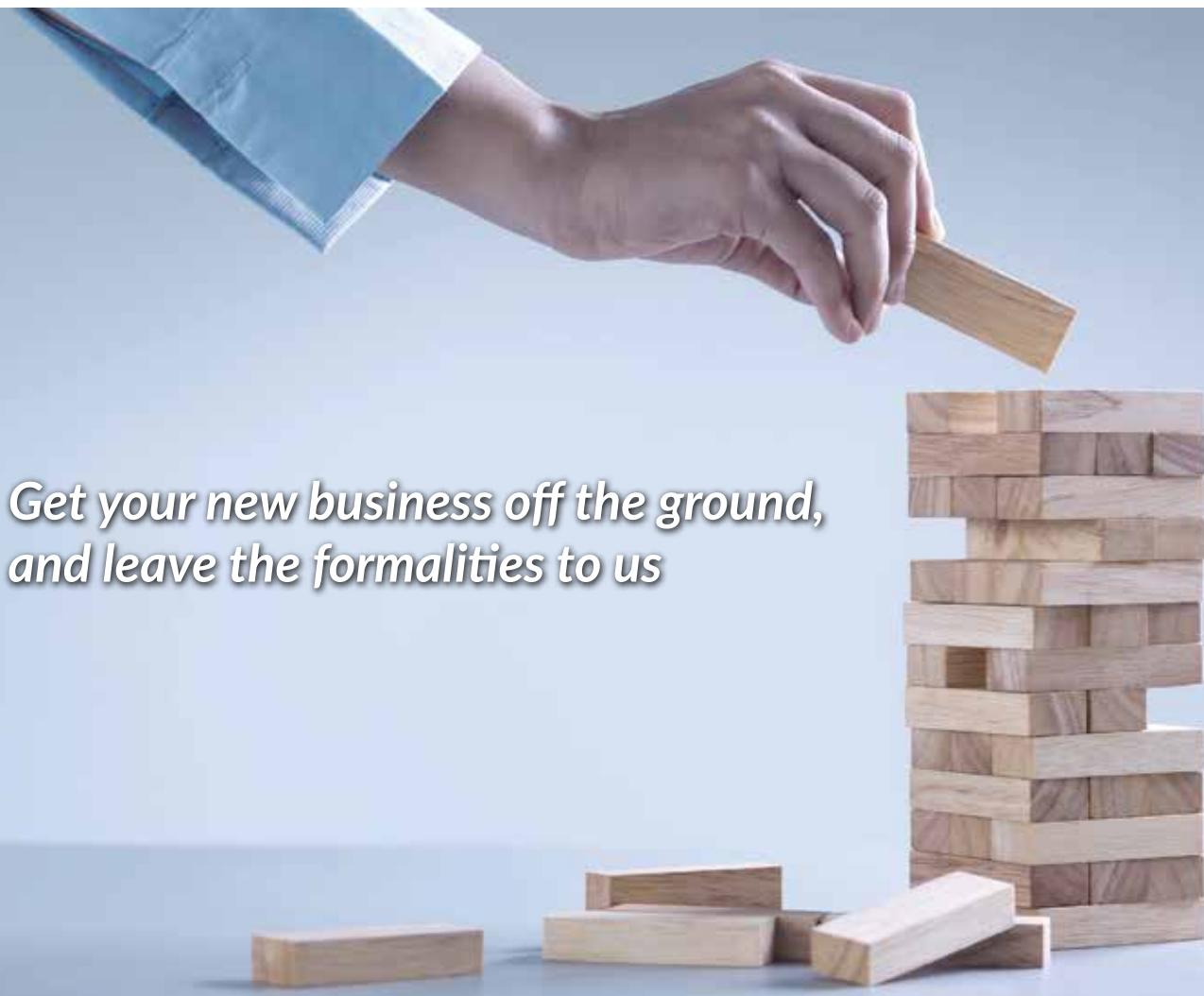
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