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July 2018

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

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Good governance comes with membership

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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, 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 to corporate secretaries and governance professionals. HKICS has over 5,800 members and 3,200 students.

Membership statistics update

As of 31 May 2018 membership statistics were as follows:
Students: 3,381
Graduates: 397
Associates: 5,276
Fellows: 649

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July 2018

CSj, the journal of The Hong Kong Institute of Chartered Secretaries, is published 12 times a year by Ninehills Media and is sent to members and students of The Hong Kong Institute of Chartered Secretaries and to certain senior executives in the public and private sectors.

Circulation: 8,200
Annual subscription: HK$2,600 (US$340)
To subscribe call: (852) 3796 3060 or
email: enquiries@ninehillsmedia.com

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ISSN 1023-4128

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Cover Stories

This month's *CSj* reviews the Institute's 19th Annual Corporate and Regulatory Update (ACRU 2018), which was held on 5 June at the Hong Kong Convention and Exhibition Centre.

Correction:

The Technical Update article in the June edition of *CSj* ('TCSP licensing: your questions answered', pages 32–35) has been updated. The updated article is available in the e-CSj version (http://csj.hkics.org.hk) but not in the print version. Readers please note that the e-CSj version of this article therefore takes precedence over the print version. Apologies for any inconvenience caused.

ACRU 2018

This month our journal reviews our 19th Annual Corporate and Regulatory Update (ACRU), which was held on 5 June at the Hong Kong Convention and Exhibition Centre (CEC). ACRU holds a very special position in our CPD calendar. This year we had another record-breaking year in terms of attendance numbers, with close to 1,900 participants packing Hall 5G of the CEC to join the ACRU dialogue.

The enduring popularity of ACRU should not, of course, come as a surprise to anyone. ACRU highlights the ultimate unity of purpose of regulators and those attending ACRU in their dedication to improving corporate governance standards. With the current rebranding going on globally in our profession, I think it is good to be reminded of the fact that, despite the variety of the different functions we assume, at the end of the day we are governance professionals.

The governance profession is a wider grouping than the Chartered Secretarial one, and we are keen to welcome into our profession and Institute all those who fall within the broader remit of governance. This changing demographic was reflected in this year's ACRU attendees, 20% of whom were non-members. These attendees came from diverse backgrounds – including directors, managers and other professional practitioners. Reflecting the wider representation of market participants signing up to join ACRU, our Institute is keen to expand the forum's scope. This year ACRU played host, for the first time, to the Equal Opportunities Commission (EOC) and the presentation by Peter Reading, Legal Counsel, EOC, certainly put anti-discrimination compliance firmly on our map.

At its core, ACRU is still very much about getting to grips with the latest regulatory changes in Hong Kong and this year there was certainly no shortage of matters to discuss. Over the last year we have seen, among other things, a new listing regime to attract new economy issuers; a new delisting regime at the Stock Exchange; a new licensing regime for trust or company service providers; and new requirements on the disclosure of significant controllers. Our principal regulators were on hand to walk us through these changes and, perhaps even more importantly, to highlight the rationale behind them.

At a time of rapid regulatory changes, one of the key takeaways of our cover stories this month is that rules are there for a purpose – at the end of the day they secure an efficient, orderly and fair market for all participants. The need to maintain market integrity is the ultimate purpose of having rules and regulations and we all – professional practitioners, shareholders, directors, managers and regulators included – benefit from this. It not only guards against the obvious risks of fraud and malpractice, but also helps to ensure efficient pricing and the allocation of capital, while also promoting investor confidence and attracting foreign investment.

Finally, I would like to look ahead to our upcoming Corporate Governance Conference (CGC). Our CGCs are the other star in our CPD firmament. Our 11th biennial CGC will be held at the JW Marriott Hotel here in Hong Kong on Friday 14 September. The one-day forum will be followed by optional corporate visits on Saturday 15 September. Under the theme 'Corporate Governance: The New Horizon', the conference will look at the challenges for governance professionals in the emerging business landscape. We will do so in the company of top thought leaders in governance globally and locally, including our guest of honour The Honourable Mr James Lau JP, Secretary for Financial Services and the Treasury of the Government of the HKSAR, and our keynote speaker Professor Mervyn King, Chairman of the International Integrated Reporting Council.

The conference website (www.hkicscgc.com) is now up and running, so I urge *CSj* readers to go online and check out this year's CGC line-up and to reserve yourself a seat while they are still available. See you at the conference!

David Fu FCIS FCS(PE)

ACRU 2018

本刊今期报道第19届公司规管最新发展研讨会(ACRU)的盛况。ACRU在公会的持续专业发展活动中地位独特，今年于6月5日在香港会议展览中心举行，参加者人数再创新高，近1,900人坐满整个5G展览厅，参与ACRU的对话。

ACRU持续受欢迎，当然不是意外。ACRU突显了监管机构和参加者致力提高企业管治水平的共同目标。世界各地的专业特许秘书组织现正重新建立品牌之际，我相信值得提醒自己，纵使我们的职能各有不同，最终都是管治专业人员。

管治专业的范畴比特许秘书专业广阔，我们十分欢迎管治专业范围内的其他从业员加入我们和公会的行列。这方面的转变，在今年ACRU的参加者背景中反映出来，他们当中有两成并非公会会员。他们的背景多样化，包括董事、经理及其他专业从业员。为配合更广泛的市场参与者参加ACRU，公会锐意扩阔研讨会的范畴。今年的ACRU首次邀请平等机会委员会（平机会）出席；平机会法律顾问Peter Reading的讲解，强调了反歧视合规工作的重要性。

ACRU的主要目的，仍然是介绍香港规管环境的最新变化，今年讨论的内容当然十分丰富。过去一年有不少改变，包括吸引新经济公司上市的新上市制度、交易所的新除牌机制、信托或公司服务提供者的新发牌制度，以及披露重要控制人的新要求。各主要监管机构为我们介绍这些改变，并且着重说明改变背后的理据。

在规管制度急速变化之际，本刊今期的封面故事提出的重点之一，就是规则的存在有其目的，最终是为所有市场参与者缔造高效率、有秩序和公平的市场。订立规则和设立监管机构的最终目的，是维持市场的完整性，而我们所有参与其中的人，包括专业从业员、股东、董事、经理和监管机构，都能从中得益。订立规则不仅可防止欺诈及不当行为，降低这方面的风险，而且有助确保有效率定价及分配资本，同时提高投资者信心，吸引外国投资。

最后，我想预告即将举行的企业管治研讨会(CGC)。CGC是公会持续专业发展活动中的另一重点项目。两年一度的CGC，今年是第11届，将于9月14日（星期五），假座香港JW万豪酒店举行。为期一天的研讨会完结后，参加者可选择在9月15日（星期六）参与企业实地考察。今年研讨会的主题是「企业管治新里程」，探讨在转变的运作环境中，管治专业人员面对的挑战。参与研讨会的人士有海外和本地在管治课题上的思想领袖，包括主礼嘉宾香港特区政府财经事务及库务局局长刘怡翔太平绅士，以及主讲嘉宾国际综合报告委员会主席Professor Mervyn King。

CGC设有官方网站(www.hkicscgc.com)，请大家浏览了解今年的讲者阵容，及早报名。研讨会当日见！

傅溢鸿 FCIS FCS(PE)

Targeting listed company governance

ACRU 2018 review – part one

Regulators attending the Institute's latest Annual Corporate and Regulatory Update, held last month at the Hong Kong Convention and Exhibition Centre, confirmed that listed company governance will remain the top priority for their enforcement and educational work in the years ahead.

What should we expect from our regulators in the years ahead? Hong Kong's statutory and frontline regulators attending the Institute's latest Annual Corporate and Regulatory Update (ACRU) gave an unequivocal answer to this question. We can expect tougher enforcement of listed company misconduct and more engagement with the market to improve the governance culture of listed issuers.

'The SFC's top enforcement priority is corporate fraud and misconduct', said Kenneth Luk, Senior Director, Enforcement, Securities and Futures Commission (SFC). The types of malpractice at the top of the SFC's enforcement agenda are:

- IPO fraud
- false or misleading financial statements, and
- serious conflict of interest and other fraud.

Lessons to be learned

Mr Luk highlighted the lessons the market can learn from a number of recent fraud cases pursued by the SFC. In the Greencool Technology case, which Mr Luk described as 'the most complex investigation the SFC has handled to date', the Market Misconduct Tribunal recently found that the former chairman/CEO and four former senior executives had disclosed false and misleading information about Greencool's sales, profit, trade receivables and bank deposits in a massive fraud.

This case has a specific interest for professional practitioners in Hong Kong since the financial controller and company secretary of the company was found liable for accepting an arrangement

Highlights

- governance professionals can expect tougher enforcement of listed company misconduct and more engagement with the market to improve the governance culture of listed issuers
- directors and governance professionals should not allow themselves to be blindsided by dominant company controllers; they need to be sceptical and diligent in performing their oversight duties
- a genuinely engaged diversity policy should set measurable objectives and show how recruitment and selection practices have been revised to ensure the company benefits from a wider pool of talent

> "the SFC's top enforcement priority is corporate fraud and misconduct"
>
> Kenneth Luk, Senior Director, Enforcement, Securities and Futures Commission

that excluded the company's Mainland subsidiaries from his supervision – limiting his responsibility to the Hong Kong holding company. He was disqualified for three years and referred to the Hong Kong Institute of Certified Public Accountants for disciplinary proceedings.

In another case – that of Qunxing Paper – the Court of First Instance found that the company's former chairman and former vice-chairman disclosed false or misleading information in Qunxing's IPO Prospectus in 2007, as well as its subsequent results announcements, by materially overstating its turnover and understating its bank borrowings.

Mr Luk emphasised that the key lessons to be learned from these cases are that directors and senior executives should not allow themselves to be blindsided by dominant company controllers. Mr Luk pointed out that if directors accept a compromised role they are failing to properly discharge their oversight duties and run the risk of also being held liable for fraud. The perpetrators of the fraud went to extraordinary lengths to disguise their malpractice. This included hiring 'experts' to forge bank documents and hiring actors to pose as clients to lend credence to their fictions, but where were the non-executive directors? They are supposed to act as a check on the owners and executive directors, so they need to be sceptical and diligent in performing their oversight duties. He added that the SFC will be holding directors and senior managers accountable for corporate governance failures.

The role of the board

The governance role of directors was also a central focus of the ACRU presentations by Hong Kong Exchanges and Clearing Ltd (the Exchange) speakers. Karen Lee, Vice-President, Enforcement, Listing Department, the Exchange, told ACRU attendees that the most common theme of the Exchange's enforcement actions remains directors' duties.

She emphasised that governance professionals need to ensure that directors are aware of their obligations and that the company's internal controls are effective. 'Directors need to take an active interest in the issuer's affairs, they can't just leave this to management,' she said. She urged ACRU participants to read the latest SFC's *Enforcement Reporter* and the *SFC Regulatory Bulletin: Listed Corporations* since these publications emphasise the importance of company directors understanding and fulfilling their fiduciary duties.

Failure to cooperate with the Exchange's investigations is the second most common theme of the Exchange's enforcement work. Ms Lee reminded ACRU attendees that Rule 2.12A (GEM Rule 17.55A) requires issuers to provide, as soon as possible or in accordance with time limits imposed by the Exchange:

- information the Exchange reasonably considers appropriate to protect investors or ensure smooth operation of the market, and
- any other information or explanation that the Exchange may reasonably require for investigating a suspected listing rule breach or verifying compliance with the listing rules.

She added that directors also need to abide by the terms of their Declaration and Undertaking to the Exchange, which they sign when taking up a directorship. This requires directors to cooperate in any investigation conducted by the listing department and/or the listing committee and to inform the Exchange of any change to their contact details. She warned that a breach of this Declaration would be taken into account by the Exchange when assessing an individual's suitability to be appointed as a director of a listed issuer in Hong Kong in the future.

The role of governance professionals in cooperating with regulatory investigations was addressed in the Q&A of the SFC's ACRU session. Gillian Meller FCIS FCS, Institute Vice-President and Chair of

> There is no magic number of directorships which any individual can hold. You would need to look at the specific circumstances of each case to know whether an individual is capable of investing enough time in his or her directorship.

Katherine Ng, Senior Vice-President and Head of Policy, Listing Department, Hong Kong Exchanges and Clearing Ltd

the SFC session, asked what advice Mr Luk would give to company secretaries who suspect malpractice in the company they work for. Mr Luk acknowledged the important role company secretaries play in ensuring regulatory compliance and advising directors on their legal and regulatory obligations, but in cases where this advice is ignored, practitioners should report their suspicions to the SFC.

Ms Lee of the Exchange also highlighted the new themes that have been added to its thematic enforcement list. These are:

- failure to comply with procedural requirements in respect of notifiable/ connected transactions
- inaccurate, incomplete and/or misleading disclosure in corporate communication, and
- repeated breaches of the listing rules.

Regarding the last of these, Ms Lee pointed out that often each breach is not particularly egregious and taken in isolation may not warrant disciplinary action, but the fact that these breaches are repeated suggests a failure of directors' oversight and a failure of internal controls to prevent listing rule breaches. The Exchange will therefore be taking a tougher line on repeated breaches of the rules.

Governance upgrade

Hong Kong, like many other jurisdictions around the world, complements its statutory and listing rule requirements with a principles-based Code of Corporate Governance. The code, Appendix 14 of the listing rules, sets out best practice recommendations and comply-or-explain provisions designed to uphold governance standards among listed issuers in Hong Kong. The Exchange reviewed the code in 2017 and subsequently made a number of proposals to enhance its effectiveness. It will be issuing its consultation conclusions on these proposals in the next few months. Katherine Ng, Senior Vice-President and Head of Policy, Listing Department, the Exchange, focused her presentation on the findings of the code review.

The role of INEDs

The oversight role of independent non-executive directors (INEDs) is key to effective governance in Hong Kong, and many of the Exchange's proposed amendments to the code are designed to enhance the effectiveness of their role. For example, among other things, the Exchange proposes to:

- introduce a Code Provision to require the disclosure of the process used for identifying and selecting proposed INEDs, as well as the reasons for their nomination
- introduce a new note to the relevant listing rule to encourage inclusion of an INED's immediate family members in the assessment of the director's independence
- introduce a new Recommended Best Practice to encourage disclosure of INEDs' cross-directorships or significant links with other directors, and
- revise the relevant Code Provision to recommend INEDs meet with the chairman in the absence of other directors at least annually.

Ms Ng confirmed that the Exchange has also been looking at the time commitment of INEDs. Having a good understanding of

all aspects of the business of a company is a prerequisite for directors to be able to contribute to board discussions in a constructive manner. INEDs therefore need to ensure they give adequate time to understand the issuers' affairs.

A related question raised in the Q&A of the Exchange's session asked for guidance on how many directorships individuals can reasonably hold and whether the Exchange is considering imposing a cap on the total number of directorships an individual can hold.

'There is no magic number of directorships which any individual can hold. You would need to look at the specific circumstances of each case to know whether an individual is capable of investing enough time in his or her directorship,' Ms Ng said. Moreover, the factors that might be relevant to this question are very varied. Is the director a CEO or full-time executive director of another company? How many board committees does he or she serve on? What kind of other organisations are involved? Even the financial year-end date of these organisations would be relevant, since, if the year-end dates coincide, the individual in question would be extremely busy at that time of year.

The Corporate Governance Code requires issuers to explain why they consider proposed INEDs holding seven or more directorships will be able to devote sufficient time to their new appointment. This was based on the fact that Institutional Shareholder Services has suggested that, for most directors, the maximum number of public company boards that a director can sit on before being considered 'overboarded' is six.

Board diversity

The Exchange also proposes to upgrade the current Code Provision on issuers' board diversity policies to a listing rule requiring the issuer to have a board diversity policy, to disclose the policy or provide a summary and to issue guidance on the factors included in the policy.

Ms Ng pointed out that having a diversity of perspectives on the board reduces the risk of groupthink. She added that the Exchange does not want issuers to take a box-ticking approach to the proposed board diversity requirements. Diversity policies need to show that issuers are genuinely seeking to enhance diversity in all aspects (gender, age, cultural and educational background, professional experience, etc). Empty blandishments about the importance of diversity will not be of use to the company or its investors. A genuinely engaged diversity policy should set measurable objectives and show how recruitment and selection practices have been revised to ensure the company benefits from a wider pool of talent. She added that the Exchange recommends an annual assessment of the company's diversity profile.

ESG reporting

In addition to reviewing the Corporate Governance Code, the Exchange also reviews compliance with its ESG Reporting Guide. Ms Ng pointed out that, in its latest review, the Exchange wanted to get a sense of the level of compliance with the upgraded 'General Disclosure' requirements of the Guide – these were upgraded to comply or explain, effective for financial years beginning in January 2016. The review (published in May 2018) looked at 400 sample issuers' ESG reports and found that overall the level of compliance was high. There were, however, a number of areas of weakness. For example, Ms Ng pointed out that many issuers' materiality assessments lacked detail. She confirmed that the Exchange will be focusing on ESG reporting, along with diversity policy, in the years ahead and encouraged ACRU attendees to get their boards involved with these issues.

> *The SFC's 'Enforcement Reporter' and the 'SFC Regulatory Bulletin: Listed Corporations' are available from the SFC website: www.sfc.hk. The Exchange has produced a wide variety of training materials relating to the issues discussed at the ACRU forum. These are available on its website: www.hkex.com.*

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Who needs rules?

ACRU 2018 review – part two

Regulation imposes costs and restrictions and may often seem to get in the way of business, but the Institute's latest Annual Corporate and Regulatory Update highlighted the fact that all market participants profit from a well-regulated market.

This year's Annual Corporate and Regulatory Update (ACRU) forum was a very timely opportunity for regulators to reach out to practitioners on the many issues at the top of the regulatory agenda in Hong Kong.

There was no shortage of issues to be discussed. The latest changes to Hong Kong's listing rules and Corporate Governance Code were the focus of Hong Kong Exchanges and Clearing Ltd (the Exchange) in the first session of the day. This was followed by an update from the Securities and Futures Commission (SFC) on the top priority of its enforcement work – corporate fraud and misconduct. The Companies Registry then addressed Hong Kong's new requirement for keeping a significant controllers register and the new licensing regime for trust or company service providers. The day's discussions were rounded off with an introduction to anti-discrimination legislation in Hong Kong by the Equal Opportunities Commission.

The value of a quality market

In the first session of the day, the Exchange fielded four speakers to discuss the latest listing rule changes designed to uphold the quality and reputation of Hong Kong's security markets.

Karen Lee, Vice-President, Enforcement, Listing Department, the Exchange, pointed out that the regulatory role of the Exchange, as the frontline regulator of listed companies, is to ensure listed companies comply with their continuing listing requirements, as set out in the listing rules, to protect the interests of shareholders and improve the standards of corporate governance among listed issuers in Hong Kong. 'The principal aim of the Exchange's enforcement work is to maintain an orderly, informed and fair market for trading of securities,' she said.

The revised delisting regime

The Exchange is not a law enforcement agency and Ms Lee pointed out that enforcement of the law takes priority over enforcement of the listing rules. The Exchange will refer serious cases to the SFC and/or other law enforcement authorities, and, in some cases, may temporarily suspend its own investigation or action so as not to prejudice the investigation or actions of other law enforcement agencies.

The biggest gun in the Exchange's armoury for penalising misconduct is delisting and Joseph Choi, Vice-President, Listed Issuer Regulation, Listing Department, the Exchange, addressed Hong Kong's new framework to facilitate the timely delisting of issuers. The purpose of the delisting rule amendments is to establish an effective delisting framework to:

- facilitate efficient and orderly exits of poor quality issuers
- provide certainty to the market on the delisting process
- incentivise suspended issuers to act promptly towards resumption, and
- deter material breaches of the listing rules.

Mr Choi explained that prolonged suspension of an issuer is not in the interests of investors or issuers and can have a negative effect on market quality and reputation. The general principle under Rule 6.04 is that continuous suspension without the issuer taking adequate action to restore listing may lead to delisting. However, the current process for delisting

Highlights

- compliance with Hong Kong's new anti–money laundering and counter–financing of terrorism regime has been high on the agenda for governance professionals working in the trust or company service provider sector
- trust or company service providers now need to apply for a licence from the Registrar of Companies and satisfy a 'fit-and-proper' test before they can provide trust or company services as a business in Hong Kong
- promoting equality and eliminating discrimination in the workplace, protecting employees from harassment and providing reasonable facilities for persons with disabilities are not only the right things to do, they are increasingly subject to legal liability

> "the principal aim of the Exchange's enforcement work is to maintain an orderly, informed and fair market for trading of securities"

Karen Lee, Vice-President, Enforcement, Listing Department, Hong Kong Exchanges and Clearing Ltd

an issuer that has been in prolonged suspension is somewhat 'cumbersome', Mr Choi pointed out. In one recent case it took 36 months to complete the process.

Under the new rules, which become effective in August this year, the Exchange will apply an 18-month deadline for the resumption of trading. Issuers who fail to take sufficient remedial action within 18 months will be delisted, even if a resumption proposal has been submitted. Suspended issuers must also issue quarterly updates of developments. Mr Choi emphasised that suspended issuers still need to meet their continuing obligations, for example those relating to notifiable and/or connected transactions and the publication of corporate reports. 'Suspension is not an excuse to cease fulfilling your continuing obligations,' he said.

Preventing circumvention of the RTO rules

While there is clearly value in having well-drafted rules to maintain market integrity, one should never underestimate the ingenuity of the market in finding ways around them. Dion Wong, Senior Vice-President, Listed Issuer Regulation, Listing Department, the Exchange, highlighted the Exchange's latest strategy to block attempts to circumvent its reverse takeover (RTO) rules.

An RTO typically refers to the acquisition of assets or a shell company in an attempt to circumvent the new listing requirements, and there have been several new ways that RTOs have been attempted under the regulatory radar. These include issuing a large-scale share subscription and then using the funds to start a new business, or breaking up RTO transactions into a series of acquisitions that do not trigger the RTO rules, but which, taken in aggregate, result in an effective change of control and/or purpose of the business.

Ms Wong pointed out that, as set out in its Guidance Letter (GL78-14), the Exchange will be taking a principles-based approach to RTOs. A principles-based approach enables the Exchange to identify attempts to circumvent the RTO rules by looking at the outcome of multiple transactions.

In addition, the Exchange has taken further action to address shell activities. Under Rule 13.24, a listed issuer must carry on sufficient operations, or have assets of sufficient value to warrant its continued listing. Once again, the Exchange will be taking a principles-based approach. The 'sufficiency' of operations or assets will be determined by means of a qualitative test rather than a prescribed threshold. Ms Wong pointed out that some companies carry on minimal operations after a material disposal, or after discontinuing a core business in an attempt to maintain listing status.

The Exchange will consult the market on its proposed listing rule amendments relating to backdoor listing and continued listing criteria over the next few months.

Hong Kong's new AML/CFT regime

Compliance with Hong Kong's new anti–money laundering and counter–financing of terrorism (AML/CFT) regime has been high on the agenda for governance professionals working in the trust or company service provider (TCSP) sector. The Companies Registry fielded four speakers to address ACRU on this topic.

Margaret Chan, Senior Solicitor, Companies Registry, pointed out that the new regime is designed to ensure that Hong Kong abides by its obligations as a member of the Financial Action Task Force (FATF), the intergovernmental body established in 1989 that sets international standards on AML/CFT. Among the 40 Recommendations made by FATF, Recommendations 22, 28 and 35 are relevant to designated non-financial businesses and professions (DNFBPs), a group which includes TCSPs. These Recommendations require DNFBPs:

- to be subject to customer due diligence (CDD) and record-keeping requirements when they engage in specified transactions

- to be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements, and

- to be subject to a range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, for any non-compliance with AML/CFT requirements.

FATF will be carrying out a mutual evaluation of Hong Kong later this year and the government has brought in legislation to ensure that FATF Recommendations are complied with. The Anti–Money Laundering and Counter–Terrorist Financing Ordinance (AMLO) (Cap 615) brings in a new licensing regime for TCSPs and makes them subject to statutory CDD and record-keeping requirements.

The new licensing regime for TCSPs

Ms Chan highlighted the compliance requirements relating to the new licensing regime for TCSPs under the AMLO. TCSPs now need to apply for a licence from the Registrar of Companies (the Registrar) and satisfy a 'fit-and-proper' test before they can provide trust or company services as a business in Hong Kong. The Registrar has set up a register of TCSP licensees, which is open for public inspection, and staff of the Companies Registry will conduct compliance inspections.

Ms Chan also highlighted the statutory CDD and record-keeping requirements relevant to TCSPs when they engage in the specified transactions set out in the AMLO. These 'specified transactions' include all of the core services provided by TCSPs, such as forming companies, acting as a director or a secretary of a company, providing a registered office, etc.

Anti-discrimination law and practice in Hong Kong

This year, for the first time, ACRU played host to the Equal Opportunities Commission (EOC). Peter Reading, Legal Counsel, EOC, gave a lively introduction to anti-discrimination legislation in Hong Kong. This area could be a ticking time bomb for many employers as social expectations relating to issues such as sexual harassment and discrimination in relation to sex, disability and race are evolving rapidly both globally and locally. Promoting equality and eliminating discrimination in the workplace, protecting employees from harassment and providing reasonable facilities for persons with disabilities are not only the right things to do, they are increasingly subject to legal liability.

Mr Reading outlined the four ordinances in Hong Kong designed to promote equality and eliminate discrimination:

- The Sex Discrimination Ordinance
- The Disability Discrimination Ordinance
- The Family Status Discrimination Ordinance, and
- The Race Discrimination Ordinance.

Compliance and governance professionals should not only familiarise themselves with the letter of the law, he added, but also the changing expectations regarding discrimination. 'Laws evolve to meet the changing needs of society,' he pointed out. For example, an increasing number of couples are cohabiting rather than get married and many jurisdictions are adapting to this changing demographic by introducing legal provisions to ensure that cohabiting couples are not subject to discrimination.

Mr Reading made an appeal to ACRU attendees to ensure that the organisations they work for:

- are aware of their legal obligations as employers and service providers
- have comprehensive policies on discrimination and investigations
- provide regular and ongoing training to all staff, and
- deal with complaints in a timely, independent and transparent manner.

More information is available on the EOC website: www.eoc.org.hk.

Ms Chan recommended ACRU attendees refer to the guidelines and reference materials that the Companies Registry has made available online regarding the new requirements brought in by the AMLO. Among other things, the Companies Registry has published a *Guideline on Licensing of Trust or Company Service Providers* and a *Guideline on Compliance of Anti–Money Laundering and Counter–Terrorist Financing Requirements for Trust or Company Service Providers*.

These materials are available at the new website dedicated to the new licensing regime for TCSPs (www.tcsp.cr.gov.hk). Roger Wong, Deputy Registry Manager, Companies Registry, introduced this new website and the Companies Registry's new office to ACRU attendees. The new office, the Registry for Trust or Company Service Providers, is located in Kowloon Bay.

In addition to being an online information resource for guidelines, external circulars and FAQs, etc, the new website enables user registration, online submission of applications and notifications, as well as free online searches of the Register of TCSP Licensees. It is a 24-hour portal and is accessible via mobile devices anytime and anywhere. Users can also access all the relevant specified forms for applications and notifications on the website.

Register of significant controllers

Another key area of AML/CFT compliance is the provision of beneficial ownership information. Ahead of the FATF mutual evaluation coming up later this year, the government has sought to address this issue via the Companies (Amendment) Ordinance 2018. This ordinance imposes a new requirement on companies incorporated in Hong Kong to keep significant controllers registers (SCRs). Ellen Chan, Deputy Principal Solicitor, Companies Registry, clarified a number of issues relating to the SCR requirement.

Companies are required to take reasonable steps to ascertain whether they have any significant controllers and to identify them in their significant controllers registers. A 'significant controller' is a person that has significant control over the company and includes a registrable person and a registrable legal entity. A person will have significant control if the person meets one or more of the following conditions:

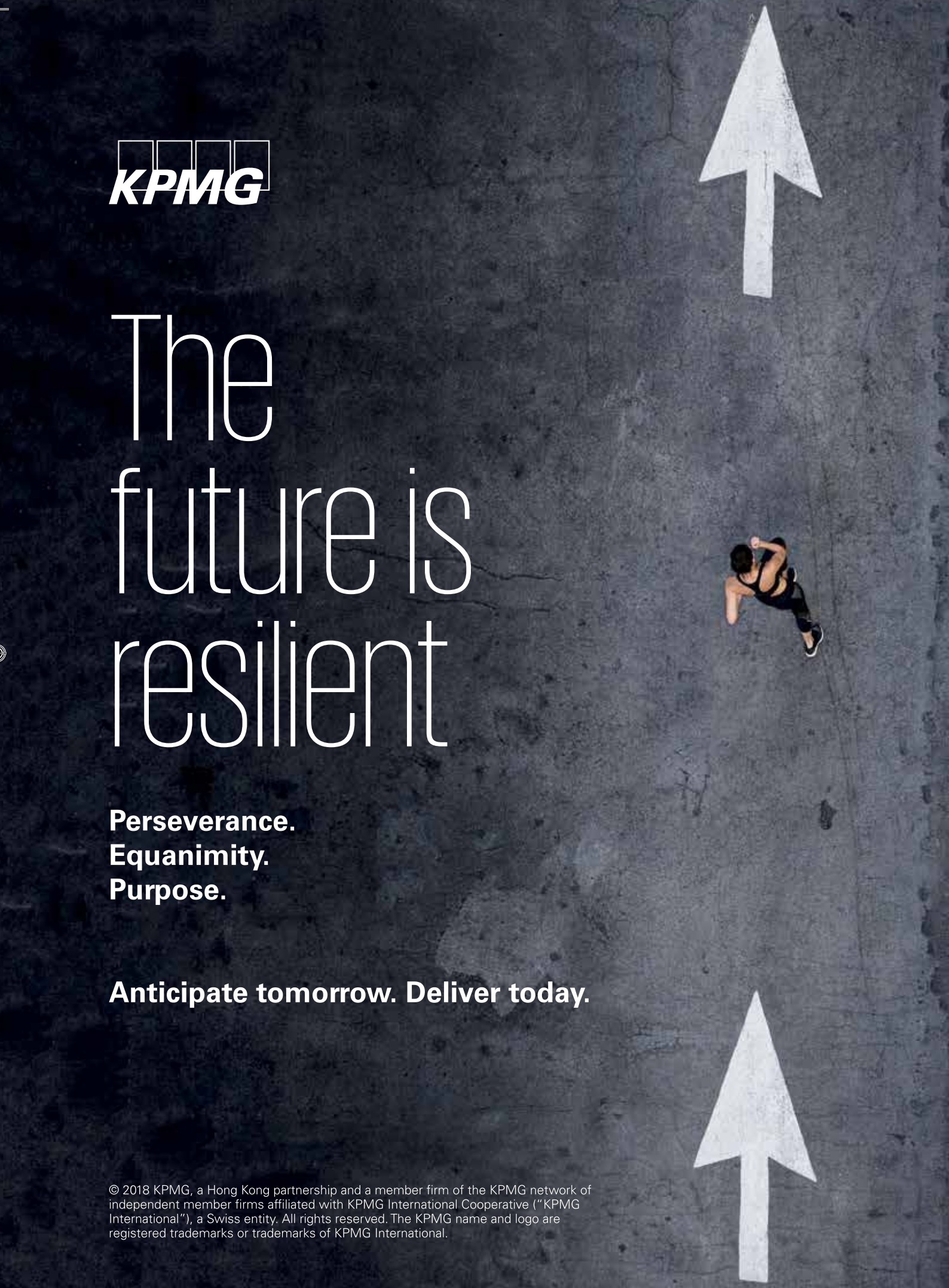
- directly or indirectly holding more than 25% of the issued shares (the right to share in more than 25% of the capital/profits) of the company
- directly or indirectly holding more than 25% of the voting rights in the company
- directly or indirectly holding the right to appoint or remove a majority of the board of directors of the company
- having the right to exercise, or actually exercising, significant influence or control over the company, and/or
- having the right to exercise, or actually exercising, significant influence or control over the activities of a trust or a firm that is not a legal person, but whose trustees or members satisfy any of the first four conditions (in their capacity as such) in relation to the company.

A registrable legal entity is a legal entity which is a member of the company and has significant control over the company. A registrable person is a natural person or specified entity that has significant control over the company. A specified entity is any of the following:

- a corporation sole
- a government of a country or territory, or part of a country or territory
- an international organisation whose members include two or more countries or territories (or their governments), and/or
- a local authority or local government in a country or territory.

Angelina Mok, Deputy Registry Manager, Companies Registry, gave useful practical examples of how to identify significant controllers, whether as a registrable legal entity or a registrable person. She also referred ACRU attendees to the dedicated thematic section on the significant controllers register on the Companies Registry's website: www.cr.gov.hk/en/scr. In addition to frequently asked questions and videos, visitors can access the:

- Companies (Amendment) Ordinance 2018
- Companies Registry External Circular No 2/2018, and
- *Guideline on the Keeping of Significant Controllers Registers by Companies*.



The evolving role of the INED

With INEDs playing an increasingly important role in ensuring effective corporate governance, Carlson Tong SBS JP, Chairman, Securities and Futures Commission, warns that they can also expect to bear more legal responsibility when things go wrong.

Some recent developments in our market make it clear that, nowadays, much more is expected of an independent non-executive director (INED) than in the past. Interestingly, I have never been an INED of a listed company, and in fact as the Chairman of the Securities and Futures Commission (SFC), I am not permitted to be a director of any listed company. But I have spent quite a bit of time sitting in different boardrooms around town in different capacities. So my comments here are my view from a regulator's perspective and also from the perspective of a former auditor. I also think that there is some commonality among the roles of an INED, an independent auditor and a regulator: we share the responsibility to look after the interests of minority shareholders.

Corporate governance

Over the past couple of decades, corporate governance problems seem to have become both more frequent and more serious. We saw what happened with Enron, then came Lehman Brothers and the global financial crisis. Here in Hong Kong, we have also had our fair share of corporate governance issues with listed companies. So it's understandable that much more emphasis is placed on the importance of INEDs now than 20 years ago. In this article, I will talk about recent regulatory changes in Hong Kong that have a direct bearing on INEDs, as well as Hong Kong's new listing regime and the SFC's adoption of a front-loaded regulatory approach – both of which have major implications for INEDs. But first, some background.

Highlights

- independent non-executive directors (INEDs) should challenge management and provide an independent review of management's performance
- under the law in Hong Kong, INEDs, non-executive directors and executive directors all have the same duty of care and fiduciary duties
- recent regulatory changes, including the new listing regime and the SFC's front-loaded regulatory approach, have major implications for INEDs.

INEDs in Hong Kong and the rest of the world

To set the scene, let's review the current requirements for INEDs in Hong Kong and other major markets. Here in Hong Kong, the listing rules require the boards of listed companies to have at least three INEDs, who must make up at least one-third of the board. As in most other major financial centres, in Hong Kong the important role played by INEDs is clearly set out in a corporate governance code. The common theme running through all of these is that INEDs should challenge management and provide an independent review of management's performance.

When it comes to the election of INEDs, Hong Kong's rules are similar to those of other markets. That is, shareholder approval is required for their appointment. The notable exception is the UK, which has a dual-voting mechanism. The election of INEDs must be approved by all shareholders and also by a vote of independent shareholders alone.

How does compensation for INEDs in Hong Kong stack up to other markets?

> "I have come across cases where people agreed to be an INED at the invitation of friends and lived to regret it"

For Hang Seng Index constituent stocks, INED remuneration is over HK$500,000 a year. That is more than 50% higher than comparable companies in Singapore and just slightly ahead of companies listed in Australia, but much lower than in the US. However, for non-constituent stocks, especially the small cap companies, the fee for INEDs is considerably lower.

Regulatory developments

Late last year, Hong Kong Exchanges and Clearing Ltd (HKEX) issued a consultation paper on changes to its Corporate Governance Code which bear on the role of INEDs. The consultation closed in December 2017 and the conclusions are expected to be finalised this summer. Among other proposals to enhance the corporate governance of listed companies, it covered board diversity, factors affecting INEDs' independence and 'overboarding', which is about the number of boards a person serves on at the same time.

Currently in Hong Kong, there are about 4,100 listed company INEDs, and more than 40 persons hold more than six INED positions. There are two people tied for the record – they each hold 15 INED positions. There are only so many hours in a day, so it's reasonable to ask how one person can keep up with what's going on with so many companies. But should regulators do something about this? Should we set a cap? The Mainland imposes a maximum of five INED positions. Or is it best to rely on a person's own capability and experience to make the judgement?

HKEX's consultation proposes that when a company elects an INED who holds more than six listed company directorships, it should explain why this person would still be able to devote sufficient time to the board. There is currently a one-year cooling-off period for someone nominated to be an INED who has been a director, partner, principal or an employee of a professional adviser. HKEX proposes to extend this to three years. And for a nominated INED who has had material interests in the company's principal business in the past year, there will now be a one-year cooling-off period.

New listing regime

Hong Kong has a new listing regime for companies with weighted voting rights (WVR). INEDs will have additional responsibilities under this regime, as these companies will be required to have a corporate governance committee comprised entirely of INEDs. This committee will focus on risks related to the WVR structure, with an emphasis on reviewing and monitoring how conflicts of interest are managed as well as compliance with requirements for connected transactions. The goal is to prevent the beneficiaries of WVR from doing things which only benefit themselves and harm the interests of investors.

HKMA guideline

In addition, a recent guideline published by the Hong Kong Monetary Authority (HKMA) covered similar ground. The best practices set out in HKMA's circular target locally incorporated banks and do not cover foreign banks. They include that INEDs must have an appropriate background and expertise, including professional knowledge of operational, financial and reputational risks. At least one INED should have a background in accounting, banking or the financial industry.

There is also a time commitment requirement. INEDs should devote time to meetings with management, as well as briefings on industry developments and regulatory requirements. Moreover, banks should consider whether INEDs remain independent if they have served on the board for more than nine years.

As for INEDs' remuneration, HKMA recommends a minimum of HK$400,000 a year, with additional payments for membership or chairing of board committees. For comparison, a large listed bank in Hong Kong paid INEDs annual fees of between HK$150,000 and HK$200,000 in 2015. HKMA's new requirements mean that, where these institutions are listed, they will be subject to stricter rules than non-banking listed companies.

The SFC's front-loaded regulatory approach

Turning to the SFC, over the past year we have introduced a new approach to policing Hong Kong's listed market. Let me briefly mention what this means in practice for listed companies.

The SFC has moved out from 'behind the scenes' and now makes its direct presence felt through early, proactive interventions. We now deal directly with companies and listing applicants when it comes to issues of concern to the SFC. In many cases, these concerns have involved acquisitions of questionable assets, businesses with a change of control, lack of sponsor due diligence or poor disclosure.

We call this approach 'front-loaded' because it emphasises earlier and more targeted intervention, with an aim to deliver a faster response and maximise the impact of our actions. To achieve this, we use our existing statutory powers in the Securities and Futures (Stock Market Listing) Rules (SMLR) under the Securities and Futures Ordinance (SFO) – referred to as SMLR. Section 6 of the SMLR gives us the power to object to listings and under Section 8 we can suspend trading.

In 2017, the number of cases involving the potential or actual exercise of SMLR powers increased substantially to around 40, from only two or three cases per year in the past. We have usually adopted this front-loaded approach in dealing with post-IPO transactions, but recently we stepped up our front-loaded approach to IPO cases. This means that listing applicants, sponsors and other parties involved in an IPO process can be investigated at the application stage where we have grounds to suspect that the SMLR provisions are triggered. There will be enforcement consequences if breaches of the SFO are identified, even if the listing application is withdrawn.

If necessary, we can combine our powers under the SMLR with our investigative powers under the SFO. These are usually SFO Section 179, the power to require production of records and documents concerning listed companies, and Section 182, to conduct enforcement investigations. You may have seen recent news reports about our searches and investigations into the use of networks of companies to commit fraud and market manipulation.

Regulatory action against INEDs

It's worth mentioning that under the law in Hong Kong, it's now well established that INEDs, non-executive directors and executive directors all have the same duty of care and fiduciary duties. You may be interested to know that in 2016, in the case of Freeman FinTech Corporation Ltd, the SFC sought disqualification orders in the Court of First Instance against 10 Freeman directors, including four INEDs and an NED who is a member of the Liu family, descended from the founder of Chong Hing Bank, formerly Liu Chong Hing Bank.

In this case, the SFC alleged that the directors caused Freeman to indirectly buy a stake in the parent company of Chong Hing Bank in disregard of the ability of other Liu family members to

Factors to consider before assuming an INED role

Before you accept an INED appointment, you should ask yourself the following questions.

- How well do you know the management or controlling shareholder?
- Do you understand the company's business?
- Does the company have qualified audited accounts, or a clean corporate governance or compliance record?
- Are you prepared to devote a significant time commitment?

In May 2017, the SFC published an issue of its *Enforcement Reporter* which set out what is expected of an INED. This included acting as a check and balance, being sceptical and diligent and exercising independent judgement.

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> "regulators, including the SFC, are increasingly holding INEDs responsible for the misconduct of companies"

object to the purchase. As it turned out, the other Liu family members did object. Freeman could not complete the acquisition and this resulted in a loss of almost HK$77 million.

The SFC claimed that the 10 directors breached their duties of care by not asking the right questions before approving the acquisition. In another case, just last month we started proceedings in the Market Misconduct Tribunal against Magic Holdings International Ltd and its nine directors. We alleged that they failed to disclose inside information in a timely manner after a preliminary agreement was reached on the sale of the company to L'Oréal, the French cosmetics giant. Of these nine directors, two were NEDs and three were INEDs.

I cannot comment any more on these cases as the legal process is still ongoing. But it should be clear that regulators, including the SFC, are increasingly holding INEDs responsible for the misconduct of companies. With INEDs playing an increasingly important role in ensuring effective corporate governance, they can also expect to bear more legal responsibility when things go wrong.

Carillion

If you need a recommendation for bedtime reading, you may want to pick up the recent UK House of Parliament report on the collapse of Carillion, one of the largest house builders in the UK. Carillion's collapse was sudden and caught everyone by surprise, including the UK government, as it was a major government contractor.

The company's 2016 accounts, published on 1 March 2017, presented a rosy picture and on the back of those results, it paid a record dividend of £79 million – £55 million of which was paid on 10 June 2017. It also awarded large performance bonuses to senior executives.

On 10 July 2017, just four months after the accounts were published, the company announced a profit warning caused by a reduction of £845 million in the value of its contracts. In January 2018, with liabilities of nearly £7 billion and just £29 million in cash, Carillion went into liquidation.

The Parliament's report laid blame on the management, the board and also the auditors. The following is what the report had to say about the non-executive directors. 'Non-executives are there to scrutinise executive management. They have a particularly vital role in challenging risk management and strategy and should act as a bulwark against reckless executives. Carillion's NEDs were, however, unable to provide any remotely convincing evidence of their effective impact.'

I am sure we haven't seen the end of this very sad affair, but I wouldn't like to be one of the directors.

Conclusion

To wrap up, I will just note that I have come across cases where people agreed to be an INED at the invitation of friends and lived to regret it. You may have heard similar stories. Thankfully, nowadays there is much more awareness of the importance of getting corporate governance right. We hope that this will give INEDs the courage to exercise their independent judgement to do what is in the interest of the company as a whole. Hopefully it will also convince listed companies to let their INEDs do their jobs.

This article is adapted from the speech by Mr Tong at The Hong Kong Institute of Directors on 11 June 2018.

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Board diversity: best practice tips

If Hong Kong companies plan to diversify their boards, they will need to restructure more than their recruitment processes, argues Rebecca Walker Chan, Project Manager, CSR Asia.

Exacerbated by uneven gender ratios and antiquated social norms, opportunities for women to participate, much less succeed, in business are still quite limited. In the 2017 WEF Global Gender Gap Report, of the 25 Asia Pacific nations surveyed, gender equity ratings of 13 nations fell and at an average rate of 8%. The gender diversity in some of Asia's leading economies is the lowest compared to other parts of the world. It is 2018, and the glass ceiling (a phrase coined in 1978) seems as unbreakable as ever. Indeed, the economic gender gap has continued to widen and without concerted efforts from every business sector, the WEF estimates it will take 217 years before we see it close.

The gender gap

Gender parity is fundamental to whether and how societies thrive. There is an excellent, clear, values-based business case for promoting gender diversity: women are one-half of the world's population and deserve equal access to health, education, economic participation, earning potential and political decision-making power. Ensuring the healthy development and appropriate use of half of the world's total talent pool has a substantial impact on the growth, competitiveness and future-readiness of economies and businesses.

However, even by 2018, no country has closed their overall gender gap and the economic losses from disparity are easily quantifiable. For example, the East Asia and the Pacific regions reportedly lose between US$42 billion and US$47 billion annually due to the overall limited access to employment opportunities for women. Furthermore, a recent McKinsey Global Institute report shared that advancing women's equality in Asia Pacific could add US$4.5 trillion to their collective annual GDP in 2025 (see Figure 1), a 12% increase over the business-as-usual trajectory.

If the numbers show that we can all benefit from more gender diversity in the workplace, why is it still such a foreign concept, especially in Asia? The gender balance of a company can offer an assortment of knowledge and skills, however research from organisations like management consulting firm Boston Consulting Group indicate that the career obstacles women face, such as being overlooked for promotions, tend to be institutional, with deep roots in the organisation's culture. They also have found that reforming this culture and creating true gender parity requires participation by both men and women, particularly given that most senior leadership teams are predominantly male.

One relatively straightforward way to measure and demonstrate gender diversity is to look at gender balance

Highlights

- gender parity is fundamental to whether and how societies thrive
- the gender diversity in some of Asia's leading economies is the lowest compared to other parts of the world
- the East Asia and the Pacific regions reportedly lose between US$42 billion and US$47 billion annually due to the overall limited access to employment opportunities for women

within an organisation's leadership. In fact, research shows that companies with a larger percentage of women in executive positions have a 34% higher total return to shareholders than those that do not. The more diversity of thought, perspectives, experiences and skills a board collectively possesses, the better it can oversee moves into riskier territory in an informed and useful way – and to assist management in making bold decisions that are likely to pay off.

These studies on female leadership show that, while there are increasingly more women on boards worldwide (28% in 2016, up from 18.3% in 2015), Asia is lagging behind (see Figure 2). Indeed, Singapore and Hong Kong's progress pales in comparison with global counterparts such as the UK, where female representation on FTSE 100 Index boards has tripled since 2009 to 26.8%, and is now voluntarily targeting 33% by 2020.

Slow progress

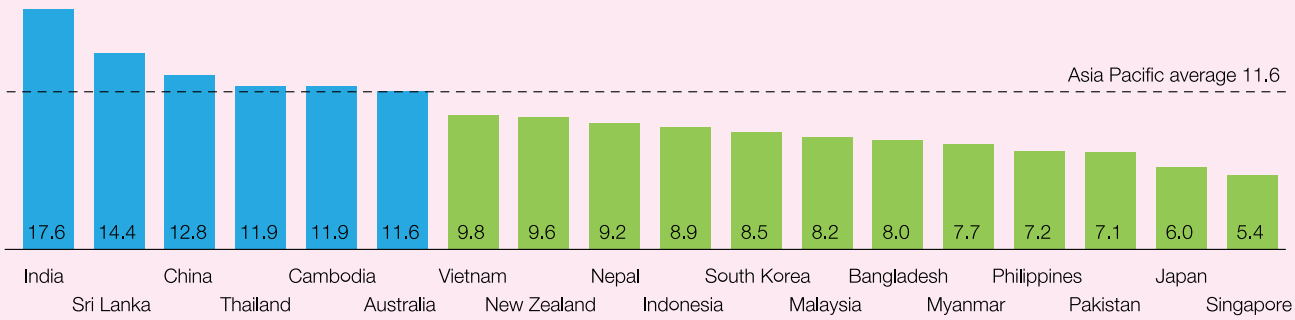
Progress has been made by some leading Hong Kong–listed companies, notably CLP Holdings, HSBC Holdings, Link Real Estate Investment Trust and MTR Corporation, which all increased the number and percentage of female board directors over the last five years. However, there has been no significant increase in the overall proportion of board positions held by women since the Hong Kong Stock Exchange introduced its comply-or-explain rules on the disclosure of diversity policies. Why is that?

By looking more closely at those sitting on boards, the answer becomes apparent. In spring 2017, Deloitte conducted their own survey of 300 board members and C-suite executives at US companies with at least US$50 million in annual revenue and 1,000 employees. One notable finding was that most board recruitment practices have not kept pace with the desire and need for greater board diversity. They also highlighted that outdated recruitment practices and a 'boys club approach' has led to current members often seeking candidates who tend to be like themselves – men with upper management experience. This attitude, combined with low turnover on boards, not only hinders movement toward greater diversity, it can also lead to myopic views of operations and impaired ability to oversee innovative strategies and adjust to trending risks.

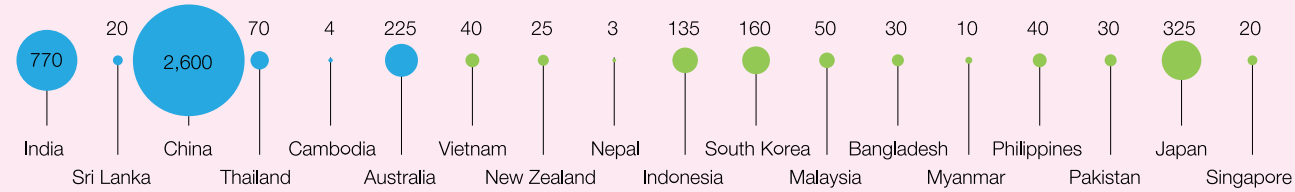
Indeed, despite knowing the positive effects of greater board diversity – companies with it are more likely to have strong financial performance and fewer instances of bribery, corruption, shareholder battles and fraud – some directors remain unconvinced about the overall value diversity brings to a company. Those uncertain directors are almost always men. In a 2017 article about corporate board diversity, Fortune shared that male directors have displayed more resistance to the corporate diversity push in general. In a survey by PwC, of the 27% of directors who said too much attention is given to gender diversity, 97% of those respondents were men. While these studies were conducted in the US, is it fair to assume that attitudes towards gender diversity among male board members are the same in Asia?

Figure 1: Incremental 2025 GDP from improving gender equality at the best-in-region rate

2025 improvement above and beyond business-as-usual GDP, %

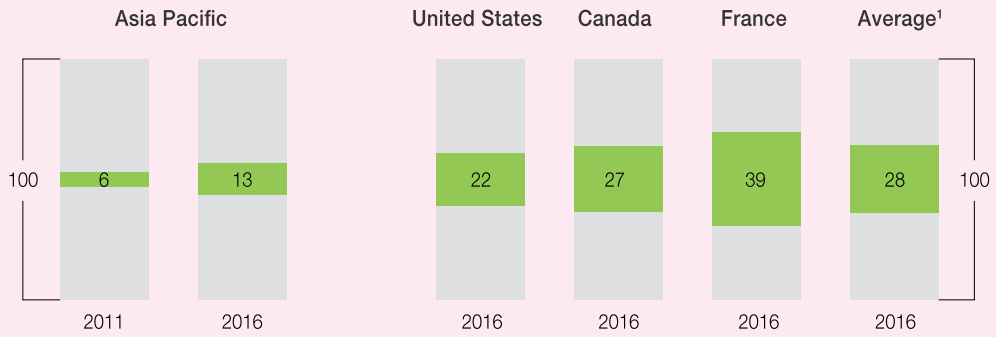


2025 improvement above and beyond business-as-usual GDP, US$ billion 2014



Source: IHS Markit; International Labour Organization; national statistical agencies; Oxford Economics; World Input-Output Database; Global Growth Model by McKinsey; McKinsey Global Institute analysis

Figure 2: Women's representation on boards, %



[1]Average of most Western countries.

McKinsey&Company | **Source:** McKinsey Global Institute analysis

> "it is 2018, and the glass ceiling (a phrase coined in 1978) seems as unbreakable as ever"

If Hong Kong companies plan to diversify their boards, they will need to restructure more than their recruitment processes. Bringing people with diverse skills, perspectives and experiences to the board – as well as women, and racial and ethnic minorities – requires more robust processes than those currently used by most boards (see 'Best practice suggestions').

Accelerating change

Leading asset owners and global advocacy groups, like the 30% Club, aim for women to comprise a minimum of 30% of board seats globally. In 2016, the 30% Club Hong Kong launched a campaign to increase the percentage of women directors on Hang Seng Index-listed company boards to 20% by 2020, working toward the long-term goal of 30%. However, at the current pace, this target will not be met globally until 2027, and likely years later in Hong Kong. By then, even more economic losses from gender disparity will have been felt by even more women, as they continue to face a glass ceiling that should have been shattered years ago.

Rebecca Walker Chan
Project Manager, CSR Asia

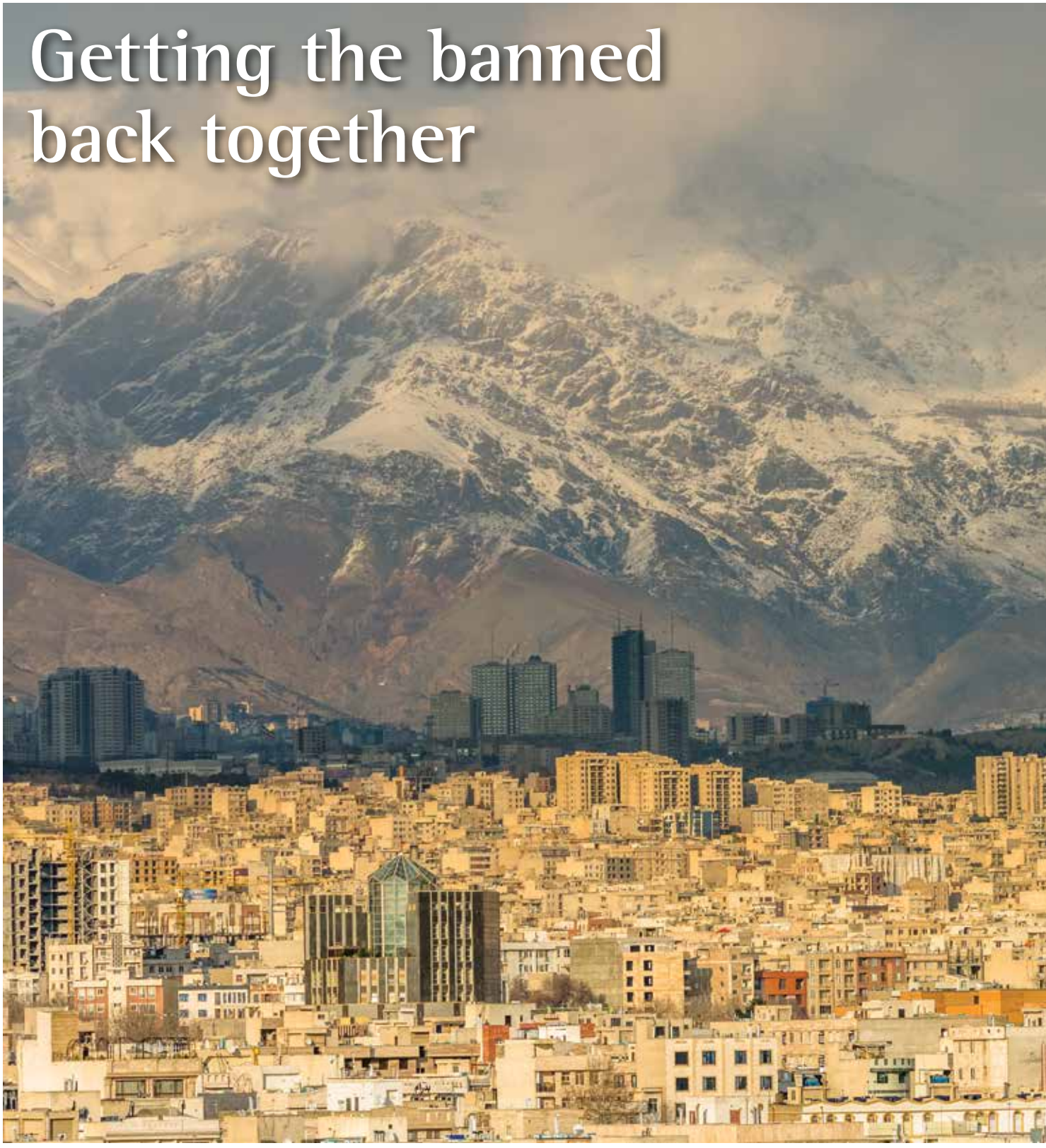
The author can be contacted at: rebecca.chan@csr-asia.com.

Best practice suggestions

Some suggested actions to create a lasting change (from McKinsey, Blackrock and Deloitte) include those listed below.

- When recruiting, consider not only individual member profiles but also assess the board as a team that works best when complementary characteristics and capabilities are in place or can be put in place.
- As a woman often juggles four times the amount of unpaid work as her male counterparts, companies should take steps to help women by expanding family friendly working practices such as policies promoting parental leave and flexible working hours.
- Articulate the benefits of diversity policies, stating why they were introduced and how they assist in building the longer-term value of the company.
- Avoid relying on recruiters and cronyism, and instead look beyond resumes and check-the-box approaches to recruiting women that fully consider a candidate's outlook, experience and fit.
- Change attitudes and cultural biases toward women by using cutting-edge and innovative approaches. To start, select and equip both male and female champions to lead cultural change within the organisation to face conscious and unconscious discrimination in the workplace.
- Embed gender diversity into operations from top to bottom, with clear managerial commitment to equality in the workplace.
- Develop processes to back up that standard, the provision of flexible working conditions to ensure that employees can achieve work–life balance, and programmes that explicitly provide mentorship, skills building and networking for women.
- Improve the transparency of diversity reporting and encourage disclosure of nomination processes that ensures diversity is reflected in any candidate list.
- Redesign succession plans that create seats for those who are truly different, for example someone with no board experience but a strong cybersecurity background or someone who more closely mirrors the customer base.
- Utilise a data-driven analytics tool that assesses management's strategies, the board's needs and desired director attributes to help define the optimal board composition.
- When recruiting new board members, consider who best can determine that management is taking the right risks to innovate and win in the marketplace.

Getting the banned back together



Eric Sohn, CAMS, Director of Business Product, Dow Jones Risk & Compliance, New York, US, looks at the potential impacts on firms involved in international trade with Iran as a result of the proposed reimposition of secondary sanctions on dealings in various goods and sectors of the Iranian economy by the US, following its exit from the Joint Comprehensive Plan of Action.

'It was the best of times, it was the worst of times', the opening lines of Charles Dickens' *Tale of Two Cities* could very well describe the state of the Joint Comprehensive Plan of Action (JCPOA) as of June 2018. According to all neutral observers, the deal to freeze Iran's nuclear weapons ambitions, negotiated by Iran and China, France, Russia, the UK, the US and Germany, is still living up to its stated goals. However, the withdrawal of the US from the pact, and the scheduled 'snapback' of the sanctions relief provided under the JCPOA later this year, has the potential to scuttle the delicate balance of concessions both sides agreed to in 2015.

The US exit from the JCPOA has significant impacts on firms involved in or interested in international trade with Iran. What will ultimately determine the future of Iran's status in the international community, however, is likely more a battle of national will and economic might than one of diplomatic overtures.

Long shadow of extra-territorial reach

The JCPOA didn't change all that much for 'US persons' (US citizens, persons resident in the US, companies registered in the US and US operations of non-US companies). While a significant number of sanctions targets were removed from the Specially Designated Nationals List (SDN List), the biggest impact was felt by non-US firms.

In addition to the removal of persons from the SDN List, an additional set of sanctions targets were moved to a new, separate list (the 'Executive Order 13599 List') that did not include secondary sanctions. Those sanctions can result in a range of economic restrictions in the US market (up to, and including, losing the ability to maintain a correspondent account at banks in the US) against

Highlights

- the withdrawal of the US from the JCPOA will mean the reimposition of secondary sanctions on dealings in various goods and sectors of the Iranian economy
- the EU plans to revive a 1996 'blocking statute' that would make complying with US sanctions illegal for EU firms in a bid to keep the JCPOA in place
- companies involved in, or interested in, international trade with Iran should factor in the stance taken by their primary regulator and government regarding the US sanctions

> “outside the US, therefore, President Trump’s actions have turned a relatively open field into an array of potential landmines”

foreign financial firms that have dealings with Iranian banks, or against firms that participate in transactions with a number of sectors of the Iranian economy, including its shipping, automotive or energy industries, or against firms involved in trade transactions in a number of mineral commodities and semi-finished goods.

Over the next few months, that will all be reinstated. Outside the US, therefore, President Trump's actions have turned a relatively open field into an array of potential landmines.

All the sanctioned parties will be returned to the SDN List, which will make them off limits worldwide due to the extraterritorial application of secondary sanctions. And, of course, secondary sanctions would also be applicable to any entity implicated by the Office of Foreign Assets Control (OFAC) 50 Percent Rule.

The secondary sanctions attached to dealings with the Central Bank of Iran and Iranian financial institutions are also being reinstated. Additionally, the US hopes to have Iranian banks removed once more from the Society for Worldwide Financial Telecommunications (SWIFT) network, the global utility which financial services firms use to, among other things, facilitate international trade. Such an action would significantly hinder Iran's ability to participate in international trade.

Additionally, all the secondary sanctions on dealings in various goods and sectors of the Iranian economy will also be reinstated. The change with the biggest potential to cause the JCPOA to fall apart, of course, is the anticipated reimposition of secondary sanctions on foreign firms involved in business dealings with Iran's petroleum and petrochemical industries. Were that to occur, it would have an outsized effect on the health of the Iranian economy, which would remove the Tehran government's remaining incentive to live up to its side of the JCPOA agreement. The Frequently Asked Questions issued in conjunction with the president's decision specifically mentions pursuing the goal of reducing Iranian revenue from petroleum and petrochemical sales.

The cruxes of the matter

The big unanswered question is how other governments will react to the US flexing its financial leverage to force other signatories out of the JCPOA. While capitulation to the demands of the world's largest economy may make economic sense, issues of global security, and the spectre of a nuclear-armed Iranian regime, may be considered more important in the overall decision-making process.

To a certain extent, all eyes are on the EU, which hosts the world's second largest economy. Jean-Claude Juncker, the President of the EU Commission, stated that the EU plans to revive a 1996 'blocking statute' that would make complying with US sanctions illegal for EU firms before the first tranche of sanctions is reimposed on 8 August. Additionally, EU leaders decided that the European Investment Bank could facilitate investments by European companies in Iran. If these intentions are realised, it will largely recreate the sanctions landscape that existed prior to 2012. Prior to that time, the US largely stood alone in imposing significant

sanctions on Iran. Because of the lack of sufficient economic leverage, those sanctions were not effective in encouraging a demonstrable change in Iranian attitudes or behaviour.

In a similar vein, how SWIFT decides to respond to US sanctions on 'specialized messaging services' will significantly impact the ease of conducting trade with Iran. For now, SWIFT has stated that it takes its orders from EU leaders in Brussels.

In the long run, however, black gold – oil – may hold the key to what ultimately becomes of the JCPOA. There is only so much crude on the world market, and automotive fuel prices have already risen dramatically in response to the US action. Additionally, other petroleum producers are experiencing production issues. Venezuelan oil production is down, and US and EU restrictions on investment in the Russian energy industry constrains their ability to fill the gap in global supply that reductions in Iranian shipments would produce. Trying to limit the development of petroleum resources in all three countries at the same time, while perhaps politically desirable, may be a challenge to get agreement on in the face of its effect on global supply and demand.

Not joint, not comprehensive... but a plan

Faced with such uncertainty, how should companies that conduct business with Iran, or wish to, proceed? Unfortunately, there is no one hard and fast answer, although there is a clear roadmap on how to arrive at the proper response.

The lynchpin of the decision-making process is the stance taken by one's primary regulator and government. Ultimately, they are the only ones who will decide whose position they will support: that of the US, or that of countries wishing to keep the JCPOA (or a negotiated replacement) in place.

It is not the responsibility of individual corporations to shoulder the burden of international relations by themselves. However, it is also not part of their role to take sole responsibility for the consequences of OFAC's extraterritorial reach. It might be wise, therefore, to treat any commerce targeted by US regulations as off limits if the government from a firm's home country does not provide relief from any enforcement actions taken by OFAC, or if it does not impose consequences for following US policies instead of its own (such as the anticipated blocking statues in the EU).

Depending on the nature of one's business, blindly disengaging from commerce with Iran out of a fear of OFAC enforcement actions may leave lucrative business behind. For example, on the day where the EU announced its intention to block US sanctions, the Danish shipping company Maersk announced its intention to withdraw from its Iranian business. On the other hand, the 2017 OFAC enforcement action against CSE TransTel, in which US jurisdiction applied to a US dollar-denominated bank account at a Singapore-based bank, should give one pause before proceeding too aggressively.

> "navigating the waters of commerce with Iran in 2018 (and beyond) may ultimately prove the old maxim about patience being a virtue"

To properly respond to the changing environment, one should become conversant in US sanctions regulations and guidance, as well as available licences and licensing policy. Luckily, all such materials are publicly available on the OFAC website, which is extremely well organised.

Navigating the waters of commerce with Iran in 2018 (and beyond) may ultimately prove the old maxim about patience being a virtue. Rather than panicking, properly understanding the regulatory exposures and exemptions that will apply to specific business transactions and relationships will provide a clearer path between expensive regulatory liabilities and profitable business opportunities.

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Social enterprises – your guide

The latest guidance note produced by the Institute's Public Governance Interest Group explores the concept of the social enterprise.

The guidance notes produced by the Institute's Public Governance Interest Group (PGIG) have explored the many different legal structures available to an organisation dedicated to the public good. The first guidance note, published in August 2016, introduced a hypothetical scenario of a director seeking advice from a company secretary on how to set up an non-governmental organisation (NGO) to help budding musicians. The first two PGIG guidance notes used this hypothetical case study to explore issues such as the relative advantages of the different legal structures available to such an organisation – a trust, a society established under the Societies Ordinance, a company under the Companies Ordinance (including a company limited by guarantee) and a statutory body.

The second guidance note explained that a limited liability company will be the most flexible form for incorporating an NGO, and the latest PGIG guidance note, the third in the series, builds on this advice. Many people not familiar with NGO governance may assume that an organisation established for a philanthropic cause will usually be a charity. The new guidance note points out that, in practice, a charity refers to a company that has obtained a tax-exempt status under Section 88 of the Inland Revenue Ordinance (Section 88 exemption).

Having a Section 88 exemption will mean that profits are exempt from tax if they are made in the course of carrying out charitable objects, but it would impose restrictions on our hypothetical NGO. For example, the objectives of the organisation would have to be restricted to those set out in law, such as the relief of poverty, or the advancement of education or religion. For this reason, establishing a for-profit 'social enterprise' without tax-exempt status offers a flexible alternative route for our hypothetical director.

Highlights

- social enterprises have the flexibility of for-profit companies while also benefitting from having a recognised philanthropic mission
- getting shareholder assent for the use of part of the profits of the organisation to pursue social objectives is key for the social enterprise model to work
- drafting of a shareholders' agreement at the outset ensures full transparency on the objectives to be pursued

What is a social enterprise?

Social enterprises are for-profit companies that opt to donate part of their profits to the furtherance of philanthropic goals. The new guidance note points out that they have become widely accepted and more common. Moreover, the Hong Kong government is keen to encourage this trend in Hong Kong, particularly since social enterprises can provide opportunities for the employment of the disadvantaged.

Establishing a for-profit social enterprise can therefore be a hybrid form between a charity and a purely commercial organisation. It can provide the flexibility

of a for-profit company – there are no restrictions on money-making activities and profits can be distributed and reinvested back into the company – while also benefiting from having a recognised philanthropic mission. The enterprise may benefit from the financial incentives the government has devised to encourage the creation of more social enterprises in Hong Kong. For example, where a social enterprise reinvests 65% or more of its distributable profits for social objectives, it may be eligible to seek support under government initiatives. The new guidance note highlights a number of government and private websites that may be of use to fledgling NGOs (see the 'Useful resources' sidebar).

As you might expect, there are governance considerations that should be taken into account if this route is followed and the guidance note provides an overview of these.

Governance considerations

The importance of shareholder assent

The guidance note stresses that getting shareholder assent for the use of part of the profits of the organisation to pursue social objectives is key for the social enterprise model to work. In the historical context, companies were supposed to maximise profits for shareholders. While times have changed and the 'social licence' for companies is now dependent on environmental, social and governance concerns, shareholder assent is still a key part of ensuring that shareholders, objectives are aligned with those of the enterprise.

The guidance note recommends the drafting of a shareholders' agreement at the outset to ensure full transparency on the objectives to be pursued. The agreement should set out clearly the purpose of the enterprise. It should also set out the register of shareholders and the voting arrangements for ordinary and

> "establishing a for-profit, social enterprise can therefore be a hybrid form between a charity and a purely commercial organisation"

'special' business matters. For example, matters designated as special business – such as acquiring real estate or changing the objects and distributions of the enterprise – may require a super-majority of votes. Some social enterprises may also, on a voluntary basis, adopt 'asset lock' and 'cap of profit sharing' provisions in the shareholders' agreement, meaning that any change to key issues would require unanimous shareholder approval.

Another key issue for the shareholders' agreement to cover is the composition

Useful resources

- The HKSAR Government's online directory of social enterprises (www.social-enterprises.gov.hk)
- The Home Affairs Department's Social Enterprises Promotion Unit (www.social-enterprises.gov.hk/en/introduction/promotionunit.html)
- The Social Innovation and Entrepreneurship Development Fund (www.sie.gov.hk)

> “where a social enterprise reinvests 65% or more of its distributable profits for social objectives, it may be eligible to seek support under government initiatives”

and governance arrangements of the board. For example, the agreement should set out any rights conferred upon shareholders to appoint board members. This affects the whole system of checks and balances on governance-related issues like the operation of bank accounts and authorisation for entering into contracts.

Other issues the shareholders' agreement could cover would include identifying who has the right to appoint the company secretary, legal advisers, auditors and other relevant professionals to the business. In addition, there may be provisions dealing with conflicts of interest and the financing of operations, which the company secretary could explore with those seeking to set up the social enterprise.

The importance of a business plan

The guidance note points out that it has become increasingly difficult for charities to open bank accounts in Hong Kong, as banks will require detailed customer due diligence prior to establishing an account. This is partly because receiving money from the public brings with it anti–money laundering and counter–financing of terrorism risks. This risk, which is an international issue for charities, should be less of a problem for social enterprises. However, the guidance note points out that a social enterprise that can provide the bank with a clearly defined business plan and financial projections will facilitate the opening of a bank account. The guidance note also sets out the list of documents required by banks and provides a link to the relevant Hong Kong Monetary Authority webpage: www.hkma.gov.hk/eng/other-information/ac-opening/documents.shtml.

What's next?

The latest guidance note from the Institute's PGIG provides timely, relevant and practical advice to governance professionals involved in NGO governance. Building on the two previous guidance notes in the series, it covers the advice governance professionals can give on the setting-up of social enterprises. In the next guidance note in the series, the PGIG will turn to the compliance issues under the Companies Ordinance where a company is the vehicle used by an organisation to deliver public good.

The guidance note reviewed in this article is available from the Publications section of the Institute's website: www.hkics.org.hk.

The Public Governance Interest Group

- April Chan FCIS FCS (Chairman)
- Lau Ka-shi BBS
- Rachel Ng ACIS ACS
- Samantha Suen FCIS FCS(PE)
- Stella Ho
- Stella Lo FCIS FCS(PE)

Mohan Datwani FCIS FCS(PE), Senior Director and Head of Technical & Research of the Institute, serves as secretary to the Institute's Interest Groups. Feedback on this project is welcome; please contact Mr Datwani at: mohan.datwani@hkics.org.hk.

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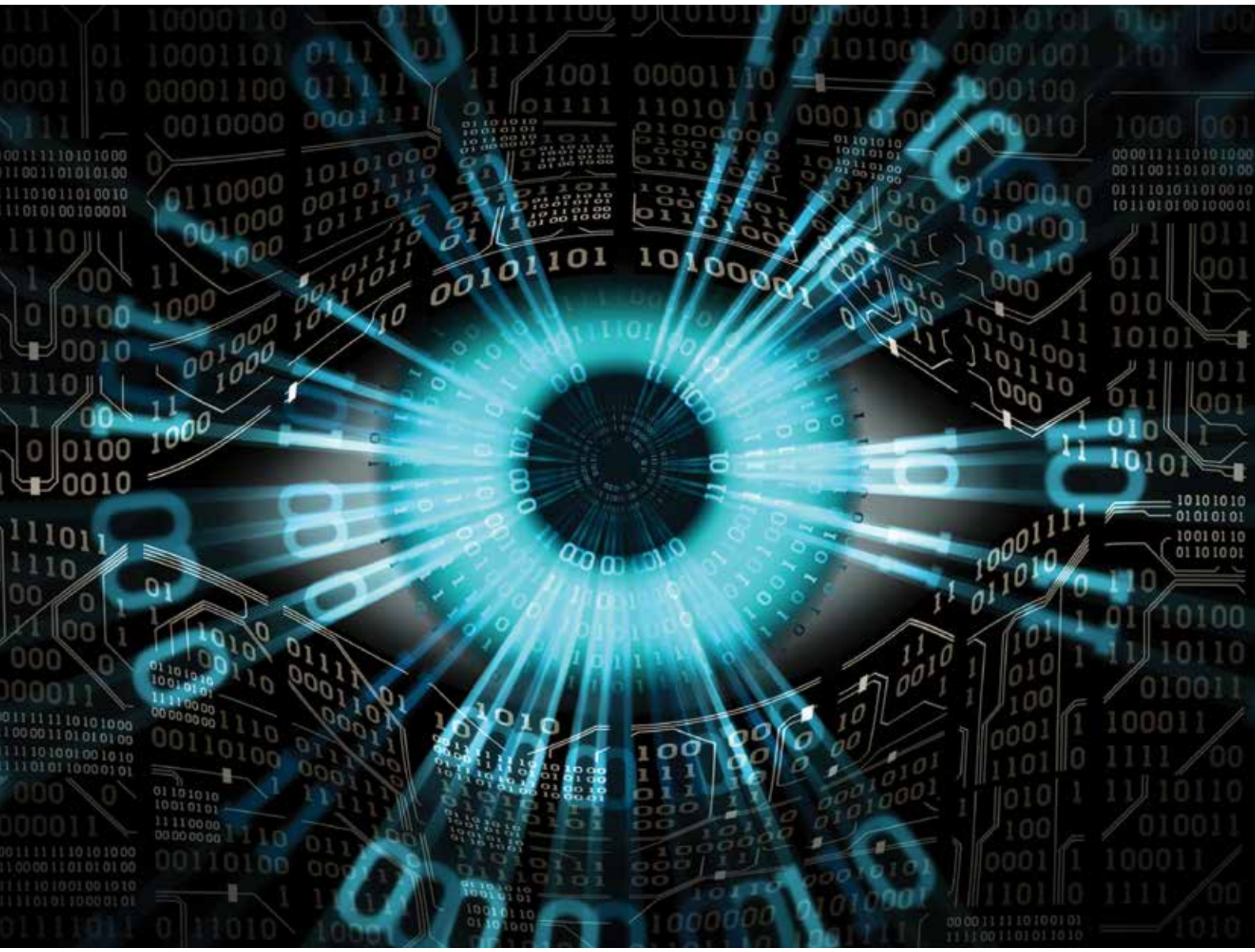
Adopting eDiscovery for internal investigations

Mei Yong, Business Development Executive, Law In Order, gives an overview of managing internal investigations using eDiscovery.



Company secretaries are often the first to be called on to manage an internal investigation. How can you effectively plan for and manage these investigations? We explore how electronic discovery (eDiscovery) tools help you mitigate risk and effectively achieve your fact-finding mission.

Internal investigations may be required for any number of reasons, including a complaint from a whistleblower regarding suspicion of fraud, or in response to a request from a regulator. The objective of any investigation is to help you with your fact-finding mission. You want to gather evidence and effectively strategise your response plan based on the findings.

The scenario – fraud investigation

Your company has received allegations from a whistleblower regarding suspicions of fraud and corruption. You are tasked with managing the internal investigation and forming the investigation team. The local regulators have also received news of this wrongdoing and made a regulatory request for information. The board may decide to proceed with litigation if necessary.

At the beginning of the internal investigation, it is essential to act quickly and ensure that no potentially relevant data is destroyed. Scoping your next steps begins with the investigation planning.

Investigation planning

Firstly, it is important to identify the nature of the fraud and corruption allegation and plan the investigation accordingly. The investigation will uncover any evidence of the fraud/corruption and will help the board decide on the appropriate action to take. Whether you are undertaking the investigation in-house or using a third party, such as a law firm or external provider, it is vital that a comprehensive investigation plan is put in place. At the initial stages of the planning, you want to define the issues to be resolved so that all involved parties have clarity.

For the information gathering stage, the sources of data and collection methodologies should be mapped out before the process begins. Identifying key persons and custodians involved in the allegation will help you focus on the right data sources. Important evidence could be found in emails and documents collected from laptops, phones and company servers related to these key persons.

Preliminary steps you may wish to take include:

- preventing access by suspected wrongdoers to company servers and devices
- suspension of employment, and
- alerting your IT team to monitor for any deletion or copying of data.

The essential question of who should undertake the investigation is also decided at this stage. If you decide to engage a third party provider, ensure there are no conflicts and that they are objective and independent. It is also important to establish clear reporting and escalation lines during your planning.

Evidence collection

Your next step is to collect the evidence for the investigation. Bear in mind that if the data is located in multiple locations and jurisdictions, you may have to take into account different laws on data privacy, state secret laws and privilege laws.

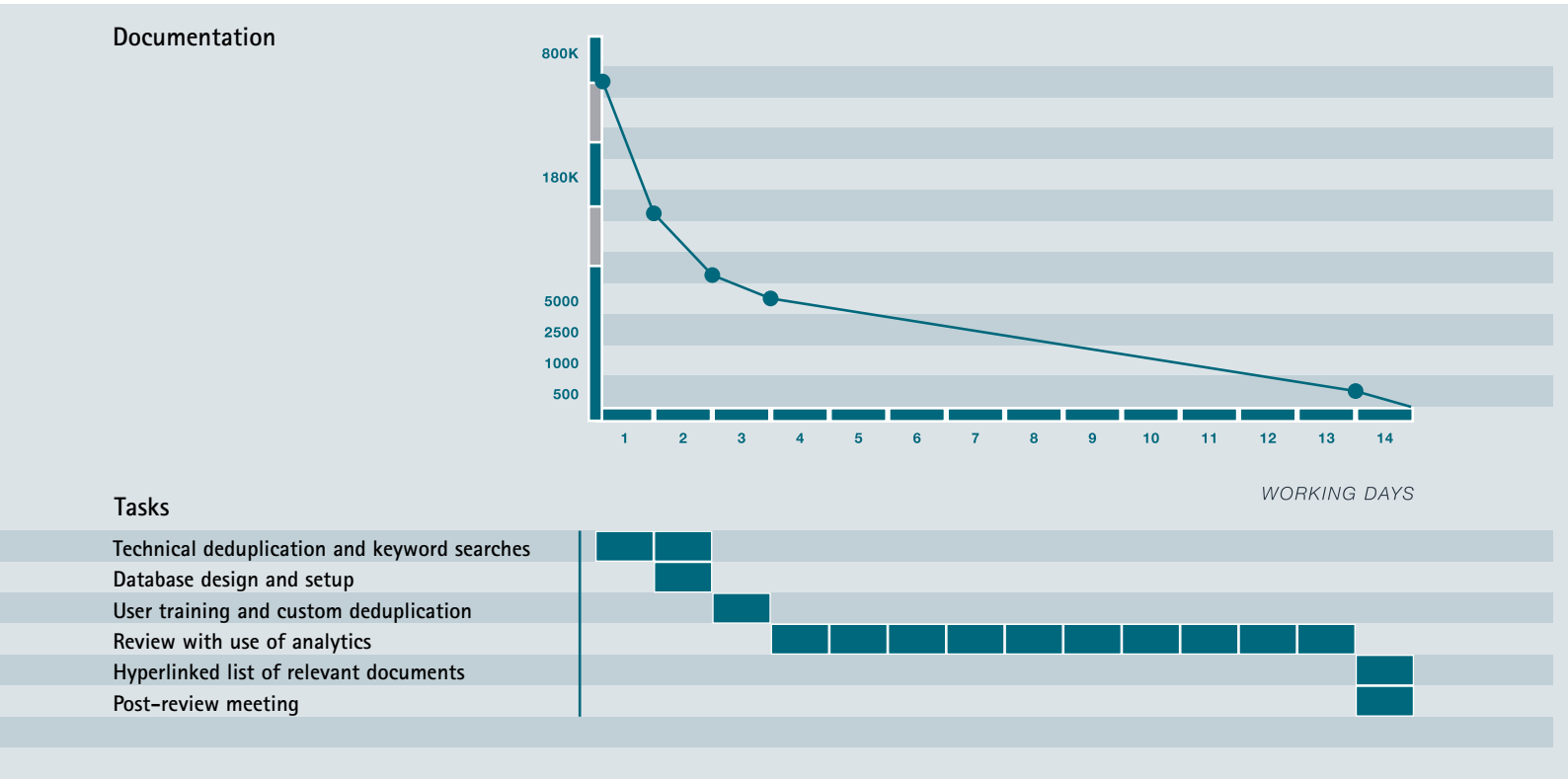
In this investigation, there is a high risk that relevant data will be deleted or changed by the wrongdoer. As such, it may be appropriate to undertake a full forensic collection instead of a basic collection. Forensic collection meets requirements for evidence in relation to chain-of-custody and authentication. Whichever method you choose, it is important that defensible preservation and collection methods are used to ensure the evidence is acceptable in court proceedings should litigation arise.

Confidentiality is a major issue when considering collection methodology, particularly when deciding who within your company will review the evidence.

Highlights

- with eDiscovery tools, your internal investigations can be more efficiently and accurately conducted, especially if it involves large data sizes
- it is important that defensible preservation and collection methods are used to ensure the evidence is acceptable in court proceedings should litigation arise
- if the data is located in multiple locations and jurisdictions, you may have to take into account different laws on data privacy, state secret laws and privilege laws

Using eDiscovery



Finally, collection parameters and timelines must be carefully set to ensure that nothing is missed but time and resources are not unnecessarily wasted.

Using eDiscovery for review

Your investigation may involve reviewing thousands or tens of thousands of emails and huge amounts of data. Today, there are tools available to assist you with this and cut down on time and costs.

Let us assume that your investigation involves 88 GB of email data. Reviewing this using the traditional approach of printing (resulting in 1.2 million pages) and reviewing in hard copy would pose a real challenge. You may struggle to conduct the internal investigation in time for the board to make decisions and to meet the regulator's request deadline.

The eDiscovery method makes use of an online review platform powered with analytics tools. One of the advantages of adopting an eDiscovery approach is the ability to conduct an early case assessment (ECA). ECA helps you quickly identify key documents within large datasets. This enables you to focus on critical evidence first and prioritise these for review. ECA provides you with a high-level overview of the data that has been collected and helps you remove duplicated or irrelevant information.

Investigation reporting

The investigation report produced by the review will help you report to all necessary stakeholders in sufficient detail. With the findings, you can then maintain privilege and make recommendations to the board where appropriate. In the process, you may want to examine the root cause of the wrongdoing and consider any lessons learned.

Conclusion

With eDiscovery tools, your internal investigations can be more efficiently and accurately conducted, especially if it involves large data sizes. As companies move into the world of Big Data it is increasingly important to be aware of the investigation options available to you in order to select the most appropriate method for your company.

Mei Yong

Business Development Executive
Law In Order

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Practical Company Secretarial Workshops

The roles of company secretaries have evolved from performing only compliance and administrative functions to having a much more strategic and deliberative role as an organisation's governance advisor. The level of responsibility calls for a thorough knowledge of the business of the organisation and of the laws, rules and regulations that govern its activities. It also requires astute judgment and considerable confidence.

HKICS is pleased to have primarily Mrs April Chan, Past President and Chairman of Technical Consultation Panel of the Institute and Inaugural President of Corporate Secretaries International Association Limited (CSIA), to present a series of practical workshops to facilitate company secretarial and governance professionals at their various stages of careers to appreciate the dynamic and evolving roles of company secretaries. The workshops comprise four parts with 14 modules (details attached) and each module will be conducted in small interactive groups. Applicants are free to choose those modules which are of interest to them to attend.

Part 1 – How to Manage Board Meetings Effectively? Module 1 - Effective Board Meetings Module 2 - Board Dynamics at Meetings	**Part 2 – Getting to Know Your Board?** Module 3 - Board Composition and Succession Planning Module 4 - Board Directors Module 5 - Board Evaluation
Part 3 – How to Communicate Effectively with Your Management, Shareholders and Other Stakeholders? Module 6 - The Company Secretary: The Board's Communicator Module 7 - Annual General Meetings	**Part 4 – What You Can Do More?** Module 8 - Strategy: Development and Analysis Module 9 - Risk and Business Continuity Planning Module 10 - Building Ethical Cultures Module 11 - Good Corporate Citizenship Module 12 - Integrated Reporting Module 13 - Corporate Finance Module 14 - Financial Oversight & Analysis

Language:	Cantonese
Accreditations:	HKICS 3.5 ECPD points per module
Fee:	HK$900 per module per HKICS member

Seats are limited and enrolment is on first come first served basis.

For enquiries, please contact Professional Development Section at 2881 6177 or email to ecpd@hkics.org.hk.

Presenter:

Mrs April Chan FCIS FCS
Past President and
Chairman of Technical
Consultation Panel
HKICS
Inaugural President
CSIA

Organiser:

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Tel: (852) 2881 6177 Fax: (852) 2881 5050 Email: ecpd@hkics.org.hk Website: www.hkics.org.hk

Professional Development

Seminars: May 2018

4 May
Company secretarial practical training series: continuing obligations of listed companies (re-run)

Chair: *Lydia Kan FCIS FCS(PE), Institute Professional Development Director*
Speaker: *Ricky Lai FCIS FCS, Company Secretary, HKC (Holdings) Ltd*

7 May
Offshore fund formation

Chair: *Ernest Lee FCIS FCS(PE), Institute Council member and Audit Committee Chairman, and Partner, Audit & Assurance, Deloitte China*
Speaker: *Ann Ng, Partner, Maples and Calder (Hong Kong) LLP*

8 May
Following dirty money: patterns in hiding and tracing assets

Chair: *Frances Chan FCIS FCS, Institute Professional Services Panel member, and Founder and Director, K Leaders Business Consultants Ltd*
Speaker: *Jessica Pyman, Partner, Managing Director Hong Kong, Mintz Group*

9 May
Disclosure of interests in shares (part XV of the SFO) – an introduction

Chair: *Richard Leung FCIS FCS, Barrister, Institute Past President, and Barrister-at-Law, Des Voeux Chambers*
Speaker: *PH Chik, Solicitor, Institute Mainland China Technical Consultation Panel legal adviser*

10 May
The myth of risk management and internal control

Chair: *Grace Wong FCIS FCS(PE), Institute Professional Development Committee member, and Company Secretary and Deputy General Manager, Investor Relations Department, China Mobile Ltd*
Speaker: *Melissa Fung, Partner, Risk Advisory, Deloitte China*

11 May
Company secretarial practical training series: notifiable and connected transactions

Chair: *Julian Leung FCIS FCS, Company Secretary and Senior Manager, Finance, New Provenance Everlasting Holdings Ltd*
Speaker: *Ricky Lai FCIS FCS, Company Secretary, HKC (Holdings) Ltd*

15 May

Practical ways to resolve offshore claim disputes

Chair: *Joey Chung FCIS FCS, Vice-President, Board of Directors' Office/CEO Office, ICBC International Holdings Ltd*

Speaker: *Wilson Cheng, Partner, Tax & Business Advisory Services, EY*

18 May

ESG reporting – the road ahead

Chair: *Sally Chan FCIS FCS(PE), Assistant Company Secretary, CLP Holdings Ltd*

Speaker: *Ir Coleman Ng, Director, Business Reporting and Sustainability, KPMG China*

Online CPD (e-CPD) seminars

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
24 July 2018	4.00pm–5.30pm	Corporate fraud and misconduct – SFC's recent cases and approach	1.5
26 July 2018	10.30am–12.00pm	Free seminar on 'anti-money laundering/counter-financing of terrorism seminar for trust or company service providers' (English)	1.5
14 August 2018	2.30pm–4.45pm	An update on significant controllers registers and the licensing regime for TCSPs	2
20 August 2018	10.30am–12.00pm	Free seminar on 'anti-money laundering/counter-financing of terrorism seminar for trust or company service providers' (Cantonese)	1.5

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

Membership

New graduate

Congratulations to our new graduates below.

Jung Wai Tak
Ko Chi Hang

New associates

Congratulations to our new associates listed below.

Au Yeung Lai Yee
Cha Fei
Chak Shuk Man
Chan Kai Hong
Chan Mei Nga
Chan Oi Kuen
Chan Tsz Yu
Chan Wai Yi
Chan Wing Ki
Chan Wing Tung
Chen Ka Ying
Cheng Chau Kuen
Cheng Ching Kit
Cheung Chung Wing
Cheung Kit Ying
Chong Wan Kai
Choy Man Sau
Chung Kam
Fong Mei Ling
Fung Tin Wai, Francis
Ho Lai Ying
Ho On Ni
Ho Sze Nga
Hsing Tsang Lun
Ip Yan Pui
Ko Wing Man
Lam Hoi Shan
Lam Wai Ying, Patricia
Lam Wing Yiu
Lau Chau Suen
Lau Wai King, Sarita
Law Yuk Yee
Lee Lung Piu
Lee Wing Yan
Leung Cheuk Hei
Leung Ka Yee
Li Man
Liang Lai Yee
Lo Wai Yan
Lo Yu Yung
Mak Ho Yiu
Ng Ka Ki
Ngai Tan Ching
Pau Yim Chuen
Sham Yee Tung
Sit Lai Ha
So Suk Ying
Tai Hio Fong
Tam Pak Yu, Vivien
Tang Pak Yan
Tang Yee Wah
Tsang Man Shan
Wan Pui Hin, Glady
Wong Kei Lai, Gary
Wong Kit Yi
Wu How Ying
Yip Yim Fan
Yu Natasha On Nei

Membership/graduateship renewal for 2018/2019

The membership/graduateship renewal notice, together with the debit note, for the financial year 2018/2019 was posted to members and graduates in early July 2018. Members and graduates should settle the payment, as well as complete and return the personal data update form to the Institute Secretariat as soon as possible, but no later than Sunday 30 September 2018. Failure to pay by the deadline will constitute grounds for membership or graduateship removal. Reinstatement by the Institute is discretionary and subject to payment of the outstanding fees, and with levies determined by the Council.

Members and graduates who have not received the renewal notice by the end of July 2018 should contact the Institute's Membership section at: 2881 6177, or email: member@hkics.org.hk. For details of the fee structure for the financial year 2018/2019, please refer to the May edition of CSj (pages 38-39) or visit the Membership section of the Institute's website: www.hkics.org.hk.

Donate as you spend with Chartered Secretaries AMEX credit card

Institute members, graduates and students are encouraged to apply for the Chartered Secretaries AMEX credit card to enjoy a range of exclusive privileges. In addition, purchases made with the Chartered Secretaries AMEX credit card will make a positive contribution to The Hong Kong Institute of Chartered Secretaries Foundation Ltd, which was established by the Institute in 2012.

For credit card details, benefits and the relevant application forms, please visit the Membership section of the Institute's website: www.hkics.org.hk.

CHARTERED SECRETARIES
特許秘書

The Hong Kong Institute of Chartered Secretaries (HKICS) is proud to present:

Corporate Governance Week 2018

CG week
8–15 September 2018

Please attend and engage with aspiring talents, company secretaries, governance leaders and regulators on key corporate governance (CG) issues for new perspectives.

8 September:
CG Paper Competition, Presentation and Awards

12–14 September:
Enhanced Continuing Professional Development Seminars, Hohhot, Mainland China

13 September:
KPMG/CLP/HKICS ESG Research Report release

14 September:
Biennial Corporate Governance Conference (CGC) 'Corporate Governance: The New Horizon'

- **Guest of Honour** – The Honourable James Lau, Secretary for Financial Services and the Treasury
- **Keynote Speaker** - Professor Mervyn King – Chairman, International Integrated Reporting Council

15 September:
CGC Corporate Visits

15 September:
HKICS Students' Masterclass - Professor Mervyn King

For more information, please contact:
2881 6177 or email:
ask@hkics.org.hk

www.hkics.org.hk

Membership – continued

Members' activities highlights: May and June 2018

5, 12, 19 and 26 May 2018
Fun & Interest Group – yoga training

9 June
HKICS dragon boat fun day 2018

26 May
Community Service – single elders home visit project 2018 – first gathering

19 June
Members' Networking – happy workplace: stress management

Forthcoming membership activities

Date	Time	Event
14 July 2018	9.45am–12.30pm	Mentorship Training – master relationship through communication hints workshop (by invitation only)
4 and 11 August 2018	10.45am–1.00pm	Fun & Interest Group – bowling training (class A)
11 August 2018	9.45am–12.00pm	Community Service – volunteer training
18 and 25 August 2018	10.45am–1.00pm	Fun & Interest Group – bowling training (class B)

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

Advocacy

Edith Shih elected ICSA International President

The Institute, as the Hong Kong/China division of The Institute of Chartered Secretaries and Administrators (ICSA), is pleased to announce that Institute Past President Edith Shih FCIS FCS(PE) has been elected International President of ICSA effective 1 July 2018 for two years. Ms Shih is an Executive Committee member, Chairman of the Thought Leadership Committee, and formerly the Senior Vice-President of ICSA. Congratulations to Ms Shih on her election. The Institute will continue to offer its full support to, and work closely with, ICSA for the future development of the Chartered Secretary and Chartered Governance Professional qualifications, as well as to facilitate best governance practices throughout the world.

Advanced seminars for board secretaries of A+H share companies

The Institute and the Shanghai Stock Exchange (SSE) jointly organised advanced seminars for board secretaries of A+H share companies cum the 46th AP ECPD seminars on 'Mergers & Acquisitions (M&A) and Financing' in Beijing between 23 and 25 May 2018. The seminars attracted over 170 participants from H-share, A+H share, red-chip, A-share and to-be-listed companies.

Institute President David Fu FCIS FCS(PE) delivered the welcoming address at the occasion. Other speakers from the SSE, senior professionals and board secretaries also shared their knowledge and experience on a wide range of topics including: the latest regulatory policies and new enforcement regulations by the China Securities Regulatory Commission; the legal responsibilities of directors and senior management; tax due diligence and integration; M&A, reorganisation and refinancing; mixed-ownership reform of state-owned enterprises; information disclosure; connected transactions and effective management; innovation for overseas investment; and global financial status. Small group discussions of these topics were arranged during the seminars.

Vice-President Dr Gao Wei FCIS FCS(PE), Past President Dr Maurice Ngai FCIS FCS(PE), Chief Representative of the Institute's Beijing Representative Office Kenneth Jiang FCIS FCS(PE) and Affiliated Person Yu Tengqun chaired different sessions at the seminars.

The Institute would like to thank the speakers, participants, co-organiser (SSE), associate organiser (Shinewing CPA), sponsors (SW Corporate Services Group (Hong Kong) Ltd; Vistra Hong Kong and Wonderful Sky Financial Group Holdings Ltd) and supporting organisations (Clifford Chance LLP; Ernst & Young; Herbert Smith Freehills LLP; and Tricor Services Ltd) for their support.

The Institute attends the Mediation Conference 2018

Institute Chief Executive Samantha Suen FCIS FCS(PE) was invited by the Department of Justice (DoJ) of the Government of the Hong Kong SAR to attend the Mediation Conference 2018 which was jointly organised by DoJ and Hong Kong Trade Development Council on 18 May 2018. The Mediation Conference 2018, of which the Institute was a supporting organisation, offered a golden opportunity to exchange views and experiences from leading international and local experts and practitioners on the latest global development in mediation. Council member Ernest Lee FCIS FCS(PE) also attended a networking luncheon which was arranged by DoJ for the conference speakers, moderators, delegates of the organiser and supporting organisations, as well as members of the DoJ Steering Committee on Mediation.

Advocacy (continued)

Chief Executive as a judge for TIHK Tax Debate Competition 2018

Institute Chief Executive Samantha Suen FCIS FCS(PE) was invited by The Taxation Institute of Hong Kong (TIHK) to be a member of the judging panel for the Tax Debate Competition on 26 May 2018.

At the debate

HKCPS visit to the Greater Bay Area in Guangdong

On 1 and 2 June 2018, a visit to the Greater Bay Area in Guangdong was arranged by The Hong Kong Coalition of Professional Services (HKCPS) in anticipation of the promulgation of the national development plan by the Central Government of the People's Republic of China, with the participation of about 30 delegates, including HKCPS Chairman and the National Committee member of the Chinese People's Political Consultative Conference Sr PC Lau SBS, as well as the representatives of the member bodies of HKCPS, of which the Institute has been a member since 2011.

During the visit, a meeting with the Guangdong Government leaders and site visits to the Shenzhen-Zhongshan Bridge, Hong Kong-Zhuhai-Macao Bridge and Zhuhai Henqin Pilot Free Trade Zone were arranged.

A bird's eye view

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

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CHARTERED SECRETARIES 特許秘書

International Qualifying Scheme (IQS) examinations

December 2018 examination schedule and enrolment

The timetable and enrolment form for the December 2018 examinations are available under the Studentship section of the Institute's website: www.hkics.org.hk. The December 2018 examination enrolment is from 1 to 29 September 2018.

Syllabus update – Corporate Administration

The topic, titled *Hong Kong Competition Law*, will be included in the syllabus of Corporate Administration under the field of Corporate Assets with effect from the December 2018 examination diet.

For details of the syllabus, please refer to Chapter 14 of the Corporate Administration study pack or, visit the IQS Syllabus of the International Qualifying Scheme under the Studentship section of the Institute's website: www.hkics.org.hk.

Policy – payment reminder

Studentship renewal

Students whose studentship expired in May 2018 are reminded to settle the renewal payment by Monday 23 July 2018.

Exemption fees

Students whose exemption was approved via confirmation letter in April 2018 are reminded to settle the exemption fee by Monday 23 July 2018.

Studentship

Studentship activities highlights: May and June 2018

26 May
HKICS seminar for collaborative course students

14 June
Postgraduate Programme in Corporate Governance in Shanghai (third intake) – information session

13 June
Dinner with members and students at Shanghai

25 June
HKICS Chartered Secretary information session

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for 11 consecutive years

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