APERCU

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BDO WINS IAB NETWORK OF THE YEAR AWARD 2018

We are proud to announce that BDO has once again been awarded the prestigious Network of the Year Award by the International Accounting Bulletin (IAB).

The IAB Awards celebrate excellence in the accounting profession. Network of the Year is awarded to a multi-firm organisation that has demonstrated the most profitable growth strategies during the past 12 months and has excelled in key strategic and operational areas. A winner of the award is recognised as a reputable brand that consistently delivers high quality professional services.

For more details, please view the press release at https://www.bdo.com.hk/news/2018/bdo-wins-iab-network-of-the-year-award-2018

MANAGING COMPLEX CROSS-BORDER ASPECTS – SOCIAL VS CORPORATE RESPONSIBILITIES

In the history of business development, multinational enterprises (MNEs) played a pivotal role in integrating – or segregating – business cultures and social values. Fast-forward to modern times, these large companies are continuing to bridge gaps between markets, technologies and people across the globe. Cross-border trade has promoted efficiency and convenience in the global economy; however, it has also created socio-economic discord among states, giving rise to protectionism globally today. Similarly, although MNEs have retained their instrumental role in improving global relations, their “profiteering” behaviour can be perceived as having adverse social and corporate effects that instigate global economic conflict.

MNEs face many dilemmas between the social and the corporate due to the conflicting demands of stakeholders, such as shareholders, governments, employees, consumers and societies. Because MNEs operate across several countries, they encounter such dilemmas often and they have frequently been the target of legislative action plans that aim to protect states’ social and economic welfare. Conventional wisdom tells us that transfer pricing (TP) regulations are a means for states to protect and enhance their national economic welfare via taxation. This paper explores whether such regulations would affect the responsible corporate and social management of MNEs as they navigate cross-border operations.

Responsible cross-border corporate management

MNEs operating in Hong Kong have recently grown in their economic and social profile, but they have also come under increased scrutiny from the government, especially the Inland Revenue Department (IRD). In July 2018, the Inland Revenue Ordinance (Amendment) (No. 6) 2018 was enacted in Hong

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Kong, which closely follows the Organisation for Economic Co-operation's (OECD's) TP Guidelines and implements the OECD's Base Erosion and Profit Shifting (BEPS) framework. The key purpose of the TP legislation is to strengthen efforts to regulate taxable MNEs at the local level. This OECD-based legislation tightens control of MNEs' cross-border operations. Such increased scrutiny of MNEs is due to their tax practices that are perceived as harmful and their alleged lack of concern for local economic well-being. Many OECD countries have already adopted this framework to ensure that MNEs uphold their fiscal responsibilities and maintain transparency in their accounting practices. The framework also provides a unified regulatory system for MNEs, which is important as they operate in multiple jurisdictions. The TP regulations effectively constrain the commercial behaviour of MNEs by setting out rules that are accepted by tax authorities internationally: they compel MNEs to manage their cross-border strategies responsibly with the aim of improving their reputation in national and international settings.

Likewise, MNEs can use these OECD regulations as the basis for their cross-border policies. The TP framework aims to identify acceptable cross-border policies and restrict unwanted behaviour in cross-border trade. MNEs must consider local demands and preferences to develop effective corporate strategies that maximise shareholder value. In other words, inability to capture local market information reduces shareholder value. Thus, effective corporate management ensures that local information is incorporated into MNEs' worldwide strategies. The TP regulations are a means to ensure that information about local markets and corporate information is shared among and integrated into MNEs. This cross-border disclosure requirement provides a mechanism for affiliated entities to share relevant cross-border information and local market intelligence so that MNEs can develop responsible strategies to corporate management.

Managing cross-border social responsibilities

A responsible investment strategy considers environmental, social and governance (ESG) factors in the selection and management of portfolios. Newly released research conducted by BDO in Hong Kong has revealed that operational performance is closely connected to the ESG factors a company has considered. The main social element is the company's understanding of its employees' health and well-being, which are the fundamental drivers of the economy. Thus, ESG governance provides important insights into how MNEs respond to local social issues when conducting global business initiatives. The BDO research recommends that although there are cost implications, good ESG reporting will help MNEs to manage their operational risks more effectively, improve their corporate reputation, provide better access to capital, and enhance their talent retention.

As human rights, environmental protection and workplace benefits top the social justice rankings, and these social concerns have direct implications for corporate management. Moreover, a society's social structure is strongly influenced by its culture. But even in the most individualistic societies, business development can only be enhanced when social and cultural conflicts are minimised. Since cross-border businesses are driven by local demands, social issues cannot be overlooked: consumer behaviour is deeply embedded in the local economy. To make a positive contribution to the local economy, a responsible global management strategy requires social knowledge from local countries. Therefore, for a sustainable global business model, MNEs' cross-border corporate strategies cannot be managed in isolation from their approach to corporate social responsibility.

In the course of optimising profits, MNEs must ensure that their business processes do not disrupt social norms in the countries in which they operate. As such, corporate governance is an important system that controls MNEs' business behaviour as they manage their social and corporate responsibilities. According to the BDO Hong Kong report, MNEs should improve their ESG reporting to make their corporate strategies more transparent for local and international communities. To do so, they should systematically review their ESG management policies to align their business objectives with social goals. They should also refine and improve their ESG governance frameworks. This creates a culture of managing cross-border social duties responsibly, which could improve their operational performance and corporate reputation.

Can TP regulations promote responsible cross-border management?

Cross-border management is crucial for MNEs. Their TP strategies and social responsibilities are heavily influenced by the markets in which they operate, because preferences and demands for goods and services are often dictated by social and cultural factors. Thus, the dilemma between social and corporate objectives may converge. To design management controls, MNEs should account for internal operating issues in addition to social, cultural and market requirements, as this will help them align their global operations with their social awareness.

The OECD TP framework provides a uniform compliance platform for MNEs in their inter-company transfers. At the same time, this internationally acceptable propriety helps to smooth out national differences, both social and economic. This regulatory compliance requirement forces MNEs to identify strategies that fit their global operations, and such strategies must integrate operational objectives and social undertakings from local and global perspectives. As mentioned previously, developing suitable TP strategies requires a good understanding of local economic, social and cultural factors. The OECD TP framework encourages MNEs to manage their corporate behaviour and to avoid negative effects on social welfare in countries in which they operate. It provides a foundation for MNEs to comply with the full spectrum of global and local rules and norms. Complying with the TP regulations helps MNEs to manage their corporate and social objectives responsibly, while optimising their overall shareholder value. In other words, the TP regulations not only impose cross-border rules but also encourage better awareness of local societies when developing responsible cross-border business and social strategies. If the compliance requirement yields successful economic outcomes and social benefits, this indicates cross-border regulatory regime could enable responsible corporate and social management.

What lies ahead in cross-border transactions?

As corporate and social responsibilities have substantially altered the economics of the firm, MNEs face additional challenges when establishing the 'arm's length' transactions. Actions undertaken in corporate or social responsibilities may not have immediate financial statement impact, but non-pecuniary impact still exert pressure in firm's operating structure, which directly affect the mechanics in price setting. OECD TP Guidelines clearly states that "business strategies would take into account many aspects of an enterprise, such as innovation and new product development, degree of diversification, risk aversion, assessment of political changes, input of existing and planned labour laws, duration of arrangements, and other factors bearing upon the daily conduct of business." (1.114)

The author believes that many external factors, be it economic, social or political, could impact the economics of the firm where MNEs are forced to continuously adapt to from global and local perspectives. OECD TP Guidelines also recognise that though not straight forward, it is necessary for MNEs to account for these aspects when setting their inter-company pricing strategies. Arm's length principle is only 'arm's length' when such exogenous factors are properly accounted for. Since most of these socio-political or economic factors are firm-specific, cross-border transactions, then, cannot use an one-size-fits-all approach. BDO Hong Kong TP experts have immense experiences in helping MNEs to examine such broad spectrum of issues in reviewing and establishing their cross-border transactions. Moreover, our BDO transfer pricing experts have extensive international TP experience. By working closely with the BDO global TP network, our experts are keen to explore innovative manners to analyse and advice on aligning inter-company transactions with OECD arm's length principle.

Should you like to explore solutions to address various cross-border issues, the author would be delighted to have detailed discussion with you.

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BDO ESG AWARDS PRESENTATION CEREMONY 2019

The BDO ESG Awards recognises outstanding listed companies in Hong Kong who have made a positive impact in the areas of Environmental, Social and Governance (ESG) – those who implement outstanding sustainability initiatives.

Having started in 2018, the Awards aim to encourage companies to be more aware of their social responsibility to incorporate sustainability into their business model. In its inaugural awards ceremony, a total of 24 companies were awarded either the 'Best in ESG' or 'Best in Reporting' categories and among them, four companies were also awarded the 'ESG Report of the Year' Award.

Co-organised with South China Morning Post (SCMP), this year, in addition to the three existing awards - 'Best in ESG', 'Best in Reporting', and 'ESG Report of the Year' - a new category called 'ESG Report of the Year (Newly Listed Companies)' has been added as recognition specifically for newly listed companies who have performed well in the areas of ESG. The second BDO ESG Awards will be held at Grand Hyatt Hong Kong on 20 February 2019 to announce the winners.

Organiser: BDO

Co-organiser: South China Morning Post

ESG SERIES IN PARTNERSHIP WITH SCMP

Environmental, Social and Governance (ESG) criteria have become an important index for investors to evaluate a company's investment-worthiness. In partnership with SCMP, a series of ESG articles has been launched to advocate the importance of ESG. In the first episode, employees of ESG-compliant companies to share how their employers have helped them achieve career and personal growth through supportive HR policy. The second episode talked about the relevance between ESG commitment and financial performance. The last episode will be launched in March 2019, please stay tuned.

To view the articles, please visit www.scmp.com/topics/good-company

NEW SERVICE LINE – FINANCIAL REPORTING ADVISORY

BDO is pleased to announce our recent launch of "Financial Reporting Advisory" as a new individual advisory service line.

Technical advice tailored to your business

Every business faces a financial reporting or accounting issue at some point when preparing their financial reports. In these situations, expert advice underpinned by an in-depth understanding of the financial reporting standards (International Financial Reporting Standards (IFRS) or Hong Kong Financial Reporting Standards (HKFRS), as applicable) is crucial.

BDO has one of the largest technical accounting divisions in Hong Kong, with a number of its team members closely connected with BDO International's global IFRS team.

Via our extensive global network, BDO is at the forefront of IFRS/HKFRS reporting and implementation.

Our service offering in each technical area includes:

- Specialist technical advice
- Implementation services of new accounting standards
- Forensic / expert witness services in application of accounting standards
- Training
- Preparation of accounting manuals and policies
- Assisting in the preparation of financial statements

For more information, please visit our Financial Reporting Advisory website at: https://www.bdo.com.hk/en-gb/services/audit-assurance/financial-reporting-advisory

If you would like to obtain a hard copy of our service flyer, or have a discussion with our Financial Reporting Advisory specialists, please contact us via email at info@bdo.com.hk or +852 2218 8288.

LATEST UPDATES ON EMPLOYMENT-RELATED LEGISLATION

The article we published in the September 2018 issue of APERCU updated readers on the latest employment-related legislative amendments for 2018/19 and beyond. In the interim, some legislative amendments have been updated and changes have been proposed that would affect employers.

1. The Employment (Amendment) (No. 2) Ordinance 2018 became effective on 19 October 2018

If an employee has been unreasonably and unlawfully dismissed and the employee makes a claim for reinstatement or re-engagement, the Labour Tribunal (LT) may make an order for reinstatement or re-engagement without the need to secure the employer's agreement.

The definitions of unreasonable dismissal and unlawful dismissal are provided in **Table 1**:

Table 1: Definitions of unreasonable dismissal and unlawful dismissal

Unreasonable dismissal		Unlawful dismissal
Dismissal other than for the following valid reasons • The conduct of the employee • The capability or qualifications of the employee for performing his or her work • Redundancy or other genuine operational requirements of the business • Statutory requirements (ie when it would be against the law to allow an employee to continue to work in his or her original position or to continue with the original terms in his or her employment contract) • Other substantial reasons	AND	Dismissal which is in contravention of the law • During pregnancy or maternity leave • During paid sick leave • After work-related injury and before compensation is determined, settled and/or paid under the Employees' Compensation Ordinance • By reason of the employee exercising trade union rights • By reason of the employee giving evidence for the enforcement of relevant labour legislation

If no order for reinstatement or re-engagement is made by the LT, the LT may make the below payable by the employer to the employee:

- An award of terminal payments as considered fair and appropriate by the LT.
- An award of compensation up to HK$150,000.

If the employer does not eventually reinstate or re-engage the employee as required by the LT order, the employer will have to pay the employee a further sum amounting to three times the employee's average monthly salary. This further sum is capped at HK$72,500 and must be paid on top of the above-mentioned monetary remedies payable to the employee as ordered by the LT.

The employer commits a criminal offence if he or she wilfully and without reasonable excuse fails to pay the further sum under an order made by the court or LT. If convicted, the employer must pay a maximum fine of HK$350,000 and faces up to three years of imprisonment.

2. Amendment to the statutory minimum wage rate with effect from 1 May 2019

The Chief Executive in Council has accepted the recommendation of the Minimum Wage Commission to increase the statutory minimum wage (SMW) rate from the prevailing level of HK$34.50 per hour to HK$37.50 per hour. Subject to the approval of the Legislative Council, the revised SMW rate will take effect on 1 May 2019.

The SMW rates before and after the amendments are summarised in **Table 2**.

Table 2

Details	Amendment to statutory minimum wage rate in 2019	
	Prevailing level of statutory minimum wage before amendment since 1 May 2017	Will come into force from 1 May 2019 (subject to the approval of the Legislative Council)
Minimum Hourly Wage Rate	HK$34.50 per hour	HK$37.50 per hour
Monetary cap on keeping records of hours worked by employees	HK$14,100 per month	HK$15,300 per month

3. Proposal to extend statutory paternity leave

The Employment (Amendment) (No. 3) Ordinance 2018 in respect of extending statutory paternity leave from three days to five days became effective on 18 January 2019.

4. Proposal to extend statutory maternity leave

The government has proposed extending statutory maternity leave from the current 10 weeks to 14 weeks.

The government will fund the cost for this extra maternity leave pay by reimbursing employers. If an employee is entitled to maternity leave pay under the Employment Ordinance, the employer must first provide the employee with maternity leave pay for both the current 10 weeks' statutory maternity leave and the additional four weeks' statutory maternity leave. Afterwards, employers may apply for reimbursement from the government for the four weeks' statutory maternity leave pay.

The amount of reimbursement of the four weeks' statutory maternity leave pay is capped at HK$36,822 per employee. The current cap is equivalent to an employee earning a monthly wage of HK$50,000 (ie HK$36,822 = HK$50,000 x 12 x 28/365 x 4/5). This cap may be reviewed and adjusted from time to time.

The rate of statutory maternity leave pay would be maintained at four-fifths of the employee's average daily wages.

The government has extended maternity leave for all female government employees to 14 weeks with effect from 10 October 2018.

In addition, it is also proposed that the Employment Ordinance be amended to update the definition of miscarriage so that an employee who suffers a miscarriage at or after 24 weeks of pregnancy may be entitled to maternity leave.

The Labour Department will report the outcome of the review to the Labour Advisory Board and seek its views on the proposal within the year 2018. The LegCo Panel on Manpower will also be consulted in this respect.

5. Updates on the proposed abolishment of the Mandatory Provident Fund (MPF) offsetting arrangement

The government has been in active discussion with both the business sector and the labour sector since the Chief Executive's 2017 Policy Address in order to explore viable options

for the abolishment of the MPF offsetting arrangement. After discussing and considering the views of various parties, it is advised that the government's support for employers would be further enhanced. The proposed enhanced arrangements are as follows:

a. The period of the two-tier government subsidy will be extended from 12 years to 25 years (details of the enhanced proposed two-tier government subsidy system are set out in **Table 3**).
b. The financial commitment in the entire government subsidy scheme will increase significantly from HK$17.2 billion to HK$29.3 billion, a 70% increase on the government's preliminary proposal in March 2018.

There will be no change to the following proposed arrangements:

- Severance payments (SPs) and long service payments (LSPs) will continue to be calculated at two-thirds of an employee's salary for the final month, multiplied by the reckonable years of service and capped at HK$390,000.
- Employers to set up designated savings accounts (DSA) to which monthly contributions will be made as a reserve for SPs and LSPs.
- The government will provide a second layer of subsidy if a business's contributions to the DSA fail to cover the SPs or LSPs.

6. Proposed amendments to anti-discrimination ordinances

The government will introduce the Proposed Discrimination Legislation Bill by the end of 2018 following its review of the four anti-discrimination ordinances: the Sex Discrimination Ordinance; the Disability Discrimination Ordinance; the Family Status Discrimination Ordinance; and the Race Discrimination Ordinance. A number of the proposed amendments are employment-related. They are summarised as follows:

Table 3: Details of the enhanced proposed two-tier government subsidy

Number of years after abolition	Tier 1 of government subsidy (% of employer's SPs and LSPs)	Tier 2 of government subsidy (% of employer's SPs and LSPs after netting off Tier 1 subsidy and accrued balance of DSA)	Maximum government subsidy (tier 1 plus tier 2)
1-3	50%	25% (50% x 50%)	75%
4	45%	24.75% (55% x 45%)	69.75%
5	40%	27% (60% x 45%)	67%
6	35%	29.25% (65% x 45%)	64.25%
7	30%	28% (70% x 40%)	58%
8	25%	30% (75% x 40%)	55%
9	20%	32% (80% x 40%)	52%
10	15%	29.75% (85% x 35%)	44.75%
11	10%	31.5% (90% x 35%)	41.5%
12	5%	33.25% (95% x 35%)	38.25%
13-15	0%	30%	30%
16-18	0%	25%	25%
19-21	0%	20%	20%
22-23	0%	15%	15%
24-25	0%	10%	10%
26	0%	0%	0%

Notes
a. Employers are allowed to offset the pre-effective date SPs and LSPs with MPF contributions they have made both before and after the effective date of the abolition of the MPF offsetting arrangement.
b. The abolition of the offsetting arrangement also applies to occupational retirement schemes under the Occupational Retirement Schemes Ordinance .

a. Protection from direct and indirect discrimination, perceived harassment and imputation that a person is of a particular racial group.
b. Prohibiting harassment on the basis of sex, disability, race (including imputed race and association with a race) in a shared workplace, in joint-tenanted and sub-tenanted premises, on aircraft, on ships and in clubs. This will apply not only to employers, employees, contract workers and co-workers but also to service providers, customers, joint tenants, sub-tenants and club managers.
c. Prohibiting direct and indirect discrimination against a woman on the ground of breastfeeding.

Employers are encouraged to obtain a good understanding of these proposed amendments. They should be prepared to develop and implement broader anti-discrimination/anti-harassment policies and compliance training programmes to provide a more harmonious work environment for employees.

Speak to our payroll professionals

Feel free to get in touch to find out how we can help you with a tailored payroll outsourcing solution.

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BDO STRENGTHENS ITS POSITION AS LEADING ADVISER TO THE MID-MARKET

BDO announces total combined fee income* of US$ 8.99 billion / € 7.56 billion for the year ended 30 September 2018, representing a year on year growth of 10.7% in US$ and 8.3% at constant exchange rates.

The global organisation's continued and accelerating growth rate is borne of a clear strategic aim to be leaders in their markets, supported by relevant business-critical acquisitions, such as cybersecurity companies. Now represented in 162 countries and territories, BDO saw consistent growth across all regions in 2018, with the strongest revenue increase in EMEA (+17%), followed by the Americas (+7.8%) and Asia Pacific (+6.6%).

BDO's culture of helping our people, our clients and society at large to succeed is reflected in the organisation's consistent expansion in headcount – aided by strategic lateral hires: up 8.4% this year to 80,087 people, working out of 1,591 offices to assist clients worldwide.

KEY FACTORS IN BDO'S GROWTH SUCCESS:

Leading in innovation

BDO firms are fast becoming acknowledged leaders in innovation. Substantial investments are being made in information technology, not only in future-focused software and tools but also in maximising alliances with industry-leading organisations: BDO's long-term global collaboration with Microsoft continues to bring benefits and this is supported at local level via partnerships with Workday and Intuit, among others.

BDO's bespoke audit process tool (APT) continues to promote consistency and quality in audit execution and APT Next Gen has been transformed in 2018. The globally aligned tool offers clients a consistently exceptional experience worldwide, powered by leading technology and underpinned by intuitive audit methodology.

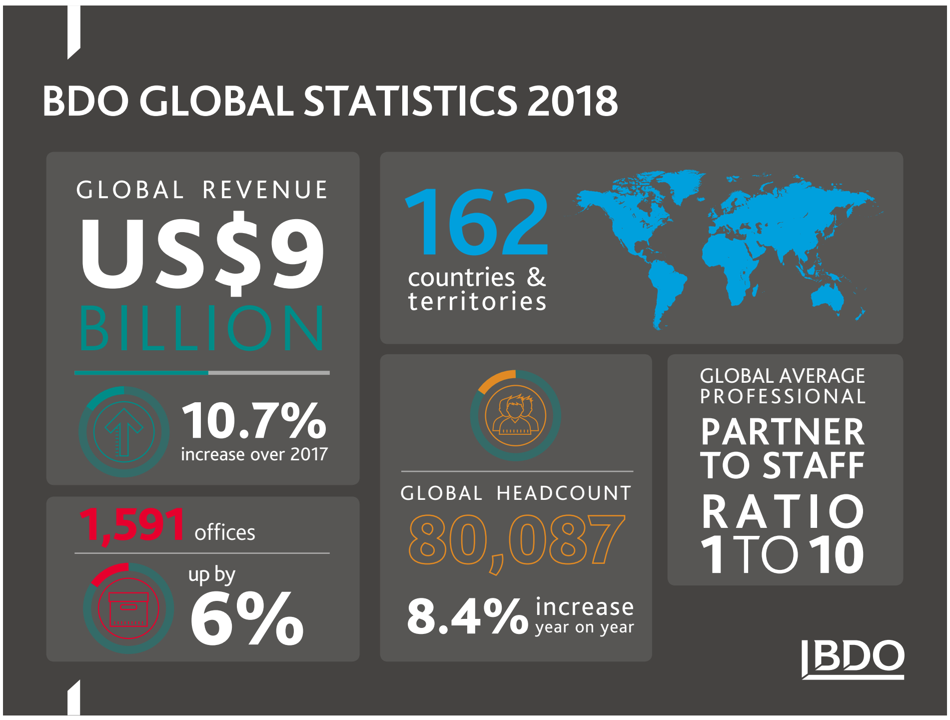
Market leaders

BDO's ongoing commitment to put clients at the centre has created a number of excellent local market leadership positions. BDO in Belgium, for example, has transformed their advisory service offering by listening to what their clients wanted, resulting in the acquisition of two firms active in robotic process automation and process mining and optimisation. Advisory services now make up the majority of the services the firm offers, making BDO in Belgium a key consulting player in their market.

Advisers of the future

BDO's consistently growing workforce is testament to its strong position in the 'war for talent', a result of global strategy combined with local initiative. For example, BDO in Indonesia is turning cost centres into profit centres with their Advanced Recruiting Process. This applies neuroscience, cutting-edge machine learning and AI to transform their recruiting process and has been packaged as a service for clients. By partnering and collaborating, BDO people enable their clients to make the right decisions and to create value.

To conclude, BDO's achievements point to great potential for our organisation in the future. This year, BDO won the *International Accounting Bulletin* (IAB) Network of the Year – for the second time in three years. As a people organisation delivering innovation and value every day, BDO will keep attracting the best people to our organisation to continue to provide exceptional client services.



*Including BDO's exclusive Alliances

BDO HONG KONG MANAGING DIRECTOR – NON-ASSURANCE JOHNSON KONG WAS ELECTED AS THE VICE PRESIDENT FOR HKICPA

Managing Director of Non Assurance, Johnson Kong was re-elected as the Vice President of the Hong Kong Institute of Certified Public Accountants (HKICPA) at its 46th annual general meeting (AGM), held on 13 December 2018.

Johnson is an elected HKICPA Council Member. In addition, he is the Chairman of the Ethics Committee, Professional Conduct Committee and Small and Medium Practitioners Committee, a member of the Education Standards Committee and Nomination Committee. He also sits on the Small & Medium Practices Committee of International Federation of Accountants (IFAC) representing Hong Kong. He is a Past Chairman of the Restructuring & Insolvency Faculty of HKICPA, Past President of the Hong Kong Institute of Accredited Accounting Technicians and an ex-Executive Board Member of INSOL.

BDO IS A DOUBLE WINNER AT THE HR VENDOR OF THE YEAR AWARDS 2018

BDO is crowned as the Gold Award – Best New Recruitment Solutions Provider, and the Bronze Award - Best Payroll Outsourcing Partner of the HR Vendors of the Year Awards 2018 (VOTY) organised by Human Resources Magazine.

The Awards are judged by extensive panel of judges, including senior HR professionals from many prominent multinational corporations like ABN AMBO Bank, Lane Crawford, Richemont, Moody's Corporation, PCCW/HKT, Muji and etc. This is the second time BDO joined VOTY – after winning the Best Payroll Outsourcing Partner last year. BDO outperformed various strong finalists, and were awarded these prestigious awards for our innovative and exceptional HR professional services.

VOTY is a competition organised by Human Resources Magazine in recognition of the best HR professional services provider in the Asia Pacific Region. Winning these awards represent great recognition of excellent service quality and professionalism within the HR industry in the Region.

BDO WINS TRUSTED ADVISER OF THE YEAR AND ACCOUNTANCY TEAM OF THE YEAR TROPHIES AT STEP PRIVATE CLIENT AWARDS 2018/19

BDO is the proud winner of a double award – 'Accountancy Team of the Year (large firm)' & 'STEP's People's Choice Award for Trusted Adviser' at the STEP Private Client Awards 2018/19.

"BDO's entry struck the right balance between a private-client feel and the rigour of an institutional firm – both approachable and technically excellent. Their proactive approach to technology to make their clients' lives easier was widely praised," the judges explained BDO's winning from a strong set of finalists.

STEP Private Client Awards are considered the hallmark of quality within the private client industry.

CORPORATE GOVERNANCE PRACTICES OF LISTED COMPANIES IN HONG KONG: TRENDS AND FUTURE

Background

On 27 July 2018, the Stock Exchange of Hong Kong (SEHK) published the Consultation Conclusions for the Consultation Paper on Review of the Corporate Governance Code and Related Listing Rules. Among other objectives, the changes proposed in the Consultation Conclusions to the Corporate Governance Code (CG Code) and the related Listing Rules aim to: 1) strengthen the transparency and accountability of the board and the nomination committee; 2) improve the transparency of the appointment of independent non-executive directors (INEDs); and 3) promote diversity on the board.

This is not the first time that the SEHK has amended the CG Code. After the introduction of the CG Code in 2005, there were amendments: 1) effective from 2011 on the number of Code Provisions (CPs), which increased from 45 to 74; 2) effective from 2013 on board diversity; and 3) effective from 2016 on the provisions for risk management and internal control (RM&IC).

The Trend

After the introduction of the RM&IC provision effective from 2016, the SEHK reviewed the corporate governance practice disclosures of 1,428 issuers and published its Analysis of Corporate Governance Practice Disclosure in 2016 Annual Reports (the 2016 Analysis) in December 2017. The level of compliance with the existing CPs is summarised in **Tables 1** and **2**.

Table 1: Total % of compliance with CPs

	2016 Analysis	2014 Analysis
Compliance with all CPs	34%	35%
Compliance with 75 or more CPs	94%	35%
Compliance with 70 or more CPs	99.6%	98%
Disclosed having an internal audit (IA) function	97%	47%

Table 2: Compliance by number of CPs

	2016		2014	
No. of CPs complied with	No. of issuers	% of issuers	No. of issuers	% of issuers
78	485	34%	N/A	N/A
77	515	36%	N/A	N/A
76	251	18%	N/A	N/A
75	86	6%	433	35%
74	59	4%	416	34%
73	12	1%	210	17%
72	11	1%	88	7%
71	2	0%	53	4%
70	2	0%	15	1%
<70	5	0%	22	2%
Total	**1,428**	**100%**	**1,237**	**100%**

In short, the level of compliance has improved since a similar analysis was conducted by SEHK on the 2014 CG Code disclosures. In particular, the percentage for compliance with less than 70 CPs dropped to under 0.5% (only a few cases) in 2016 from about 2% (22 cases) in 2014. The percentage of issuers with an internal audit (IA) function also increased significantly (from 47% to 97%) after the requirement became a CP due to the amendments effective from 2016.

Flexibility in the CG Code – the "comply or explain" principle

The CG Code sets out a number of principles followed by its provisions, and several recommended best practices (RBPs). Those following the CG Code should recognise that the CPs and RBPs are not mandatory. SEHK did not adopt a "one size fits all" approach. Deviations from the CPs are acceptable if there are more suitable ways for the issuer to comply with the principles. This gives issuers the flexibility to establish internal control and corporate governance practices that are most suitable for them.

Deviation from the CG Code

The five provisions of the CG Code that were reported in the 2016 Analysis as most frequently deviated from are as follows:

- A.2.1 – Separation of the roles of chairman and chief executive: 37%
- A.6.7 – Non-executive directors' attendance at general meetings: 20%
- E.1.2 – Chairman's attendance at the annual general meeting: 14%
- A.4.1 – Non-executive directors appointed for a specific term, subject to re-election: 12%
- A.5.1 – Establishment of a nomination committee: 5%

The analysis of the annual reports in the CG Code disclosure for 2014 revealed that the five provisions most frequently deviated from the CG Code were the same.

According to the principle of "comply or explain", issuers may have good reasons not to follow certain CPs. Among all the provisions, the one that is most commonly deviated from is "separation of the roles of chairman and chief executive". The reasons given by the issuers include: 1) one person performing the roles of both chairman and chief executive can provide strong and consistent leadership and can enable more effective planning and better execution of long-term strategies; and 2) the board has confidence in the person who is acting as both chairman and chief executive, because that person possesses sufficient knowledge of the issuer's operations. Further, some issuers were non-compliant with this CP for part of the year only, due to the resignation of the chairman or chief executive.

The Future

On 27 July 2018, SEHK published its Consultation Conclusions on the review of the CG Code. The proposed changes to the CG Code and the related Listing Rules aim to:

Table 3: Changes to the CG Code effective from 1 January 2019

Area	Summary of changes
INEDs – overboarding	• A CP has been amended to require the board to state in the circular to shareholders accompanying the resolution to elect the INED its reasons for determining that the proposed INED would be able to devote sufficient time to the board if the INED would be holding more than six listed company directorships
INEDs – board diversity	• To improve the diversity of the board, including gender diversity, the relevant CP has been upgraded to a Listing Rule requiring issuers to have a diversity policy and to disclose the policy or a summary of the policy in the issuer's corporate governance report. • CP has been amended to require the board to state in the circular to shareholders accompanying the resolution to appoint an INED its considerations relating to diversity, including: a) the process used to identify the nominee; b) the perspective, skills and experience that the person can bring to the board; and c) how the nominee would contribute to the diversity of the board.
INEDs – factors affecting INEDs' independence	• To strengthen the criteria for assessing the independence of potential INEDs and to align with international practice: a) the Listing Rule on independence criteria for INEDs has been amended to introduce a one-year cooling-off period for people with material interests in the issuer's principal business activities; b) the Listing Rule has been amended to extend the cooling-off period from one year to two years for former professional advisors; c) a CP has been amended to extend the cooling-off period from one year to two years for former partners of the issuer's audit firm before they can be members of the issuers' audit committee; d) a Note has been introduced under the Listing Rule recommending the inclusion of a person's immediate family members in the assessment of a proposed INED's independence; and e) an RBP has been introduced for an INED's cross-directorship or significant links with other directors in the Corporate Governance Report.
Nomination policy	• The Mandatory Disclosure Requirement has been amended to include disclosure of the nomination policy.
Director's attendance at meetings	• The CP has been amended to read, "Generally they (directors) should also attend general meetings to gain and develop a balanced understanding of the views of shareholders." • A CP has been amended to require the INEDs (excluding non-executive directors and executive directors) to meet the Chairman at least annually.
Dividend policy	• A CP has been introduced to require issuers to disclose their dividend policies in annual reports.

- strengthen the transparency and accountability of the board and nomination committee and the appointment of directors, including INEDs;
- improve the transparency of INEDs' relationships with issuers;
- enhance criteria for assessing the independence of potential INED candidates;
- promote board diversity, including gender diversity; and
- require greater transparency in dividend policies.

The new measures will take effect on 1 January 2019 through amendments to the CG Code and the related Listing Rules. The areas affected by the amendments are summarised in **Table 3**.

Next Steps

Those in charge of governance in listed companies in Hong Kong may take this opportunity to:

- review the measures to be taken for compliance with the new amendments to the CG Code effective from 2019;
- review the issuer's compliance with the existing CG Code and the related disclosure for deviations; and
- if there is any actual or suspected deviation:
  a) seek professional assistance, if necessary, to identify ways to address the deviation; and
  b) disclose the deviations and the reasons for such deviations in accordance with the Listing Rules.

If you have any questions on corporate governance issues, you can contact the author as shown below.

PETER PANG
Risk Advisory Services
peterpang@bdo.com.hk

NEW APPOINTMENT

GABRIEL WONG
Director
Specialist Advisory
Services

Gabriel Wong has been appointed as Director of Specialist Advisory with effect from 1 October 2018.

Gabriel has more than 14 years of experience advising clients on matters relating to forensic accounting, regulatory and internal investigations and breach of contract and shareholders' disputes resolutions. He leads investigations into issues concerning financial fraud, bribery and corruption, irregular rebates and kickbacks, misappropriation of assets, financial statement manipulation, employees' conflicts of interests, management misconduct and collusion, theft of proprietary information, anomalous accounting treatments, conspiracy to defraud and suspicious related party transactions. He is also experienced in the review of internal controls, investigative due diligence, compliance training, anti-money laundering compliance reviews and Foreign Corrupt Practices Act related investigations and reviews.

Gabriel also previously worked in a regulatory authority's enforcement division performing investigations into complaints regarding financial institutions.

Gabriel has served leading companies in various industries including property development, construction, semi-conductors, telecommunications, electronics, advertising, healthcare, chemicals, metals, apparel, banking, electricity, automobiles, quantity surveying, professional associations, quality assurance, gaming, natural resources and textile in the Asian region with a focus on PRC. He has advised multinational companies having significant presence in Asia which include private institutions and public companies listed in various stock exchanges worldwide.

Gabriel is a fellow member of the Hong Kong Institute of Certified Public Accountants, the Association of Chartered Certified Accountants and the Association of Hong Kong Accountants. He is a founding member of the Hong Kong Chapter of the Association of Certified Anti-Money Laundering Specialists, an associate member of the Association of Certified Fraud Examiners and its Hong Kong Chapter. He is also a practising fellow member (accounting) of the Academy of Experts.

FIONA TSOI
Principal
Assurance Services

Fiona Tsoi has been appointed as Principal of Assurance with effect from 1 October 2018.

Fiona has extensive experiences in handling assignments of listed and private companies operating in Hong Kong, Mainland China and a number of overseas countries over a variety of industries, including manufacturing and trading, construction, financial advisory services, assets fund management, money lending, software development, and building surveying services. She is also involved in various transaction support assignments, such as initial public offerings.

Fiona is a Member of the Association of Chartered Certified Accountants.

JANITA LAU
Principal
Assurance Services

Janita Lau has been appointed as Principal of Assurance with effect from 1 October 2018.

Janita has extensive experience in handling assignments of listed and private companies operating mainly in Hong Kong and Mainland China over a wide range of industries including retail, trading, manufacturing, money lending & financial institutions, financial services, professional services (law firms), information technology (mobile game, e-commerce), fashion & luxury, hospitality & leisure and investment holding. Janita is also involved in various transaction support assignments including acquisitions & mergers and initial public offerings.

Janita is a Hong Kong Certified Public Accountant and a member of CPA Australia.

MING IP
Principal
Assurance Services

Ming Ip has been appointed as Principal of Assurance with effect from 1 October 2018.

Ming has extensive experience in handling assignments of listed and private companies operating mainly in Hong Kong and Mainland China over a wide variety of industries including manufacturing and trading, retail, online travel booking, software development, property leasing and provision of recruitment service.

Ming is a Fellow Member of the Association of Chartered Certified Accountants.

SAM MAK
Principal
Assurance Services

Sam Mak has been appointed as Principal of Assurance with effect from 1 October 2018.

Sam has extensive experience in providing assurance services to listed and private companies operating mainly in Hong Kong and Mainland China over a wide variety of industries including financial services, consumer and industrial products, and specialist recruitment services.

Sam was also involved in transaction support assignments including capital market transactions in acquisition of companies and public flotation of companies in Hong Kong.

Sam is a fellow member of the Association of Chartered Certified Accountants.

TERESA TSANG
Principal
Assurance Services

Teresa Tsang has been appointed as Principal of Assurance with effect from 1 October 2018.

Teresa has extensive experience in handling and coordinating large scale multinational assurance assignments. She served clients over a wide variety of industries including entertainment, logistics, manufacturing, trading, travel and tourism services and financial services. She also has substantial experience in handling clients listed on US stock exchange.

Teresa is a Hong Kong Certified Public Accountant, she is also a Fellow of the Association of Chartered Certified Accountants.

WINNIE CHAN
Principal
Financial Reporting Advisory

Winnie Chan has been appointed as Principal of Financial Reporting Advisory with effect from 3 December 2018.

In her role, Winnie is focusing on advising clients on the practical implementation of new accounting standards.

Winnie has over 16 years of experience in the accounting profession. Before joining BDO, she was with the HKICPA as Associate Director of Standard Setting. Her key responsibilities at HKICPA involved taking lead in standard setting initiatives in HKFRS projects, handling HKFRS interpretation issues, liaising with regulatory bodies on HKFRS related matters, and providing training on the latest developments of accounting standards.

Winnie has extensive experience in providing assurance services. During her time with international firms, she worked with a wide range of clients including listed, privately owned groups as well as public sector clients.

Winnie is a Hong Kong Certified Public Accountant, a fellow member of the Institute of Chartered Accountants in England and Wales and a Chartered Secretary.

VIVIAN CHOW
Principal
Risk Advisory Services

Vivian Chow has been appointed as Principal of Risk Advisory with effect from 1 October 2018.

Vivian is an experienced professional drawing upon a background that includes corporate governance, regulatory and compliance, consulting, and audit and financial reporting in Hong Kong, Mainland China and the United States.

Vivian has worked with a diverse group of clients from non-governmental organisations to multinational public and private companies across several industries in providing corporate governance, risk management, internal audit, and regulatory and compliance review and readiness.

Vivian is a U.S. Certified Public Accountant.

ERIC PAT
Principal
Specialist Advisory Services

Eric Pat has been appointed as Principal of Specialist Advisory with effect from 1 October 2018.

Eric has extensive experience in providing valuation services, serving both privately-held and listed companies in Hong Kong and Mainland China.

He leads a team that specialises in the valuation of businesses, financial instruments and intangible assets for the purposes of financial reporting, transaction support, and litigation support.

Eric is a CFA charterholder, a Chartered Professional Accountant of Canada and a Chartered Surveyor (RICS). He is a member of Chartered Financial Analyst Institute, Chartered Professional Accountants of Canada, and Royal Institution of Chartered Surveyors.

OLIVIA WONG
Principal
Specialist Advisory Services

Olivia Wong has been appointed as Principal of Specialist Advisory with effect from 1 October 2018.

Olivia has been involved in many audit reviews and forensic assignments in Hong Kong and Mainland China serving listed companies, multinational corporations, academic organisation and governments.

Olivia has investigated irregular rebates and kickbacks, misappropriation of assets, financial statement manipulations, potential leakage of private and confidential information and other fraud investigations.

Olivia was involved in litigation support engagements including assisting the named expert with the preparation of the expert report and attending the hearings.

Olivia is a member of Hong Kong Institute of Certified Public Accountants and an associate member of Association of Certified Fraud Examiners.

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