# Serving the profession

**Hong Kong Corporate Counsel Association president Jasmine Karimi tells Ajay Shamdasani about the benefits of HKCCA membership and the challenges facing the Association in 2009**

### What are the most significant issues facing corporate counsel in Hong Kong?

The current financial crunch has caused upheaval in most sectors and corporate lawyers have not been spared. Common gripes and worries are those of headcount freezes, pay-cuts, elimination of bonuses and, worse-still, lay-offs.

Many employers keep insisting on Chinese language [speaking and drafting] skills even where, quite frankly, the work can often be done well without Chinese fluency. So that is causing angst among regional lawyers who want to continue to be based here but won't be "allowed" because they lack Chinese language proficiency.

Budget cuts mean the workload for existing counsel increases without corresponding rewards. This is not the Hong Kong of yesteryear! A meaner, leaner staff with less pay, motivation and recognition is concerning. We hope to engage in dialogue with corporates to ensure that rewards and recognition can also be given in other innovative, non-pecuniary ways.

The other lingering issue is the difficulty of maintaining enough independence from the business to give appropriate legal advice versus business advice. The more senior you are in a company, the greater the risk that the two become blurred and it takes concerted effort to appropriately pull back.

### What problems have corporate counsel encountered lately in ensuring their companies remain compliant with an ever growing array of laws and regulations?

Hong Kong is absolutely known for its rule of law. If our standards ever fell we would lose our competitive edge.

Lawyers are always conscious of their obligation to ensure compliance with increasing laws and regulations. Increasing workloads do not always afford us the time to stay abreast of everything; that is where the HKCCA's seminars and conferences come in. Our members can stay current on developments by attending bi-monthly luncheon seminars (usually hosted by a variety of law firms) on topical and timely subjects.

We often find ourselves in situations where we need to impress upon management that compliance regimes are important and to dissuade them from a "check-the box" mindset; it is not something to be done just for the sake of routine. It is the lack of adherence to effective compliance that is, to an extent, responsible for the global economic meltdown.

Arming ourselves with knowledge is not enough – we must also maintain contact with each other and swap "war stories" on how to guide managers towards greater compliance. Knowing that we are not alone in our internal challenges helps boost morale.

### Given the recession, what measures can the Hong Kong Stock Exchange (HKSE) take to encourage more mainland Chinese and/or other Asian companies to list locally?

As of late-September 2008, there were 1,078 listed companies on the main board [of the HKSE] and GEM. In the first nine months of last year, there were 41 new listings, compared to over 60 in the same period in 2007. In the last three months of 2008, there were few listings. In 2009, unless the market picks up, there will be even fewer listings.

Local regulators will not lower standards to allow more listings as they are committed to ensuring Hong Kong exemplifies high corporate governance. They might be more practical where it appears that one-size-does-not-fit-all in applying listing criteria for certain industries. For example the Exchange's approach to mineral companies is well known, where certain concessions have been made for financial standard requirements.

Most importantly, the slowdown in listings is not about a lack of candidates: issuers are queuing up to be listed here. Ask any investment banker: it is a problem of demand – the market just does not exist right now.

> "The need for extremely high standards of corporate governance and transparency has never been greater"

### What were the most important developments in Hong Kong last year in the areas of corporate and securities law?

Amendments to the Takeover Code came into force on August 1. The most notable change was the plugging of the loophole affecting privatisation of a company through asset disposal and possibly delisting. Confusion persists concerning how the exempt principal trader and exempt fund manager regimes work in practice, and we are organising a workshop on it.

The Companies Ordinance remains under review and the responsible committee issued a report in December containing useful reforms, which generally update the existing regime to more closely resemble the UK's legislation. A draft bill is likely to be published in mid-2009 for consultation before introduction to the Legislative Council later this year. The HKCCA will apprise its members of the proposals.

The most significant judgment last year was the *Shanghai Land* case in September. The fact that all the defendants were found guilty and sentenced to between 18-33 months imprisonment sent a strong message that Hong Kong takes a hard line against fraudulent activities and the making of false statements in transaction documents. The need for extremely high standards of corporate governance and transparency has never been greater.

Changes to the listing rules became effective on January 1 2009 after the 2008 consultation paper.

### Effective April 1 2009, the Hong Kong Exchanges and Clearing will lengthen the "blackout period" during which directors cannot trade shares of their own companies until the end of the financial period and the publication of results. The blackout period lasts just one month ahead of the publication of financial results. What are your thoughts on the measure?

This is the most controversial aspect of changing the listing rules. Essentially, the period for directors to trade has been dramatically shortened. Its implementation has been postponed until April for good reason: 236 companies have signed a letter of protest.

Under local rules, listed companies need to report results twice a year and have an inordinately long time to disclose them – three months after the end of the period for the half-year report and four months for the year-end report.

In contrast, US financial results are reported quarterly and must be disclosed within 40 days of a quarter's end and 60 days of the end of the year.

### Will this be beneficial?

The problem is directors and managers of locally listed companies have been permitted to trade shares until a month before results are announced, giving them months of proprietary access to information that could be invaluable in knowing whether to buy or sell shares.

The new rule aims to change such informational asymmetry. The HKCCA's line on this should be that a reversal of the new rule would send a jarring message about investor protection. Good corporate governance is vital to maintaining Hong Kong's position in the international financial markets. After recent events involving lack of disclosure by listed companies (i.e. CITIC Pacific), it is now more important than ever for regulators to send a positive message on investor protection.

The solution is for Hong Kong-listed companies to report as quickly as their US counterparts.

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### What difficulties has the HKCCA faced since forming in March 2003?

The HKCCA is an association run on a voluntary basis by in-house lawyers for in-house lawyers. As such, it is dependant on the time our executive committee (ExCo) can spare. While our ExCo are a highly dedicated team of professionals with tremendous energy and drive to see the HKCCA prosper, our "day jobs" and uncontrollable schedules often thwart our best intentions.

We are fortunate to have a part-time paid administrative assistant, but our relatively small membership base precludes engaging full-time paid staff. We hope to address the latter challenge, but the former is something we still grapple with. Fortunately, we support each other and help to the extent we can.

### What are the HKCCA's greatest triumphs?

We have experienced positive momentum: a more notable success has been our establishment as a legitimate association representing in-house lawyers, thereby raising the profile of the in-house legal community. Our annual conference is well received and has drawn renowned key-note speakers such as [former HSBC chairman] Sir David Eldon and [chief judge of the High Court of Hong Kong] Justice Geoffrey Ma, in 2007 and 2008 respectively. Justice Anthony Rogers [of Hong Kong's Court of Appeal] continues to be a patron member.

Our bi-monthly luncheon seminars have seen attendance more than double in the past year. We have also added a new category of corporate membership and the uptake has been fantastic. We have recently started strengthening our international reputation by forging ties with counterpart associations. For example, I represented the Association as a panelist at the 2009 Corporate Counsel World Summit in Vancouver in late-January.

The Law Society of Hong Kong's recognition of our organisation's efforts and its granting of CPD points to our ExCo members for the time we put in is a strong endorsement of the value we add to the profession.

### How much has the HKCCA's membership grown during the past five and a half years?

The Association started small; fewer than 10 founders. We met regularly and before long the HKCCA was born. We now have almost 350 members and hope to cross the 400 mark in 2009.

### How do you intend to grow your membership base and raise your profile?

With our numbers growing, we plan to take the organisation to the next level and generate greater prominence for in-house lawyers. Upcoming initiatives include: launching our newsletter later this year; enhancing our website to facilitate better intramural networking; and our informal social functions held every two months. Our general counsel quarterly cocktail events are also growing in attendance.