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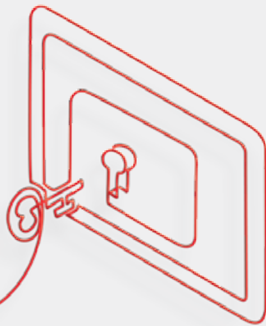

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CGj

CHARTERED GOVERNANCE Hong Kong

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About The Hong Kong Chartered Governance Institute

The Hong Kong Chartered Governance Institute (HKCGI, the Institute) 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 and Chartered Governance Professional in Hong Kong and the mainland of China (the Mainland).

The Institute was first established in 1949 as an association of Hong Kong members of The Chartered Governance Institute (CGI). In 1994 the Institute became CGI's Hong Kong Division and, since 2005, has been CGI's China Division.

The Institute is a founder member of Corporate Secretaries International Association Ltd (CSIA), which was established in March 2010 in Geneva, Switzerland. Relocated to Hong Kong in 2017, where it operates as a company limited by guarantee, CSIA aims to give a global voice to corporate secretaries and governance professionals.

The Institute has over 6,700 members, and more than 400 graduates and around 3,000 students.

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Whistleblowing

Our Institute has been promoting the benefits of having effective whistleblowing channels for some years. This is not only fundamental to good corporate governance and ESG practices, but also brings real benefits to organisations in terms of risk mitigation. Employees are usually the first to witness malpractice, so establishing whistleblowing channels is a vital tool to help organisations detect and correct unlawful conduct or irregularities that occur in the workplace.

The good news is that the message on whistleblowing is starting to gain traction – helped of course by the growing regulatory pressure. Hong Kong Exchanges and Clearing Ltd (HKEX) recently upgraded the requirement for HKEX listed issuers to have a whistleblowing policy from a recommended best practice to a new code provision (CP D.2.6). As our cover story this month makes clear, however, the main obstacle to benefitting from the internal early warning system that a whistleblowing framework provides is that employees are often reluctant to speak up about misconduct. Building an effective whistleblowing system is therefore as much about creating a corporate culture that is conducive to whistleblowing as it is about the modalities involved in setting up whistleblower hotlines. The key issue to grapple with is to ensure that potential whistleblowers feel safe from retaliation.

The very real dangers that whistleblowers can be exposed to are highlighted by the story of Pavandeep Gill, the whistleblower who first exposed malpractice at the German payment processor and financial services provider Wirecard. His story is cited by our cover story this month, but I think it bears a closer look.

Very soon after Mr Gill took up his position as Wirecard's senior legal counsel for the Asia-Pacific region in 2017, two employees came to him with suspicions of accounting irregularities. An investigation subsequently uncovered evidence that fake customers, contracts and invoices were being created to boost Wirecard's apparent earning potential. Mr Gill informed his supervisors at the company's headquarters in Munich of the fraud, but it quickly became apparent that the fraud went all the way to the top of the company. Not only was no action taken against the perpetrators, but Mr Gill found himself the victim of intimidation from Wirecard's senior management.

For three years after he left the company in 2018, it appeared that Wirecard would be successful in hiding the evidence Mr Gill had uncovered. The company continued to go after him, however, undermining his future job prospects. In 2021 his mother, Sokhbir Kaur, who had supported her son throughout his ordeal, took the story to the *Financial Times* and the company's accounting fraud was finally exposed.

The relevance of this story for members of our profession is not limited to our roles in establishing effective whistleblower frameworks – it goes deeper than that. As a governance professional, Mr Gill chose to stand up for ethical integrity despite the very real dangers that this exposed him to. In an article published by the Association of Certified Fraud Examiners late last year, Mr Gill summed up what he had learned from the experience. 'Use your moral compass as your guide. If you have the truth and you have the ethics and the principles in your favour, then I think there's nothing really to fear.'

The moral compass is of course our Institute's new logo and Mr Gill therefore speaks to our aspirations as governance professionals. Technical expertise in governance is a basic minimum. Harder to learn, but just as important, is having the courage to act as the conscience-keeper of the organisations we work for.

Ernest Lee FCG HKFCG(PE)

举报

公会多年来一直在宣传拥有有效举报渠道的好处。这不仅是良好的公司治理和ESG实践的基础，也有助于降低组织风险。雇员通常是第一个目睹不当行为的人，因此建立举报渠道是一个重要的工具，可以帮助组织发现并纠正工作场所发生的非法行为或违规行为。

好消息是，关于举报的问题开始得到重视 – 当然这得益于日益增加的监管压力。香港交易及结算所有限公司（港交所）最近将港交所上市发行人制定举报政策的要求从推荐的最佳做法提升为新的守则条文(CP D.2.6)。然而，正如我们本月的封面故事所指出，从举报系统所提供的内部预警机制中获益的主要障碍是，员工往往不愿意说出不当行为。因此，建立一个有效的举报系统，既要创造一个有利于举报的企业文化，也要考虑到设立举报热线的方式。需要努力解决的关键问题是确保潜在的举报人感到安全，不会被报复。

Pavandeep Gill的事件揭示了举报人可能面临的非常真实的危险，他是首次揭露德国支付处理商和金融服务提供商Wirecard的不当行为的举报人。我们这个月的封面故事引用了他的事件，我认为这值得仔细研究一下。

Gill先生在2017年担任Wirecard亚太区高级法律顾问后不久，就有两名员工向他提出了会计违规的疑虑。随后的调查发现，有证据表明，有人在制造假客户、假合同和假发票以提高Wirecard的明显盈利潜力。Gill先生向公司慕尼黑总部的主管通报了这一欺诈行为，但很快就发现欺诈行为一直延伸到公司的高层。公司不仅没有对肇事者采取任何行动，Gill先生还发现自己成了被Wirecard公司高级管理层恐吓的受害者。

在他于2018年离开公司后的三年里，似乎Wirecard成功地隐藏了Gill先生所发现的证据。然而，该公司继续追踪他，破坏了他未来的工作前景。他的母亲索克比尔-考尔(Sokhbir Kaur)在儿子承受这一磨难的整个过程中一直支持他，2021年，她把这个事件告诉了《金融时报》，该公司的会计欺诈行为最终被曝光。

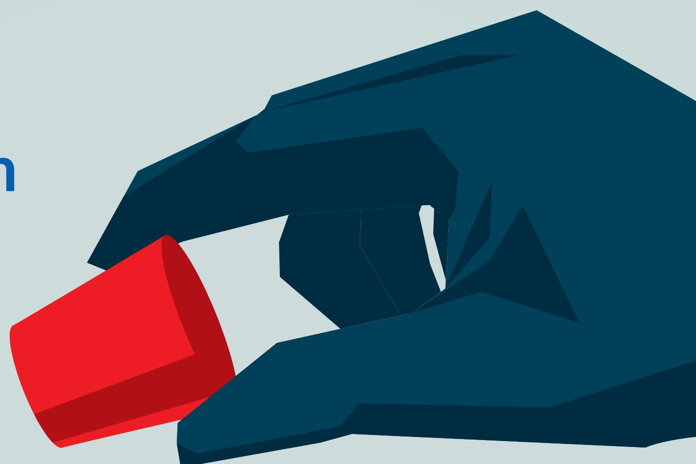
这个事件对我们行业成员的意义并不仅限于我们在建立有效的举报系统方面的作用 – 它对我们有更深远的意义。作为一名治理专业人员，Gill先生选择站出来维护道德操守，尽管这使他面临非常真实的危险。在去年年底注册舞弊审查师协会发表的一篇文章中，Gill先生总结了他从这一经历中所学到的东西：应该以道德为指向，如果你掌握了真相，并且是按你的道德和原则行事，那么我认为没有什么真正需要害怕的。

道德指南针是公会的新标识，因此Gill先生其实说出了我们作为治理专业人士的抱负。治理方面的专业技能是最基本的，更难掌握但同样重要的，是要有勇气成为我们所任职的组织的良心守护者。

李俊豪 FCG HKFCG(PE)

The silence of good people

Whistleblower protection in Hong Kong



Building an effective whistleblower framework is a little more complex than setting up a complaint hotline for employees. *CGj* takes a look at a critical component of such frameworks that has received too little attention in Hong Kong – whistleblower protection.

The collapse of the German payments processor Wirecard AG in June 2020, with EU1.9 billion missing from its accounts, was the final act in a long-running drama that should be required viewing for governance professionals wanting to understand the value of whistleblowing.

For years, the company was the darling of the markets. Its books, according to its auditors, were clean. Its prospects, according to the analysts, were spectacular and the regulators were pursuing critics of the company for possible shorting of the stock. As is often the case, however, many employees of the company were under no illusion about what was going on and the process that ended with the company filing for insolvency, and the Chief Executive and two high-ranking managers being charged with accounting fraud and market manipulation, was instigated by a whistleblower.

'The establishment of a whistleblowing policy and framework is core to maintaining high ethical standards and good corporate governance,' says William Tam ACG HKACG, Partner, Deloitte China. He emphasises that employees are usually the first to sniff out corruption. 'They are one of the key elements in detecting and successfully pursuing misconduct within a company. The rate of success is significantly higher compared to traditional governance lines of defence. An internal audit exercise in a multinational corporation, for example, is less likely to uncover misconduct than information from a well-placed whistleblower,' he says.

But there is another lesson to learn from the Wirecard debacle. There

Highlights

- whistleblowers are one of the key elements in detecting and successfully pursuing misconduct within a company – achieving significantly higher rates of success than traditional governance lines of defence
- even the most elaborate whistleblowing framework is worthless if employees don't feel safe enough to use it
- current legal protections for whistleblowers in Hong Kong need to be strengthened – in particular providing legal remedies for victims of retaliation

> the establishment of a whistleblowing policy and framework is core to maintaining high ethical standards and good corporate governance

William Tam ACG HKACG, Partner, Deloitte China

are significant risks to reporting fraud, particularly of course, as was the case with Wirecard, when it goes all the way to the top of the company. Whistleblowers risk either being dismissed or finding their job not tenable and having to resign. They may also face a real risk of damage to their future career prospects. Integrity and fearlessness is a daunting combination to ask of any employee, at all rungs of the employment ladder.

If you want to maximise the benefits of whistleblowing, therefore, you need to create an environment that is conducive to it. Napoleon Bonaparte is famously credited with saying that 'the world suffers a lot, not because of the violence of bad people but because of the silence of good people'. Companies therefore need to look at the cost-benefit calculation of potential whistleblowers.

'The holy grail of any whistleblowing initiative is to get employees to the point where they feel comfortable enough to expose corporate fraud,' says Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive. 'The question to ask is whether, at the end of the day, the employee feels safe.'

Regulatory regimes around the world have been focusing on this all-important question and whistleblower protections are becoming a standard part of the legislative and regulatory approach to whistleblowing – but what is the situation in Hong Kong? Let us look at recent developments.

Is Hong Kong lagging behind?

Global regulatory developments have increasingly reinforced the protective shield around the whistleblower, from as far back as the Public Interest Disclosure Act (PIDA) 1998 in the UK to the Whistleblowing Directive implemented by the European Union (EU) in 2019 (the Directive (EU) 2019/1937). In the US, retaliatory measures against a whistleblower can potentially result in jail time.

In 2013, lawmaker Cyd Ho Sau-lan, a member of the Legislative Council of Hong Kong, unsuccessfully proposed whistleblower legislation which would protect individuals from retaliation for exposing malfeasance. A decade on, and it appears little has changed in the regulatory sphere.

Mr Tam points to four key elements a potential whistleblower is looking for. Firstly, will my identity be protected? Secondly, will I be protected from retaliation? If at the end of the day they are going to suffer, very few employees will come forward as whistleblowers. Thirdly, will I be compensated if I suffer ill treatment? And fourthly, will I be protected from any civil or criminal action for my disclosures? He adds that, while many companies in Hong Kong have adopted good practices in this area, from the regulatory perspective, the above four elements are noticeably absent.

In Hong Kong, whistleblower protection is only provided for implicitly in piecemeal provisions that are spread over various ordinances. There have been no new developments on what constitutes retaliatory conduct for instance, although one can draw inferences as to what would constitute such acts. For example, a very narrowly defined provision in the Employment Ordinance states that 'an employer shall not dismiss an employee by reason of his giving evidence or information in any proceedings and inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation'. The potential whistleblower is on shaky ground here, given the inference that only dismissal counts as retaliation, but other potential action by the employer may be considered.

With such fragmented provisions and essential elements left undefined, key concerns for potential whistleblowers remain unanswered. None of the statutes mentioned above prescribe any specific legal remedies for the whistleblower in the event of retaliation. This is hardly reassuring when viewed in contrast with the EU's Whistleblowing Directive for example, which clearly lays out the definition of what constitutes retaliation. Clearer statutory definitions and remedies may ultimately be what tips the balance in providing that elusive 'comfort' for the whistle to be blown.

The question then arises, would soft regulation make a difference where statutory provisions fail to deliver?

New Code requirements

Hong Kong Exchanges and Clearing Ltd (HKEX) recently upgraded the Recommended Best Practice in the Corporate Governance Code (the Code) regarding the need for issuers to have whistleblowing policies to the status of a Code Provision (CP). With effect from 1 January 2022, CP D.2.7 requires issuers, subject to comply or explain, to establish a whistleblowing policy, a system for employees and those dealing with the company to be able to raise concerns about possible improprieties. The policy should ensure whistleblowing is anonymous and in confidence.

Moreover, the audit committee, or other designated committee comprising only independent non-executive directors, should be responsible for handling whistleblowing complaints. Information related to anti-corruption and whistleblowing policies is already required to be disclosed on a comply-or-explain basis in issuers' ESG reports.

This explicit requirement for companies to have a whistleblowing policy is a timely development, says Mr Tam, but he emphasises that it is important to avoid a copy-and-paste approach in implementing the new requirement. He reiterates that any whistleblowing framework must have building trust as the primary focus since it will only be effective if employees feel safe to come forward. He adds that there is an increasing demand for whistleblowing frameworks that involve independent third parties. Deloitte's independent whistleblowing service, Conduct Watch, for example, has greater take-up in some instances than internal reporting procedures.

Regardless of whether the framework is developed internally or by an external provider, a forward-thinking approach where individuals are comfortable to use the framework is essential in developing an effective whistleblowing mechanism. Having a mechanism that is formally in place but not used when it is needed is pointless. It could potentially result in disgruntled employees turning to the regulators, with far more public consequences.

To be effective, emphasises Mr Tam, a whistleblowing framework needs to have two layers. Firstly, there should be internal procedures and policies in place that will articulate all the necessary information that a whistleblower should provide. Just as crucially, the procedures and policies should clearly lay out the escalation procedures, the step-by-step process that will be taken once a complaint has been received, and the expected turnaround time. The second layer is awareness training, to explain how employees can file a complaint. These key elements are reiterated in the Independent Commission Against Corruption's Corporate Whistleblowing Policy – Framework of Core Elements (see 'Essential features of an effective whistleblowing framework').

The role of corporate culture

Whether an employee feels secure enough to report fraud will depend not only on what it says in the brochure, but on what actually goes on in practice within an organisation. A recent guide on whistleblowing published by Herbert Smith Freehills (Whistleblowing Laws, Culture and Policies: A Global Guide For Private Sector Employers), points out that 'any policy, code or procedure, anywhere in the world, will only work if it is trusted by those who are expected to use it'.

Mr Tam stresses that it is therefore imperative for companies to communicate to employees that they can make complaints at whatever level and that there is a commitment to the process. The framework also needs to be designed to ensure that anyone alleged to be involved in the malpractice, however senior, is excluded from the follow-up process. As Mr Datwani points out, 'If I complain against the CEO, but under the policy the CEO determines the response to complaints, then what would be the point? People who blow the whistle must absolutely know that they are safe, otherwise the policy will not work'.

Moreover, while the tone needs to be set from the top, Mr Tam points out that companies need to get buy-in from all staff. He makes the point that frontline employees such as sales personnel are often the most effective whistleblowers, but are not necessarily the highest placed within the company. In order then for these employees to feel safe enough to come forward, it is vital that management sends the message to all stakeholders, especially those on the front line that these issues are important.

The global perspective

Fear of retaliation and practical considerations have long been daunting hurdles for potential whistleblowers. The tide is however turning –

> the holy grail of any whistleblowing initiative is to get employees to the point where they feel comfortable enough to expose corporate fraud

Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive

regulators in many jurisdictions are recognising that employees are valuable sources of information that lift the veil on corporate malfeasance. Whilst the new amendments to the Code are a step in the right direction, legislative initiatives in Hong Kong need to follow suit.

In the meantime, governance professionals need to keep abreast of legal developments globally. The reality of business today is that companies no longer operate under a static regulatory umbrella and very few of Hong Kong companies operate just in the Hong Kong SAR. Practices in one jurisdiction quickly become mandatory requirements in another and companies operating globally need to observe standards in the various jurisdictions they are operating in. A governance professional who has developed internal mechanisms of the highest standard is less likely to be caught wrong footed.

Sharan Gill

Sharan Gill is a lawyer and writer based in Hong Kong.

Essential features of an effective whistleblowing framework

Ensure whistleblower protection and transparency. Two key disincentives to potential whistleblowers are the fear of retaliation and the belief that nothing will be done anyway. Whistleblowing frameworks therefore have to be confidential, there has to be protection against retaliation and there needs to be a mechanism for getting back in touch with whistleblowers to reassure them that the matter is being looked into. While this information would not be a full account of allegations and responses, ensuring that the whistleblower is kept informed of developments is an important step in the process.

Ensure independent and impartial assessment of whistleblower reports. This is best achieved by having a specialised designated person or 'intake team' to handle any reports. Mr Tam points out that the team can be an internal or external one, though there is some evidence for increased confidence in external providers.

Prevent conflicts of interest and provide clear reporting channels. When a complaint is first received, there should be a quick triage to determine whether there are any conflicts of interest. If, for example, those involved in handling the report include someone alleged to be involved in the malpractice, then that person should be excluded from the follow-up process. Reporting channels should be designed accordingly. Reports against staff members or business counterparts can be made to a designated officer, for example the company secretary, internal auditor or head of compliance. Reports against directors or senior management can be made to the chairman of the board's audit committee. In addition, reports can be made to designated independent personnel, such as independent non-executive directors.

Publicise your whistleblowing policy and reporting channels. Communicating with staff and other stakeholders is essential. This should include regular training of staff on relevant policies and the reporting channels.

Regularly review your framework. In addition to the above, organisations should regularly review their whistleblower framework to ensure it remains fit for purpose.

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ESG and venture capital – portfolio management in practice

In the second and final part of their article, ESG consultants Theodora Thunder and Dr Glenn Frommer look at the specific application of ESG strategies to portfolio development.

In the first part of this article, published in last month's *CGj*, we explored the business case for establishing a strong environmental, social and governance (ESG) strategy and management mindset for venture capital (VC) portfolios. Discussions covered the benefits, risks and unique challenges to VC managers when adopting an ESG strategy in their portfolios. In this second and final part, we set out a practical ESG-guided roadmap that in staged segments mirror the lifecycle of a portfolio: purpose and management framework, deal sourcing, due diligence, portfolio management and exit strategy.

Purpose

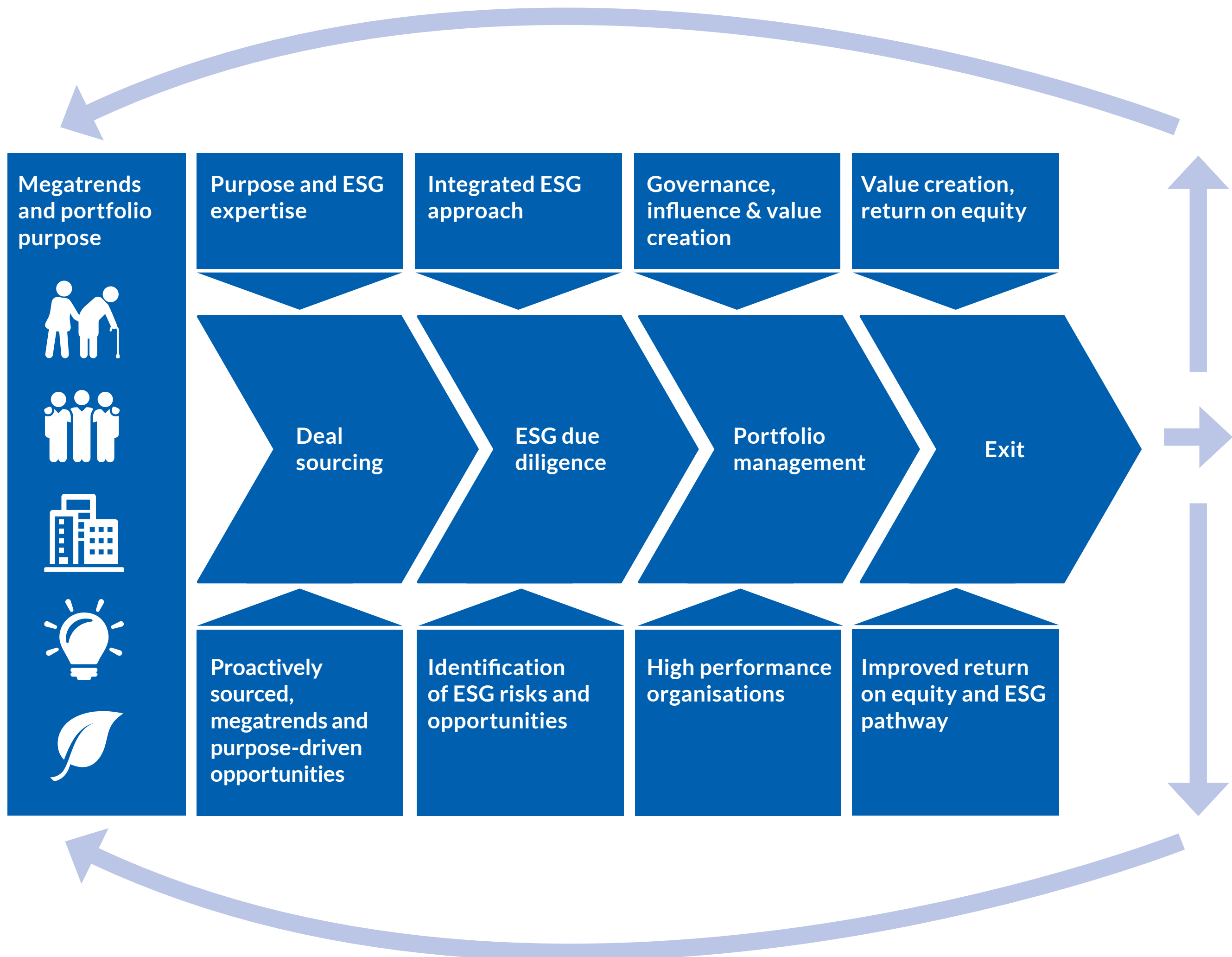
An ESG-influenced purpose is driven by an understanding of the megatrends (as illuminated by the United Nations' Sustainable Development Goals for example) relevant to the fund's targeted industry and the opportunities arising out of the increasing urgency of environmental and social needs as global markets embrace post-pandemic economies and societies, and battle climate change impact. Limited partners (the investors who supply VC funds with capital) are increasingly pressuring VC managers to include mandates to address these needs, directing their own funding purpose beyond just being the money-making machine of past decades. The exponential growth in ESG investment funds across global markets is testimony to these trends.

It is the responsibility of the general partner (the manager of the VC fund) to understand, define and articulate the portfolio's purpose and set the expected return on equity for the overall portfolio. With years of basically free money now in the rear-view mirror, fund managers are faced with a future of rising costs and risks to achieve high returns, while managing the downside that increasingly brings non-financial impacts onto the radar. A more stringent risk appetite influenced by ESG factors is emerging that necessarily raises the performance bar

Highlights

- investors in venture capital funds are increasingly pressuring fund managers to address ESG issues
- applying an ESG lens to the due diligence process identifies a broader scope of unforeseen investee-specific risks
- venture capital funds should engage with investee companies on material ESG issues, addressing due diligence findings and encouraging ongoing ESG management as the company grows

ESG development in the venture capital portfolio lifecycle



over the lifecycle of the portfolio and of the companies within the portfolio. This starts with the governance that drives and integrates purpose across the portfolio.

Once a purpose-driven ESG policy and management framework has been established, management needs to ensure allocation of resources to manage the material issues identified to achieve the desired goals. This includes overall responsibility and oversight at board and senior management level, the clear allocation of responsibilities for day-to-day management, accountability methods and the development of expertise at the operating level, which includes ESG training for relevant employees.

Deal sourcing

As the awareness of ESG materiality recalibrates deal sourcing, it sets up an integrated process in which the parameters for deal choice and fund purpose interact. This demands (and assumes) a level of expertise and the skills to proactively source and identify opportunities through an ESG lens. Using this approach raises the bar for potential candidates at the screening stage. In addition to the standards/criteria of mandated portfolio purpose and return on equity expectations, ESG-focused materiality

identifies potential non-financial risks in the business model and strategy. On the plus side, a start-up which has adopted an ESG mindset at its early stages of development demonstrates sector leadership, competent risk/opportunity management and a corporate culture that attracts today's investor interests.

To support deal sourcing and the management of portfolio companies, the VC company needs to establish a 'fit for purpose' portfolio dashboard developed as a competitive advantage. It would include at minimum the standards, systems and metrics that capture ESG performance data to augment the financial reporting to regulators, investors and industry stakeholders. As an active management tool, the dashboard codifies the VC company's own ESG policy and the framework for assessing and measuring risks, opportunity and impact when screening investment opportunities, as well as managing the overall portfolio throughout its lifecycle. A recent research paper – Dashboarding Pays Off – published by the MIT Centre for Information Systems (see endnote for details), discusses the use of dashboarding to track the what and how of value creation, which is essential to the exit strategy.

Ideally the dashboard would be managed by a dedicated ESG manager who oversees the internal ESG agenda and the mentoring of the portfolio of companies' management teams. Each company in turn would adopt its own dashboard for similar purposes and use it for peer assessment comparison.

Due diligence

Applying an ESG lens to the due diligence process identifies a broader scope of unforeseen investee-specific risks – what is missing or what poses elevated risk to the portfolio. The ESG lens could capture potential social impact from foreseeable changes in the investee's business model, the lack of management competencies to manage change, or the gap in resources for oversight of ESG issues and the functional management systems that cover non-financial risks (such as employment, ethics, health and safety, data security and diversity risks). The due diligence process could also include assessing the cultural fit and a potential ESG action plan to address material ESG risks and opportunities following investment. This could also include the milestones and interventions that reflect the VC portfolio's focus on adding value and improving return on equity. It will also appraise the skills and competencies available within the portfolio, determining areas of strength, weakness and potential.

Portfolio management

The objective of good portfolio management is to create high performers within the stable of companies while achieving overall portfolio value creation. As the portfolio grows and invested entities mature, risks and opportunities can increase in magnitude and scope, impacting the targeted exit strategy and ability to guide value creation. The significant challenge is to understand to what degree the investor can influence performance within the target company based on the minority/majority stakeholding.

> "a start-up which has adopted an ESG mindset at its early stages of development demonstrates sector leadership, competent risk/opportunity management and a corporate culture that attracts today's investor interests"

In practice, this proposes a series of essential management tools.

- Establish and lead the development of an ESG structure within investee companies. Having an overarching portfolio ESG framework serves as a benchmark to guide development when working with investee companies' risks and opportunities and the ESG pathway. Aligning this framework requires designated roles and responsibilities within the portfolio fund management team to ensure compliance and company performance development, as well as nurturing the ESG values-based culture.
- Engage with company management on material ESG issues through the holding period, addressing due diligence findings and encouraging ongoing ESG

> having an overarching portfolio ESG framework serves as a benchmark to guide development when working with investee companies' risks and opportunities

management as the company grows. Consider ESG action plans that are flexible and rolled out in a staggered approach throughout the company's development. This includes formulating a set of agreed targets and key performance indicators (KPIs) against a performance timeline. Reassessment and adjustment of the risks and opportunities should be triggered when the company passes KPIs or other thresholds. Against this, the VC fund independently sets its own thresholds in relation to the portfolio ESG issues and exit strategy. Engagement can be facilitated through capacity building in which stakeholder interests and material issues are identified and prioritised at the early stages and reviewed on a regular basis.

- Verifiable and relevant data is at the core of management decision-making. Choice of data points and their collection needs to reflect what is important to the individual business and to the portfolio, how it supports the ESG strategy and how the metrics can be of genuine use to measure impact. Timely engagement, monitoring and reporting informs on progress and points to possible interventions that can mitigate negative impact on the exit strategy, or conversely leverage unforeseen opportunities to add value. Prime candidates for this approach to data management is the acquisition of companies to build a digital asset ecosystem.
- With new funding rounds, consideration should be given to follow up on ESG risks and opportunities (decline of influence over company, business model changes, new product development, new markets entry, etc). Next-stage investment requires the review and update of the ESG strategy and action plan to ensure continued alignment with future performance expectations.

The exit

There are no standards to guide the exit strategy, let alone a strategy shaped by ESG principles. Rather, it is the story of how the fund manager has methodically created and reported operational value within the company guided by the portfolio's ESG focus and value creation framework.

The portfolio manager is tasked with two responsibilities to secure a successful exit. First, to achieve (or come close to) the portfolio's expected return on equity while leveraging opportunities to add value and keep risk within set parameters. And second, to ensure the continued pathway of value creation that attracts potential investors or trade buyers. There are no shortcuts, but rather the multi-year discipline in building a clear, transparent and evidence-backed equity story detailing the individual company's potential to the next owner or investor. This is where the practice of an ESG strategy within portfolio development aligns to the megatrend of demonstrating social and environmental purpose behind investment.

This practical roadmap is not a static framework, but rather functions as an iterative process designed to build in resilience and sustainability in the portfolio's companies. The successful exit demonstrates the viability of this roadmap as a means to achieve competitive advantage in the increasingly high-risk stakes of venture capital in Asia.

Theodora Thunder and Dr Glenn Frommer
ESG consultants

The authors help corporate management establish company-specific ESG strategy and its implementation and practice. Their collective experience spans a number of industries in Hong Kong and internationally. They can be contacted at: thunder@streeter.com.hk. Ms Thunder is a member of the Red Links Sustainability Consortium: www.redlinks.com.hk.

Part one of this article is available at: https://cgj.hkcgi.org.hk. The research paper mentioned in the article – Dashboarding Pays Off – is available at: https://cisr.mit.edu/publication/2022_0101_Dashboarding_WeillWoerner.

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Speakers

Jenny Cheng GradCG, Manager, corporate governance, MTR Corporation Ltd.
Vivian Cheung GradCG, Legal Manager, H Properties Ltd.

Facilitator

Louisa Lau FCG HKFCG(PE), Registrar, HKCGI

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Recent guidance notes

CGj reviews four recent additions to the guidance note series of the Institute, two of which give advice on issues pertaining to merger and acquisition (M&A) transactions, notably those involving share transfers, while two spotlight the ethical themes relating to digital transformation.

Governance professionals are now expected to cover a far wider range of topics than ever before. They must be able to provide high-level advice and insights into such far-flung areas as the potential legal and business risks arising from change of control events in M&A transactions, technical compliance issues, ethical concerns linked to digital transformation, and fraud investigation and prevention.

The Institute's guidance notes, issued through its seven Interest Groups set up under the Technical Consultation Panel in June 2016, are designed to assist the governance professional to understand the full gamut of pertinent matters, and to relay practical and easy-to-assimilate information. In this article, *CGj* offers a snapshot of four recent guidance notes.

Share transfers: change of control

The seventh guidance note issued by the Takeovers, Mergers and Acquisitions Interest Group, in November 2021, examines change of control (COC) events in relation to M&As, especially those involving share transfers. As part of the overall due diligence necessary in such cases, and to help manage related legal and business risks, the governance professional should be aware of the issues involved in COC events and – where listed companies are involved – be knowledgeable about the regulatory compliance requirements.

This guidance note looks at what governance professionals would need to know about the potential triggering of COC provisions under third-party agreements, and outlines the aims, definitions and implications of COC provisions; how they can guard against the risk of incompatibility with a new management team following a COC of a target company and its holding companies; some possible exclusions under a COC agreement; and various potential risks, including existing contractual obligations of the target company group and potential commercial risks, as well as ways to mitigate such risks to ensure the acquirer in an M&A is able to receive all benefits of the target's contracts.

Further requirements for listed companies

In addition, governance professionals need to be aware of the possible impact of a proposed acquisition of the shares of a listed company and the resulting obligations under the Hong Kong Code on Takeovers and Mergers (the Code) administered by the Securities and Futures Commission. General Principle 2(2) of the Code provides that if control of a company changes, or is acquired or consolidated, a general offer must normally be made to all other shareholders, while a mandatory offer needs to be extended to all shareholders of a target company under Rule 26 of the Code for designated transactions.

The guidance note also calls attention to the reverse takeover (RTO) Rules under the Listing Rules, with which The Stock Exchange of Hong Kong Ltd (the Exchange) seeks to prevent 'backdoor listings' by investors acquiring controls of listed issuers for their listing platforms, and sets out the six factors that the Exchange will normally weigh up when determining whether an acquisition or a series of acquisitions constitutes a reverse takeover. The Exchange will also check a number of other factors to assess whether there has been a change in control or de facto control. As stated in the guidance, 'The Exchange will treat a listed issuer proposing a reverse takeover as if it were a new listing applicant. The acquisition targets and the enlarged group must meet all the relevant listing requirements.'

Highlights

- for M&A transactions involving share transfers, the governance professional needs to be aware of the issue of change of control and be knowledgeable about regulatory compliance requirements
- the governance professional can better assist their organisation if they understand the overall ethical dimensions of digital transformation – notably how remote working can bring extra challenges, but also distinct benefits – and if they can help establish an appropriate internal control mechanism
- unethical or fraudulent activities in a remote working environment can be mitigated with the assistance of a governance professional, who can help foster an ethical mindset and sense of purpose in their organisation

as part of the overall due diligence necessary... the governance professional should be aware of the issues involved in change of control events

Share transfers: stamp duty

The theme is further elucidated in the Interest Group's eighth guidance note, also issued in November 2021, which gives a synopsis of the stamping of share transfers in private M&A transactions. Intensifying international concerns about tax evasion means that the governance professional needs to grasp the overall tax effects of any potential M&A transaction involving share transfers.

Stamp duty is charged on the sale or purchase of any Hong Kong stock, where 'stock', as defined by the Stamp Duty Ordinance (Cap 117) (SDO), covers a broad definition, including shares, stocks, debentures, loan stocks, funds, bonds, notes, units under a unit trust scheme and any rights to subscribe for any stock (excluding employees' share options). 'Sale and purchase' of stock includes an exchange of shares (such as share-to-share swaps), but excludes the allotment of shares.

Since 1 August 2021, the stamp duty rate on contract notes for the sale or purchase of any Hong Kong stock is 0.13% of the higher of the consideration or its value on every bought note and every sold note. In effect, the stamp duty rate is 0.26% of the consideration or the value of the shares (whichever is higher).

The SDO does provide some options for stamp duty exemptions or relief. In the context of M&As, intracompany transactions are entitled to stamp duty relief, under certain conditions, but only for associated bodies corporate, and only when the transferor and transferee remain associated for at least two years.

Contract notes and instruments of transfer of unquoted shares should be presented to the Stamp Office for stamping – which can also be done online via the e-Stamping service – while other specified documents must also be submitted for the assessment of the amount of stamp duty payable. Contract notes for the sale or purchase of any Hong Kong stock have to be stamped within two days after the sale or purchase if effected in Hong Kong, or within 30 days after the sale or purchase if effected elsewhere.

Penalties for late stamping will be imposed, although there is a mechanism in place whereby the Collector of Stamp Revenue may remit partly or wholly the penalty payable, depending on individual circumstances and with appropriate documentation. Allotments and other methods can also be used to minimise stamp duty payments – which could be significant depending on the size of the transaction – and so appropriate professional advice should be sought.

Remote working: overarching ethical dimensions

In the face of business disruption forced by events such as Covid-19, remote working has become increasingly prevalent amongst organisations. Today's technological advancements have undoubtedly brought benefits such as overcoming geographical barriers, reducing office expenses and allowing employees a greater autonomy. However, the digital transformation of today's working environment does not come without significant challenges, not least from the ethical perspective.

It is this ethical perspective allied to digital transformation, along with a consideration of the necessary elements of an internal control mechanism, that is the focus of the eighth guidance note issued in January 2022 by the Ethics, Bribery and Corruption Interest Group, whereas their ninth guidance note – also issued that same month – provides an overview of associated ethical values and fraud prevention measures.

In this section, we summarise the overarching ethical dimensions discussed in the eighth guidance note, and suggest how these principles are important for the governance professional to understand, in order to better assist their organisation and people through the complexities of digital transformation.

Five recurrent ethical themes

Digital transformation can involve a number of jurisdictions, and ethical standards can vary according to location, industry, organisation and individual. However, the following

five standards – which are consistent with the Institute's own Code of Professional Ethics and Conduct, as well as the Code of Ethics for Professional Accountant of the Hong Kong Institute of Certified Public Accountants – are a useful and widely adopted rule of thumb when appraising ethical thinking and behaviour.

- integrity and objectivity
- professional competence and due care
- professional behaviour
- transparency, and
- confidentiality.

Remote working and an internal control mechanism

Apart from having a good grasp of the overarching ethical standards made necessary by digital transformation, the governance professional should advise their organisations and people on various aspects of remote working – in particular, having an appropriate internal control mechanism in place to ensure good business ethics.

Control mechanism plus human oversight. As the guidance note states, 'the governance professional should start by ensuring that there is an understanding that having a strong internal control framework is critical for the success of a digital transformation', whether the people involved are working in the office or remotely, or a combination of both.

To control against fraud and risk of error, segregation should be introduced for duties, authorisations and approvals, as well as for physical and IT security, while no one person should have control over an entire process – all of which becomes more difficult with remote working. A clear internal control mechanism needs to be firmly established to address these and other issues, tailored to each organisation's needs and situation.

However, the framework's policies and procedures in themselves are not enough – there also needs to be in-person supervision and communication to better monitor and support employees.

Safeguarding data security. Not all companies are in a position to provide their employees with devices when working remotely, which has resulted in a 'bring-your-own-device' (BYOD) situation in many cases. Without proper internal controls, this can pose a serious data security risk when employees use their devices to access their organisation's networks and systems.

The governance professional should therefore be aware that preventive and detective controls need to be installed or programmed into the employees' personal device(s) for BYOD to be deemed safe.

Communicating virtually. In a remote working situation – where interactions between people in an organisation are necessarily curtailed – virtual communication applications and cloud-based platforms are invaluable for team collaboration and information exchange. However, without proper controls, virtual meetings can be attended by unintended participants, with potential loss of shared details and documents, and there is scope for possible information leakage and employee misconduct.

Staff well-being. Apart from the ethical concerns and IT exposures outlined above, the governance professional will also need to be aware of the latent danger of staff becoming anxious, stressed or isolated when working remotely, with a detrimental impact on their work–life balance. This in turn can lead to employees losing their sense of belonging and loyalty to an organisation, becoming less careful about risks involved in working away from the office, or even, as the guidance note suggests, becoming 'more prone to engaging in self-serving actions'. Careful monitoring, and greater support and awareness of this scenario, is therefore something else to be considered when identifying some of the issues involved with digital transformation of the workplace.

Remote working: fraud dimensions

The ninth guidance note issued by the Ethics, Bribery and Corruption Interest Group expands on the topic of remote working, focusing on ethical value and fraud prevention in relation to digital transformation.

Relationship between ethical values and unethical or fraudulent activities

The governance professional is reminded that the occurrence of unethical or fraudulent activities is often based on what is termed the 'fraud-triangle', made up of three elements, as set out below:

> **the governance professional should start by ensuring that there is an understanding that having a strong internal control framework is critical for the success of a digital transformation**

1. ***Opportunity.*** Organisations should evaluate, identify and close any loopholes that could provide an opportunity for someone to engage in unethical or fraudulent activities. Remote working affords additional opportunities, especially if there are any loose data control measures, weak system identity authentication, inadequate password encryption or poor corporate governance oversight.

2. ***Pressure and incentive.*** While opportunity sets the backdrop for fraud, pressure and incentive are the elements that give purpose and motivation for a relevant person to engage in unethical or fraudulent activities. Remote working can give rise to increased pressure and incentive, including from unreasonable performance targets and negative emotions resulting from the isolation from a physical working environment.

3. ***Rationalisation.*** This is the process employed by a relevant person in justifying his or her unethical or fraudulent activities, or the belief that one's actions do not violate ethical values or are at least 'acceptable' in the circumstances. This can be exacerbated in a remote working setting.

Mitigation in response to remote working challenges

The chance of unethical or fraudulent activities taking place in an organisation has been shown to decrease proportionately with an increase in ethical values being instilled into employees. With the help of the governance professional, the fraud-triangle can be deterred effectively through the following high-level, pragmatic actions:

- ***Leadership:*** organisations should draft policies and procedures relating to the remote working environment to serve as a guide to employees, while leaders should set the tone from the top to express the shared responsibility involved in digital transformation and their trust in their employees.

- ***Work environment:*** the processes and procedures normally adopted in a work environment will have to be redesigned for remote working, while a safe and appropriate channel for reporting and escalating should be made available to employees to bring to light potential unethical or fraudulent activities without fear of potential retaliation. The

Credits

The Institute would like to thank everyone involved in the guidance notes reviewed in this article, in particular the members of the Institute's Interest Groups set out below.

Takeovers, Mergers and Acquisitions Interest Group

Michelle Hung FCG HKFCG (Chairman), Dr David Ng FCG HKFCG, Henry Fung, Kevin Cheung, Lisa Chung, Patrick Cheung and Philip Pong. Gratitude is expressed to Patrick Cheung, Partner, Holman Fenwick Willan, as the author of this paper.

Ethics, Bribery and Corruption Interest Group

Dr Brain Lo FCG HKFCG (Chairman), Anna Lam, Jeremy Birch, Michael Chan, Ralph Sellar and William Tam ACG HKACG. Gratitude is expressed to William Tam ACG HKACG, Partner, Deloitte China, as the author of this paper.

Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive, serves as Secretary to the Institute's Interest Groups. If you have any comments and/or suggestions relating to the Institute's Interest Groups, he can be contacted at: mohan.datwani@hkcgi.org.hk.

company's IT team also plays an important role in ensuring a smooth transition to a secure remote working situation.

- ***Employee collaboration:*** when not working together in an office setting, barriers may arise between mangers and team members. Ongoing communication via regular group or one-to-one online meetings can help to build harmonious working relationships, avoid emotional burnout and adjust work allocation, and, more appositely, help address any issues that might give rise to unethical or fraudulent activities before they happen.

Turning remote working into a plus

The governance professional is well placed to help foster an ethical mindset and a sense of mutual trust in their organisation, which sets the foundation for establishing a fit and proper system of internal controls, thereby making the best of remote working arrangements.

The digital transformation from a traditional physical office to a remote working environment, if handled correctly, can create more track records and evidence to strengthen an organisation's fraud detection and investigation capabilities. In addition, with no limitations on physical location brought about by digital transformation, organisations can attract, recruit and engage talent from around the world. CGj

The guidance notes reviewed in this article are available under the Thought Leadership section of the Institute's website: www.hkcgi.org.hk.

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Updated guidance for intermediaries in virtual asset (VA) activities in Hong Kong

David Cheng, Partner, Hong Kong Office, Winston & Strawn, overviews the latest guidance for intermediaries dealing in VA-related products and services, and clarifies the new measures and requirements pertaining to Hong Kong's virtual asset market.

The VA landscape in Hong Kong has evolved rapidly in recent years, with a broader range of VA-related products available in the market. For example, certain high-profile cryptocurrency exchange-traded funds (ETFs), such as a Bitcoin ETF from Canada and a Bitcoin futures ETF from the US, were for some time available to retail investors on certain trading platforms that operate in Hong Kong.

On 28 January 2022, the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) published a joint circular (the Circular) that supersedes a previous SFC circular in 2018 on the distribution of VA funds (the 2018 Circular). The Circular covers a range of VA-related activities, including the distribution of VA-related products, the provision of VA-dealing services and the provision of VA-advisory services.

Distribution of VA-related products

While recognising that the spot market for virtual assets is largely unregulated at present, the SFC and the HKMA consider certain investor protection measures should be imposed on the trading of VA-related products, which refer to investment products that (a) have a principal investment objective or strategy to invest in virtual assets, (b) derive their value principally from the value and characteristics of virtual assets, or (c) track or replicate the investment results or returns that closely match or correspond to virtual assets.

Intermediaries distributing VA-related products should take all following applicable measures for investor protection:

1. ***Professional investors only.*** While intermediaries may offer non-complex derivative VA-related products to retail investors, they should offer other VA-related products to professional investors only.

2. ***Virtual asset knowledge test***. Intermediaries should assess whether their clients have knowledge of investing in virtual assets and VA-related products before effecting a transaction on their behalf, unless the client is an institutional professional investor or qualified corporate professional investor. Intermediaries should also ensure that their clients have sufficient net worth to afford to assume the risk and bear the potential loss associated with trading VA-related products.

3. ***Suitability.*** Intermediaries should observe their obligations set out in the SFC's suitability requirement FAQs (namely, on Compliance with Suitability Obligations by Licensed or Registered Persons and on Triggering of Suitability Obligations), including the know your customer (KYC) procedures, understanding of the investment products they recommend, competent staff and sufficient training, just to name a few. Intermediaries should also conduct proper due diligence on the product, including, for example, understanding the risks and features of the underlying virtual assets, the targeted investors and the product's regulatory status.

4. ***Financial accommodation.*** Intermediaries should not provide clients with financial accommodation for investing in VA-related products, unless they have satisfied themselves that the client has the financial capacity to meet the obligations arising from leveraged or margin trading in VA-related products.

5. ***Disclosure***. Intermediaries should provide to clients, in a clear and easily comprehensible manner,

Highlights

- a joint circular published in January this year by the Securities and Futures Commission and the Hong Kong Monetary Authority is representative of their continuing efforts to regulate the virtual asset (VA) market in Hong Kong
- intermediaries distributing VA-related products are now expected to take a number of specified investor protection measures, and to comply with certain requirements when providing VA-dealing services and VA-advisory services
- intermediaries should now restrict retail investors' access to certain VA-related products that are open to professional investors only

information about VA-related products and warning statements specific to virtual assets. The Circular has given some examples of such warning statements in Appendix 5.

6. ***Prohibition of unauthorised investments.*** Some VA-related products are not permitted to be offered to retail investors because of restrictions specific to some jurisdictions or exchanges. Intermediaries should not offer to the public any investments that have not been authorised by the SFC, and should ensure online platforms that distribute VA-related products are properly designed to comply with those selling restrictions, so that only investors in the appropriate jurisdictions can gain access to their platforms.

7. ***Complex product requirements.*** The SFC has published a non-exhaustive list of examples of non-complex and complex products (Non-Complex and Complex Product List), where some VA-related products may be determined to be complex products. Intermediaries distributing complex VA-related products should follow the complex product requirements.

8. ***Derivative product requirements.*** Certain VA-related products are considered derivative products. Intermediaries distributing such derivative VA-related products should ensure that the client understands the nature and risks of the products and has sufficient net worth to be able to assume the risks and bear the potential losses of trading in the products.

In relation to points 7 and 8 above, the Circular discusses investor protection measures specific to the following three classes of products:

1. ***Nonderivative products.*** Nonderivative VA-related products are very likely to be considered complex products and should therefore comply with the complex product requirements.

2. ***Non-complex derivative products.*** VA-related derivative products that are either traded on a specified exchange, or funds approved for retail investors by the regulator in a designated jurisdiction, are generally not considered complex products, unless they are determined to be 'complex' according to the Non-Complex and Complex Product List. When distributing such non-complex derivative products, intermediaries should follow the derivative product requirements. As discussed above, there is no 'professional investor only' restriction for non-complex derivative products.

3. ***Complex derivative products.*** Complex derivative products include (a) unlisted VA derivatives, (b) VA derivatives listed on a non-specified exchange, (c) VA funds that are not approved for retail investors in any designated jurisdiction, and (d) other VA derivatives determined to be complex under the Non-Complex and Complex Product List. For these complex derivative products, both the complex product requirements and the derivative product requirements apply.

"the SFC and the HKMA consider certain investor protection measures should be imposed on the trading of VA-related products"

Provision of VA-dealing services

Intermediaries must be licensed or registered for Type 1 regulated activity to provide VA-dealing services to existing clients of Type 1 services only. According to the Circular, intermediaries should also note and comply with the following requirements in the provision of VA-dealing services:

- ***SFC-licensed VA trading platforms only:*** The majority of VA trading platforms are unregulated or regulated for anti–money laundering and counter–terrorist financing purposes only. Intermediaries that provide VA-dealing services should partner with SFC-licensed VA trading platforms only.

- ***Fitness and properness:*** Non-security virtual assets fall outside the SFC's jurisdiction;

however, VA-dealing services that involve the trading of non-security virtual assets may affect an intermediary's fitness and properness to stay licensed or registered to conduct regulated activities. Therefore, intermediaries are expected to comply with all the regulatory requirements imposed by the SFC and the HKMA when providing VA-dealing services, whether or not the virtual assets involved are securities.

- ***Introducing agent services:*** Where intermediaries act as introducing agents, they should introduce professional investors to SFC-licensed platforms only and should not relay orders on behalf of their clients to the platforms or hold any client assets (fiat currencies or virtual assets) for the introducing services.

- ***Omnibus-account arrangement:*** Intermediaries providing VA-dealing services under an omnibus-account arrangement are expected to follow the SFC's licensing or registration conditions, including the terms and conditions set out under Appendix 6 to the Circular such as excess liquid capital, written client agreement and record-keeping requirements, among others.

- ***Discretionary account management services:*** There is a *de minimis* threshold for intermediaries providing discretionary account management services, subject to additional requirements set out in the Proforma Terms and Conditions for Licensed Corporations which Manage Portfolios that Invest in Virtual Assets, published by the SFC in October 2019. Where a Type-1 intermediary is authorised by its clients to provide VA-dealing services on a discretionary basis as an *ancillary* service, the intermediary should invest less than 10% of the gross asset value of the client's portfolio in virtual assets.

Provision of VA-advisory services

Currently, only Type 1 or Type 4 intermediaries are allowed to provide VA-advisory services. Again, such VA-advisory services should be provided to intermediaries' existing clients to whom they provide services in Type 1 or Type 4 regulated activities only. Intermediaries providing VA-advisory services should observe the same requirements listed in the section above on the distribution of VA-related products. In addition, they should also ensure they meet the requirements of fitness and properness, knowledge test and conduct as set out in the Terms and Conditions.

Implementation

There will be a six-month transition period before the full implementation of the expected requirements in the Circular for intermediaries already engaging in VA-related activities to revise their systems and controls in accordance with such requirements. Intermediaries that do not currently engage in any of the above VA-related activities but intend to do so should notify the SFC in advance and ensure they comply with all the requirements before introducing such services.

Conclusion

The Circular represents the continuing efforts of the SFC and the HKMA to regulate the virtual asset market in Hong Kong. According to the new requirements, intermediaries, such as online brokerages and trading platforms, should restrict retail investors' access to the VA-related products that are open to professional investors only. This means certain popular cryptocurrency ETFs, Bitcoin futures ETFs, or other cryptocurrency funds will no longer be available to retail investors in Hong Kong.

On the other hand, intermediaries providing VA-dealing and VA-advisory services can partner with VA-trading platforms that are licensed by the SFC only. This could indicate that the SFC, which granted its first license to a VA-trading platform in December 2020, may license more VA-trading platforms that are eligible.

Even though, at present, non-security virtual assets fall outside the SFC's jurisdiction, the Circular shows further steps to regulate the trading of non-security virtual assets in the context of VA-dealing services, which is in keeping with the proposal by the Financial Services and the Treasury Bureau back in May 2021 of an SFC-licensing regime for virtual asset service providers in Hong Kong.

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Challenging a delisting decision

A closer look at the approach of Hong Kong courts in determining legal challenges against delisting decisions

Wynne Mok, Partner, and Jason Cheng, Associate, Slaughter and May, examine the background and precedents to the latest attempt by a company to challenge a delisting decision in the High Court, and explain the factors considered by the courts in such cases.

In the past year, we have seen a number of failed attempts to challenge the decisions made by The Stock Exchange of Hong Kong Ltd (the Exchange) to cancel the listing of certain issuers by way of judicial review. The latest attempt was made by Up Energy Development Group Ltd (the Company).

The High Court recently delivered its decision on the Company's application for leave to apply for judicial review of the decision made by the Listing Appeals Committee (LAC) of the Exchange to cancel the listing status of the Company.

This article discusses the factors which the Hong Kong courts have considered when determining previous applications for leave to challenge the legality of the Exchange's decision to delist a company under the Listing Rules.

Up Energy Development

The Company is a Bermuda-incorporated company, conducting the business of mining, production and sales of coking coal. Its securities had been listed on the Main Board of the Exchange since 2 December 1992.

When the Company's financial situation deteriorated in early 2016, winding-up petitions were presented against the Company in Hong Kong and Bermuda. On 30 June 2016, trading in the Company's shares was suspended due to its failure to release its annual results. On 18 October 2016, pursuant to Practice Note 17 (PN17), the Exchange informed the Company that it had been placed into the first delisting stage with the following resumption conditions:

- to demonstrate that it had a sufficient level of operations or assets of sufficient value as required under Listing Rule 13.24 (LR13.24)
- to publish all outstanding financial results and address audit qualifications (if any), and
- to have the winding-up petitions either withdrawn or dismissed and the provisional liquidators discharged.

Around the same time, the Company went into provisional liquidation and joint provisional liquidators (JPLs) were appointed. The JPLs were given full powers over the affairs of the Company and the directors' powers ceased.

The Listing Division subsequently placed the Company in the second stage of delisting and required it to submit a viable resumption proposal within six months. In an attempt to comply with the requirement, the Company submitted a draft resumption proposal and a further modification, which unfortunately did not meet the Listing Division's expectations. The matter then proceeded to the third stage of delisting. Whilst the Company had attempted to apply for a review of the Listing Division's decision (and the subsequent decision of the Listing Committee), those attempts were unsuccessful.

Notwithstanding that the Company submitted another resumption proposal, the Listing Committee decided to cancel the listing of the Company's shares in March 2020. Upon the Company's application, the Listing Review Committee (LRC) reviewed the Listing Committee's decision. When the LRC decided against the Company, the Company

Highlights

- the latest challenge to a delisting decision by the Exchange has recently been dismissed by the High Court
- suspended issuers must comply with all the Listing Rules – notably the amended LR13.24 – in order for a resumption of listing to be considered
- when evaluating whether to mount a legal challenge against the Exchange's decision to delist a listed issuer, a number of key factors should first be taken into account

applied to the LAC for a review of the LRC's decision. By the time the matter came before the LAC, the Company had had almost five years to put forward a viable resumption proposal and had no less than eight separate opportunities to demonstrate compliance with the resumption conditions imposed. It however sought a time extension of six months to submit a viable resumption proposal.

The LAC met on 21 April 2021. Having considered the parties' written submissions and oral submissions, the LAC decided against the Company. The Company then sought leave from the Court of First Instance (CFI) to apply for judicial review of the LAC decision.

Grounds of review

The Company claimed that the LAC decision was tainted with procedural impropriety in three aspects (Ground 1). Alternatively, the decision constituted a disproportionate interference with the right to property of the Company (Ground 2). Both grounds were dismissed.

Ground 1 (a): Failure to afford a fair remedial period

As mentioned above, the Company was required to demonstrate compliance with LR13.24. Prior to 1 October 2019, LR13.24 required listed issuers to demonstrate a sufficient level of operations or assets of sufficient value to warrant continued listing. The rule was amended to its current form on 1 October 2019, whereby listed issuers are required to demonstrate a sufficient level of operations *and* the existence of assets of sufficient value. When the amended LR13.24 came into force, listed issuers were granted a grace period of 12 months to comply with the new requirements.

The Company argued that when the amended LR13.24 became effective on 1 October 2019, it should as a matter of fairness have been given a fresh 18-month remedial period (that is, until 1 April 2021) to comply with the new requirement. As such, it was unfair that the LAC dismissed the review and refused to grant a further time extension for the submission of a resumption proposal.

The CFI rejected the Company's argument. It accepted the Exchange's argument that the Company, as for other suspended issuers, was not exempt from compliance with all of the Listing Rules. All suspended issuers were informed that they would have 12 months to comply with the amended LR13.24. There was no basis to extend the 12-month remedial period by another six months. Furthermore, as a matter of fact, the Company had already enjoyed an extension of 18 months by the date of the LAC hearing, but was still unable to comply with the new LR13.24.

Ground 1 (b): Apparent bias

According to the transcripts of the LAC hearing, the Chairman and Deputy Chairman raised questions and comments about the absence of representatives from the management of the Company at the hearing (the first question). The LAC also expressed concern about a 'latent potential conflict of interest' in that, unlike the Exchange, the JPLs had an 'interest in earning fees on the Company' and they were running the Company. The LAC asked the Company for more information concerning the appointment of the JPLs and their fee arrangements (the second question).

The Company sought to argue that the questions and concerns raised by the LAC demonstrated an apparent bias. It was submitted that since the JPLs were properly appointed and were officers of the court, there was simply no (reasonable) basis for those queries. The LAC was in fact attacking the integrity of the JPLs.

As confirmed by the Court, the well-established test for apparent bias is whether a fair-minded and informed observer, having considered the relevant facts, would conclude that the decision-maker has not brought or will not bring an impartial mind (that is, a mind open to persuasion by the evidence and submissions raised by the parties) to bear on the adjudication of the matter. The issue was not whether the LAC was fair and impartial in the LAC decision, but whether a fair-minded and informed observer would conclude that there was a reasonable apprehension of bias. It is to be presumed that the fair-minded observer would have observed the entirety of the LAC hearing, including all the questions and answers, submissions and exchanges at the hearing.

Having considered the transcripts in context, the Court was of the view that the LAC's first question was relevant to the determination of whether the Company had a viable and sustainable business, including by reference to the identity and expertise of the persons in charge of the business. The second question on the JPLs' fee arrangements were

> the courts… are reluctant to interfere with decisions by the Exchange's committees as they are deemed independent

put to ease the regulatory concern that the parties associated with suspended listed issuers might try to take advantage of the economic value of the listed shell by engaging in a reverse takeover or backdoor listing. The Court accepted the Exchange's submission that the fact that the LAC raised questions suggested that they wished to give the Company an opportunity to clarify and explain the position. Indeed, the Company's representative responded to those questions and the LAC had no further questions. The LAC decision was not based on any concern about reverse takeover or backdoor listing.

Ground 1 (c): Lack of a fair and adequate opportunity to present one's case

At the LAC hearing, the Company wanted to make a more comprehensive submission to facilitate the committee members' decision, starting with the basic background of the Company and its developments over the past few years. However, the Company's representative was reminded to keep his oral submissions succinct and limited as far as possible to matters not adequately covered in the written submissions and materials filed before the hearing. The Company contended that as such, it was not afforded a fair and adequate opportunity to present its case.

The CFI acknowledged that it is trite that a person who is entitled to be heard orally must be allowed an adequate opportunity of putting his own case and the decision-maker is obliged to listen fairly to the contentions of all persons entitled to be represented at the hearing. However, standards of procedural fairness are not immutable and depend on the facts and circumstances of each case. Where the parties had had an opportunity to file full written submissions in advance of an oral hearing (which was the case here), it is justifiable to require every oral submission made to the tribunal to be succinct and limited as far as possible to matters not adequately covered in the written submissions. Indeed, the Court found it a typically fair approach to ask parties to restrict their oral submissions to anything which is not covered by the written submissions.

Ground 2: Constitutional challenge

The Company argued that the LAC decision constituted a disproportionate interference with the right to property of the Company under Articles 6 and 105 of the Basic Law. Relying on the Court of Appeal's decision in *Interush Ltd v Commissioner of Police*, the Company submitted that 'property' should be interpreted generously and should include not only tangible assets but also any right which has an economic value, such as a chose in action.

However, Judge Coleman, reaffirming his Lordship's decisions in *Longrun Tea Group Co Ltd v The Stock Exchange of Hong Kong Ltd* and *Kwok Hiu Kwan v Convoy Global Holdings Ltd*, held that the listing status of the Company would not fall within the concept of 'property' so as to trigger the provisions in the Basic Law. Even if the listing status constituted 'property', it is not property belonging to the Company. In a reverse takeover scenario, the real value of a company's listing status would belong to its creditors and contributors, since the value would essentially be taken as a means of removing or resolving the relevant debts upon the restructuring arising out of its insolvency.

In the *Convoy* case, his Lordship acknowledged that there were cases where the courts recognised a company's listing status as a valuable asset. However, those cases were all concerned with insolvent companies. The same position would not apply to companies that are not insolvent. Further, those earlier cases were decided prior to 2019 and at a time when reverse takeover was not as strictly regulated as it is today, and therefore the listing status of a company might have carried some value in a reverse takeover. However, nowadays, it would be extremely unlikely that the listing status of most companies would remain a real valuable asset.

Whilst the listing status would have an impact on the prospect of the scheme of arrangement that had been approved by the requisite statutory majority of the creditors of the Company, as the Court ruled, it does

> the Court, in determining whether to grant leave to apply for judicial review, will focus on whether the decision made is proper under the usual test and not on the underlying merits of the case already considered by the Exchange

not alter the conclusion that it is not a right to property of the Company.

In any event, the CFI was satisfied that the LAC decision made pursuant to the delisting procedure under the Listing Rules was rationally connected to the legitimate aims of preventing the build-up of issuers whose shares have been suspended for long periods, with no certainty as to when trading would resume or when the issuer would be delisted, which would in turn hinder the proper functioning of the securities market and undermine its quality and reputation. A decision to delist an issuer after the remedial period has lapsed and all review procedures have been exhausted would be deemed proportionate.

In light of the above, the CFI refused the Company's application for leave to apply for judicial review.

Lessons from previous attempts to challenge a delisting decision

Having studied the case of Up Energy and the other recent cases, we set out below the takeaway points that one should bear in mind when considering whether to mount a legal challenge against the Exchange's decision to delist a listed issuer.

1. A decision made by an administrative body could be challenged on the grounds that it is tainted by procedural impropriety, or that it is irrational or unreasonable in the Wednesbury sense.

2. The courts, however, are reluctant to interfere with decisions by the Exchange's committees as they are deemed independent in their role due to their appointment mechanism and the composition of the members who represent the various interests of investors, representatives of listed companies and market practitioners. These people are well placed with their relevant knowledge and experience to determine currently acceptable standards in the market.

3. An applicant must first exhaust all alternative remedies before seeking the Court's intervention by way of a judicial review. Unless there are exceptional circumstances, it would be abusive for the applicant to make a challenge and seek a stay or adjournment of the application for leave to review the Exchange's decision, pending the outcome of an alternative remedy pursuant to the Listing Rules, hoping to further delay a delisting decision already made.

4. Whilst there is a presumption that an administrative power will be exercised in a manner which is fair in all the circumstances, provided that the decision-making body achieves the degree of fairness appropriate to its task, it is for the body to decide how it will proceed. The Court would hardly exercise its judicial review jurisdiction to review decisions that go only to procedure rather than to the end result.

5. It is difficult to successfully challenge the Exchange's assessment of an issuer's compliance with LR13.24 in court. The Exchange is entitled to look at the level of operations and the level of assets in conjunction with the issuer's actual business. In particular, relevant considerations include the way in which the assets have actually been deployed in the past and the likely use of those assets in the future. The Court, in determining whether to grant leave to apply for judicial review, will focus on whether the decision made is proper under the usual test and not on the underlying merits of the case already considered by the Exchange.

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Slaughter and May

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Employment termination without cause

Right to terminate without cause prevails over the implied duty of mutual trust and confidence between employer and employee

Wynne Mok, Partner, and Jason Cheng, Associate, Slaughter and May, discuss a recent court ruling that reconfirms an employer's right to terminate an employment contract without cause, and why the duty of mutual trust and confidence between employer and employee cannot be used as a basis for recovering any damages from such a dismissal.

Background

In *Lam Siu Wai v Equal Opportunities Commission (Lam)*, the Court of First Instance (CFI) affirmed that the common law implied duty of mutual trust and confidence (Duty) was concerned with the preservation of the continued relationship between employer and employee, and could not be used to water down an employer's contractual or statutory right to terminate employment without cause by notice or payment in lieu of notice.

In this article, we will discuss the scope and applicability of the Duty.

Facts

The Equal Opportunities Commission (EOC) terminated the Claimant's employment after 22 years of service, by paying her three months' salary in lieu of notice, as well as all the accrued entitlements pursuant to the employment contract. The letter of termination referred to the Claimant's 'recent attitude and behaviour' not closely matching with the requirements of the senior position she was employed for at the time.

The Claimant lodged a claim at the Labour Tribunal against the EOC for damages, on the grounds that the EOC wrongfully terminated her employment in breach of the Duty. More specifically, referring to the reason for her dismissal stated in the letter of termination (Dismissal Reason), the Claimant alleged that her termination was in bad faith and not for a valid reason under section 32K of the Employment Ordinance (Cap 57) (Ordinance), and that the wrongful termination in bad faith amounted to serious breaches of the EOC's implied duty of mutual trust and confidence contained under her employment terms. She claimed loss and damages, including loss of her income, loss of the employer's MPF contributions and loss of gratuity for the remaining period of the fixed term employment contract.

The EOC's case, however, was based primarily on its contractual or statutory right to terminate the employment contract by payment in lieu. In particular, the EOC sought to rely on section 7 of the Ordinance, which provides that either party to an employment contract may at any time terminate the contract without notice by making payment in lieu. There was indeed no obligation to provide any valid reason (indeed, any reason) for the termination without cause.

The Labour Tribunal decided in favour of the Claimant and held that the EOC had breached the Duty:

1. Section 7 of the Ordinance only establishes a mode of termination without cause (that is, termination by payment in lieu of notice). In exercising the statutory right under section 7, the employer should make sure that there is no breach of any express or implied terms of the employment contract.

2. The most critical issue was whether there was a good and valid reason to terminate the employment. If the employer

Highlights

- a recent Court of First Instance (CFI) case affirmed and clarified the common law implied duty of mutual trust and confidence between employer and employee in Hong Kong
- however, the CFI confirmed that such duty cannot be applied to water down an employer's contractual or statutory right to terminate employment without cause by notice or payment in lieu of notice
- employers should bear in mind that if the intention is to exercise the right to terminate without cause, the less they say about the reasons for the termination the better

had a good and valid reason for the termination, there would not be any breach of the Duty in the employment terms.

3. The burden was on the employer to prove that the reason for dismissing the Claimant was good and valid.

4. Having considered the evidence given, the Labour Tribunal concluded that the EOC failed to prove that the Dismissal Reason was a 'true and valid' reason for dismissing the Claimant. Indeed, the possible reason for termination was that the Claimant had lodged a complaint or grievance about a senior management personnel, who then retaliated by creating a pretext for dismissing the Claimant.

Decision of the CFI

The EOC appealed against the Labour Tribunal's decision. The relevant grounds of appeal were that the Presiding Officer erred in holding that the critical issue in determining the Claimant's claim was whether there was a good and valid reason for the termination of the employment contract when the EOC terminated the Claimant's employment without cause upon exercise of its contractual right in accordance with the terms of the employment contract and/or its statutory rights under the Ordinance. The Presiding Officer also erred in holding that the EOC acted in breach of the Duty when the Duty did not and could not override the EOC's right to terminate an employment by payment in lieu (whether contractual or statutory).

Referring to the UK case of *Malik v BCCI (Malik)*, the CFI confirmed the existence of the Duty, namely that in respect of an employer, it shall not 'without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee'. The Duty is apt to cover a great diversity of situations in which a balance has to be struck between an employer's interest in managing his or her business as he or she sees fit and the employee's interest in not being unfairly and improperly exploited.

Malik concerned two former employees of BCCI, a bank that went into liquidation in the summer of 1991. Shortly before the applicants were dismissed on the grounds of redundancy, it became widely known that the bank might have been carrying on its business fraudulently. The former employees claimed that stigma was attached to them and they were unable to find new employment in the financial services industry, notwithstanding that they were not implicated in the bank's misconduct. Their claims for damages were rejected in the first instance and by the UK Court of Appeal.

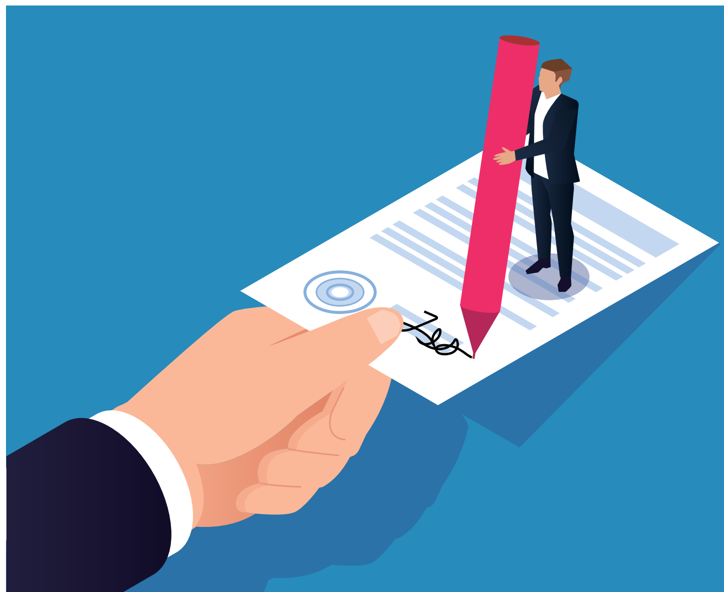
The House of Lords, however, allowed the former employees' further appeal. It was decided that the bank as an employer was under a general implied obligation not to engage in conduct likely to undermine the trust and confidence between employer and employee, and this general obligation included an implied obligation not to conduct a corrupt and dishonest business. The former employees were awarded damages, including loss of earnings owing to the failure to obtain new employment as a result of the stigma.

Application of the Duty

As regards the application of the Duty, the CFI referred to the Hong Kong Court of Appeal's (CA) decision in *Tadjudin Sunny v Bank of America, National Association (Tadjudin Sunny)*. The CA in *Tadjudin Sunny* in turn referred to the House of Lords' decision in *Johnson v Unisys Ltd (Johnson)*, in which the majority held that the Duty cannot be utilised as a foundation for an employee to recover damages for loss arising from the manner of his or her dismissal. This was because the Duty was concerned with preserving the continuing relationship that should subsist between employer and employee, and therefore it was not appropriate for use in connection with the way in which the relationship is terminated. The CFI confirmed that this represents where Hong Kong law stands and the Duty cannot be applied to water down an employer's right to terminate the employment of its employee without cause by invoking the notice provisions.

In *Johnson*, the plaintiff employee was dismissed for some alleged irregularity. To terminate the employment, the defendant employer paid the plaintiff employee four weeks' salary in lieu of notice pursuant to the employment contract, which allowed the employer to terminate the employment for cause (based on gross misconduct on the part of the employee) or without cause (by notice or payment in lieu of notice). The plaintiff employee claimed damages at common law, alleging that his dismissal was in breach of various implied terms

> the contractual right to terminate an employment (on the part of either employer or employee) can be exercised unreasonably or capriciously so long as such right is exercised in accordance with the relevant employment contract



of his employment contract, one of which was that the employer would not without reasonable cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between itself and its employees. The allegation lay in the fact that he was dismissed without a fair hearing and in breach of the employer's disciplinary procedure. Due to the manner in which he was dismissed, he suffered a mental breakdown and was unable to work. His claim was rejected in the first instance and his subsequent appeals to the UK Court of Appeal and the House of Lords failed.

Lord Hoffmann of the House of Lords, in particular, found it difficult to adapt the implied term of mutual trust and confidence to the dismissal in the face of the express provisions that the defendant employer was entitled to terminate the plaintiff's employment on four weeks' notice without any reason, given the principle that any terms which the courts imply into a contract must be consistent with the express terms.

Johnson should be distinguished from *Tadjudin Sunny*. Whilst the employer in the case of *Tadjudin Sunny* sought to terminate the employment contract by giving one month's salary in lieu of notice pursuant to the employment terms, the CA decided that the employer was in breach of an implied term.

The plaintiff there was employed by the defendant as an analyst. The employment contract expressly provided that the plaintiff's eligibility for any bonus under the defendant's performance incentive program was conditional upon her remaining in the defendant's employment at the time of payment of the bonus. Following a series of performance issues, the defendant placed the plaintiff on a performance improvement plan and ultimately terminated her employment. As the termination took place prior to the bonus payment date, the plaintiff did not receive any performance bonus prior to her departure.

The CA held that it was intended and understood by both parties that the performance bonus constituted an important benefit for the plaintiff and an integral part of her remuneration package. On this basis, the appellate court found it necessary to imply into the employment contract a term that the defendant could not exercise its contractual right to terminate the plaintiff's employment by notice or payment in lieu to deprive the plaintiff of her performance bonus. Without such an implied term, the plaintiff's contractual right to be eligible for consideration under the performance incentive program could be easily taken away by the defendant exercising its contractual right of termination by notice or payment in lieu.

> to imply a duty of good faith in the termination of employment without cause would lead to far-reaching effects on employment law

The CA was satisfied that based on the evidence provided, the lower court was correct in finding that the defendant acted maliciously in invoking and conducting the performance improvement plan with the view to terminating the plaintiff's employment and avoiding payment of her bonus, and was therefore in breach of the implied term.

In *Lam*, the CFI made it clear that *Tadjudin Sunny* was not an authority for the general proposition that the right to terminate without cause was qualified by an implied duty to exercise such right in good faith. Indeed, the CA in *Tadjudin Sunny* acknowledged that the issue before it was 'narrow and specific', based on the particular facts and circumstances of the case.

The CFI also stressed that consistent with the analysis on the Duty (that is, the right to terminate without cause is not subject to the Duty), the contractual right to terminate an employment (on the part of either employer or employee) can be exercised unreasonably or capriciously so long as such right is exercised in accordance with the relevant employment contract, and the court is not concerned with the rightness or wrongness of the dismissal. The case of *Cheung Chi Keung v Hospital Authority (Cheung Chi Keung)* was referred to. Therefore, the CFI failed to see how or why the Dismissal Reason had any bearing on the termination of the Claimant's employment.

In *Cheung Chi Keung*, the defendant employer commenced disciplinary proceedings against the plaintiff employee due to the latter's unsatisfactory work performance pursuant to the human resources policies that were incorporated into the employment contract. The defendant subsequently terminated the employment contract by giving the plaintiff two months' salary in lieu of notice before the disciplinary proceedings were concluded. In the plaintiff's claim for wrongful dismissal, the CFI held that on a proper construction of the relevant employment contract, the defendant had a separate and distinct right to terminate the plaintiff's employment without cause by notice or payment in lieu. Such right was not subject to the disciplinary proceedings and could be exercised unreasonably or capriciously.

As an obiter, the Honourable Mr Justice Anthony Chan expressed that to imply a duty of good faith in the termination of employment without cause would lead to far-reaching effects on employment law. Reasons for termination may well have to be given for the exercise of such right, which may be subject to scrutiny by the Labour Tribunal. Litigation complexity and costs may increase significantly, and delay may be caused. It would be more appropriate for such significant changes to the law to be dealt with by the legislature.

Takeaways

The CFI's decision in *Lam* reminds us that there is an implied duty of mutual trust and confidence between employer and employee under common law. However, in general, it has no application in the exercise of the contractual or statutory right to terminate an employment without cause.

Nevertheless, if an employer exercises the right to terminate an employment with the intent to deprive the employee's entitlement under the relevant employment contract, the Hong Kong courts may be ready to imply a term in the contract that the employer's right be exercised in good faith.

It is also important for employers to bear in mind that if the intention is to exercise the right to terminate without cause, the less they say about the reasons for the termination the better. As demonstrated in *Lam*, whilst the employer meant to terminate the employment contract by making a payment in lieu pursuant to the employment terms, the statement about the employee's performance in the letter of termination unfortunately gave rise to the subsequent dispute.

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Speakers: *Agnes KY Tai, Director, Great Glory Investment Corporation; and Victor Kwong, General Manager – Corporate Sustainability and Chairman of Environmental Working Committee, Hong Kong and China Gas Company Ltd (Towngas)*

25 March

The Corporate Governance Code changes – masterclass on practical issues with perspectives from regulators, issuers and investors

Chair: *Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), CGI Past International President and Institute Past President, and Executive Director and Company Secretary, CK Hutchison Holdings Ltd*

Speakers: *Kelly Lee, Vice President, Policy and Secretariat Services, Listing Division, Hong Kong Exchanges and Clearing Ltd; Gillian Meller FCG HKFCG(PE), Institute Immediate Past President, and Legal and Governance Director, MTR Corporation Ltd; and Flora Wang, Director, Sustainability Investing, Fidelity International*

30 March

Technology series: integrated risk management – is your company ready for it?

Chair: *Eric Chan FCG HKFCG(PE), Chief Consultant, Reachtop Consulting Ltd*

Speakers: *Tiong-wee Poh, Associate Partner, Risk Transformation, and Hilary Yung, Senior Manager, Consulting, Ernst & Young Advisory Services Ltd*

Video-recorded ECPD seminars

Some of the Institute's previous ECPD seminars/webinars can now be viewed on the Hong Kong Metropolitan University's online e-CPD seminars platform.

Details of the Institute's video-recorded ECPD seminars are available in the Professional Development section of the Institute's website: www.hkcgi.org.hk.

For enquiries, please contact the Institute's Professional Development Section: 2830 6011, or email: cpd@hkcgi.org.hk.

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
17 May 2022	4.00pm–5.30pm	U.S. export controls and sanctions against Russia and Belarus: an expansive, novel, and plurilateral approach	1.5
18 May 2022	4.00pm–5.30pm	Family wealth management	1.5
20 May 2022	6.45pm–8.45pm	Company secretarial practical training series: connected transactions – practice and application	2
17 June 2022	2.30pm–4.30pm	What you need to know about insider dealing and the legal implications for senior management	2

For details of forthcoming seminars/webinars, please visit the Professional Development section of the Institute's website: www.hkcgi.org.hk.

Membership

New graduates

The Institute would like to congratulate our new graduates listed below.

Cheng Wai Man	Ng Kai Man, Carmen
Ho Cheuk Chong, Cheryl	Tong Ka Yan
Lam Chi Hin	Wong Ho Ching
Lam Wai Hing	

New Fellows

The Institute would like to congratulate the following Fellows elected in March 2022.

Chan Kar Nang, Sherman FCG HKFCG

Mr Chan is a Partner of the Hong Kong office of Seyfarth Shaw, an international law firm. He has 17 years of experience of advising in corporate law. Mr Chan holds an LLB from The City University of Hong Kong, an LLM from the University of Melbourne and a master's degree in accountancy from The Chinese University of Hong Kong. He is admitted as a solicitor in Hong Kong, England and Wales, and Australia. He is also qualified as a China Appointed Attesting Officer.

Chan Suk Fun FCG HKFCG

Ms Chan is the Assistant Company Secretary of Nan Fung Development Ltd. Prior to her current employment, she held a senior management position in Tricor Services Ltd, where she worked for over 17 years. She holds a bachelor's degree in history from Hong Kong Baptist University and a master's degree in professional accounting and information systems from City University of Hong Kong.

Chen Xuehui FCG HKFCG

Ms Chen joined Ping An Healthcare and Technology Company Ltd (Stock Code: 1833) in 2020 and currently serves as the Board Office Manager. She has extensive experience in accounting, financial management and corporate governance. Ms Chen holds a joint bachelor's degree in finance and accounting from Shanghai University of Finance and Economics, a master's degree in applied economics from Waseda University and a master's degree in corporate governance from Hong Kong Metropolitan University.

Hou Lerui FCG HKFCG

Ms Hou is the Vice President of Shanghai Jinjiang International Hotels Co Ltd (SHEX: 600754/900934). Ms Hou holds a bachelor's degree in economics from Fudan University, a master's degree in economics, finance and management from the University of Bristol and a master's degree in legal studies from the University of Bristol. She is also a qualified lawyer in the Mainland.

Kwok Yin Ting FCG HKFCG

Ms Kwok is the Assistant General Manager of Sertus Incorporations Ltd. Ms Kwok is responsible for overseeing the business operations and corporate services provided to clients globally. Ms Kwok has over 15 years' experience in the corporate secretarial field. She holds a bachelor's degree in business administration from Hong Kong Baptist University, and a master's degree in professional accounting and corporate governance from City University of Hong Kong.

Leung Ching Han FCG HKFCG

Ms Leung is the Manager of Company Secretarial Department of Nan Fung Development Ltd. Ms Leung holds a bachelor's degree in social science from The Chinese University of Hong Kong and a master's degree in professional accounting and information systems from City University of Hong Kong.

Man Kit Ling FCG HKFCG(PE)

Miss Man is the Assistant Company Secretary of The Cross-Harbour (Holdings) Ltd (Stock Code: 32). She has over 20 years experience in corporate secretarial and governance services. She holds a postgraduate diploma in corporate governance from The Hong Kong Polytechnic University.

Au Jeanne FCG HKFCG

Senior Manager, Tricor Services Ltd

Chan Yuk Chi FCG HKFCG

Company Secretary, Shunten International (Holdings) Ltd (Stock Code: 932)

Chen Yan FCG HKFCG

Company Secretary, TOT BIOPHARM International Co Ltd (Stock Code: 1875)

Chu Keung Wah FCG HKFCG
Managing Director, Azzurra CPA Ltd, Director, Balwyn International Ltd and Director, Cecil International Ltd

Chung Cheuk Kwan FCG HKFCG
Director, Immanuel World Ltd

Ho Yee Ling FCG HKFCG(PE)
Deputy Company Secretary, John Swire & Sons (H.K.) Ltd (Stock Code: 19)

Tsang Lam Lee FCG HKFCG
Deputy Company Secretary, John Swire & Sons (H.K.) Ltd (Stock Code: 19)

Membership activities: April 2022

23 April
Online mobile photography workshop

30 April
Online Chinese calligraphy workshop

Forthcoming membership activities

Date	Time	Event
19 May 2022	12.00pm–1.00pm	Wellness series: managing stress for a better life (free webinar)
2 June 2022	12.00pm–1.00pm	Wellness series: staying positive with mindfulness (free webinar)
11 June 2022	11.00am–12.00pm	Wellness series: back care yoga workshop (free webinar)
18 June 2022	11.00am–12.00pm	Wellness series: detox yoga workshop (free webinar)

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

Advocacy

Congratulatory message from The Honourable Paul Chan Mo-po, GBM GBS MH JP FCG HKFCG, Financial Secretary of the HKSAR Government

The Honourable Paul Chan Mo-po, GBM GBS MH JP FCG HKFCG, Financial Secretary of the HKSAR Government delivered a speech to the Institute and its members following the launch of its new brand identity and revamped website in January 2022.

The video of Paul Chan's speech was released on 22 April on the Institute's recently redesigned E-Update, a weekly electronic correspondence with its members, graduates and students.

The Financial Secretary, who has been a member of the Institute for nearly 40 years and is now a proud Fellow, discussed the timely rebranding of the Institute and its efforts towards that objective over the past year. One of the Institute's core missions is to help members navigate the increasingly complex governance landscape in the global pursuit of purposeful governance. The multifaceted roles and responsibilities of governance professionals are reflected in the Institute's membership, while its 6,800 members and nearly 3,000 students will continue to shape future developments in the corporate world.

The Institute is committed to endorsing a gold standard in governance, and its members' diverse expertise will be invaluable in its concerted efforts to safeguard the city's status as a leading international financial and commercial centre in the post-pandemic economy. The Institute's dedication to advocating global reporting standards will engender confidence among global investors and businesses.

Under a new HKEX Listing Rule, company secretaries are now formally recognised as part of senior management in Hong Kong listed companies. In January, HKEX revised the Corporate Governance Code and Listing Rules to strengthen board independence and to promote gender diversity in the boardroom. The robustness of Hong Kong's corporate governance regime is recognised around the world. The Financial Action Task Force's latest Mutual Evaluation Report commended the HKSAR's efforts in combating money laundering and terrorist financing, making Hong Kong the first jurisdiction in the Asia-Pacific region to achieve overall compliance.

The Institute is recognised locally, regionally and internationally. Through its strategic goal of advancing good governance, the Institute will continue to support the government and contribute to a better post-pandemic economic future.

The video in its entirety is available on the Institute's website (www.hkcgi.org.hk). To view the Financial Secretary's website, please visit www.fso.gov.hk/eng/index.htm.

President's Forum: A New Vision 2022

Following the unveiling of the Institute's new brand identity and revamped website on 20 January 2022, the Institute has been organising a series of activities in celebration of this momentous occasion. The Institute's new identity will better position it in the continual broadening of its presence as the authority on purposeful governance, and will enhance employment and other business opportunities for members, whose roles and responsibilities have evolved to embrace a wider remit of governance concerns.

In this connection, the Institute held the President's Forum: A New Vision 2022 on 7 April, at which Institute President Ernest Lee FCG HKFCG(PE) and Institute Vice-President David Simmonds FCG HKFCG spoke about the Institute's new brand identity, as well as their responses to feedback received in a related survey conducted in March about the new brand identity.

The President's Forum: A New Vision 2022 provided a platform for exchange of information and ideas, and an opportunity to address members' questions.

The Institute would like to thank all participants who submitted their invaluable feedback through the survey, as well as all those who attended the President's Forum: A New Vision 2022.

Beyond compliance

Institute President Ernest Lee FCG HKFCG(PE) gave an exclusive interview, titled Beyond Compliance, to A Plus – the official magazine of the Hong Kong Institute of Certified Public Accountants (HKICPA) – about the Institute's new brand identity and the importance of a principles-based approach to corporate governance.

Photo credit: Courtesy of Raul Ariano

Advocacy (continued)

The SPAC regime: opportunities for Hong Kong – a practical and technical brief

Special Purpose Acquisition Companies (SPACs) have been around in the US for the last two decades. After accounting for a significant proportion of global fund raisings, the rest of the world has embarked on a frenzied race to introduce this regime. Hong Kong has already proposed, passed and introduced changes to the Listing Rules for a new SPAC regime, and has seen the first SPAC listing applications. SPACs, with a war chest of funds from their IPOs, carry on no business except to source, acquire and list IPO candidates through additional fund raisings. This is where the De-SPAC Transaction or true IPOs take place.

The SPAC regime is expected to provide significant opportunities for Hong Kong and there is already a pipeline of SPAC/De-SPAC deals. On 7 April, Mohan Datwani FCG HKFCG(PE), Solicitor and Institute Deputy Chief Executive, chaired a webinar titled 'The SPAC regime: opportunities for Hong Kong – a practical and technical brief', with Irene Chu, Partner, Head of Audit – New Economy and Life Sciences, Hong Kong, KPMG China, and Daniel Wan, Partner, Addleshaw Goddard (Hong Kong) LLP, to discuss what SPACs are and what the benefits are for the parties involved, an overview of Hong Kong's new SPAC regulations and how these have addressed governance concerns, as well as the opportunities for governance professionals.

Student Ambassadors Programme (SAP): Fireside Chat with Dr Ricky Szeto

The Institute's Student Ambassadors Programme (SAP) provides a platform for undergraduates from local universities to better understand the dual qualification of Chartered Secretary and Chartered Governance Professional. It helps student ambassadors develop their potential as future leaders in governance.

On 7 April 2022, the Institute invited Dr Ricky Szeto Wing-fu, CEO and Executive Director of Hung Fook Tong Group Holdings Ltd, as a guest speaker to share the environmental, social and governance (ESG) practice of his group. All student ambassadors and participants were very interested to learn about the ESG principles that are applicable in the commercial sector.

CGj goes green

As part of its commitment to preserving the environment, the Institute's Council offers Institute members, graduates and students the option of receiving an electronic version of *CGj*. The monthly journal was made available on the Institute's website from August 2015 onwards. The Institute is pleased to report that 6,125 members, graduates and students have opted for the electronic version (eCGj) as of 30 June 2021.

Members and graduates may change their means of receiving *CGj* once a year, anytime between 1 June and 15 June, opting for either a physical copy or the electronic version. If any member or graduate would like to do so for the financial year starting from 1 July 2022, you can update your preference online under the Profile section of your Institute user account on or before 15 June 2022. Otherwise, your option from the previous year will continue to apply in the year 2022/2023.

For enquiries, please contact the Institute's Membership Section at 2881 6177, or email: member@hkcgi.org.hk.

Chartered Governance Qualifying Programme (CGQP)

June 2022 examination diet

The pre-released case studies for the relevant Part Two modules of the CGQP – namely Boardroom Dynamics, Risk Management and Strategic Management – were emailed to candidates on 3 May 2022.

The examination admission slips, together with the information packs, including the Precautionary Measures at Examination Centres and Instructions to Candidates, were released on 19 May 2022. All candidates are reminded to follow the instructions and precautionary measures before entering the examination centres.

For details, please visit the Examinations page under the Chartered Governance Qualifying Programme subpage of the Studentship section of the Institute's website: www.hkcgi.org.hk.

For enquiries, please contact Leaf Tai: 2830 6010, or email: exam@hkcgi.org.hk.

Studentship activities: April 2022

7 April

Student Ambassadors Programme (SAP): Fireside Chat with Dr Ricky Szeto, CEO and Executive Director of Hung Fook Tong Group Holdings Ltd

Forthcoming studentship activities

Date	Time	Event
26 May 2022	1.00pm–2.00pm	Governance Professionals Information Session (English session)
22 June 2022	1.00pm–2.00pm	Governance Professionals Information Session (Putonghua session)

Learning support for CGQP examinations preparation

Videos of the following student gatherings are available on the Institute's website under the Studentship section:

Student Gathering (1): update on the CGQP and how to use the PrimeLaw online platform
Student Gathering (2): experience sharing on preparation for the CGQP examinations

For details, please visit the Students Gathering page under the Learning Support subpage of the Studentship section of the Institute's website: www.hkcgi.org.hk.

Notice

Policy – payment reminder

Studentship renewal

New policy effective from 1 July 2021

Institute students whose studentship expires in April, May or June 2022 should have received their renewal notice by email on 1 April 2022. Please be reminded to settle the renewal fee by Thursday 30 June 2022.

Failure to settle the renewal fee by the deadline will result in the removal of studentship from the student register.

For enquiries, please contact the Institute's Studentship Registration Section: 2881 6177, or email: student_reg@hkcgi.org.hk.

Featured Job Openings

Company name	Position
Sit, Fung, Kwong & Shum Solicitors	Company Secretarial Assistant/Officer

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