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April 2022

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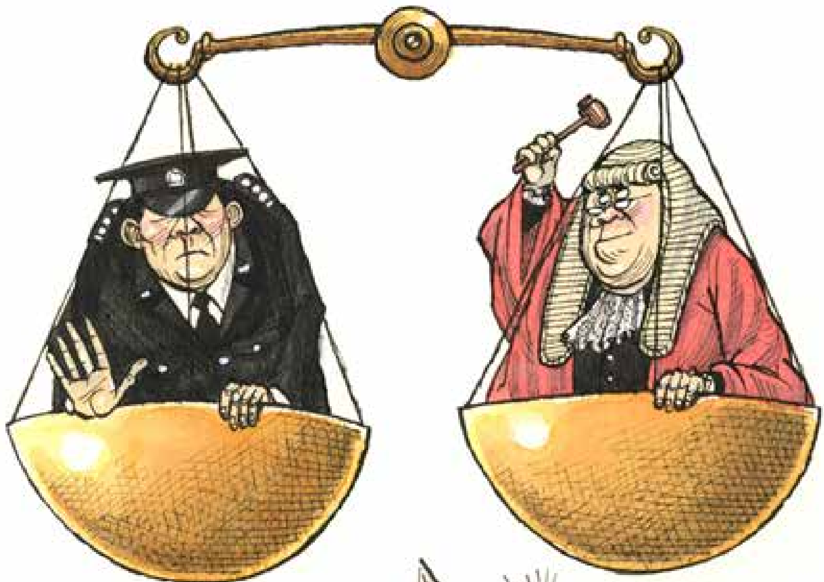
The journal of the Hong Kong Chartered Governance Institute
香港公司治理公會會刊

Principles-based regulation

Is it working?

Paul Lau interview
ESG and venture capital
Working from home



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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.

Membership and studentship statistics update

As of 28 February 2022, the statistics were as follows:
Students: 2,952 **Graduates**: 527 **Associates**: 6,044 **Fellows**: 769

The Hong Kong Chartered Governance Institute

(Incorporated in Hong Kong with limited liability by guarantee)
3/F, Hong Kong Diamond Exchange Building,
8 Duddell Street, Central, Hong Kong
Tel: (852) 2881 6177
Fax: (852) 2881 5050
Email: ask@hkcgi.org.hk (general)
cpd@hkcgi.org.hk (professional development)
member@hkcgi.org.hk (member)
student@hkcgi.org.hk (student)
Website: www.hkcgi.org.hk

Beijing Representative Office

Rm 15A04A, 15A/F, Dacheng Tower,
No 127 Xuanwumen West Street,
Xicheng District, Beijing, 100031, PRC
Tel: (86) 10 6641 9368
Email: bro@hkcgi.org.hk
Website: www.hkcgi.org.cn

The Chartered Governance Institute

Governance Institute of Australia
Level 10, 5 Hunter Street
Sydney, NSW 2000
Australia
Tel: (61) 2 9223 5744
Fax: (61) 2 9232 7174

The Chartered Governance Institute of Canada
202–300 March Road
Ottawa, ON, Canada K2K 2E2
Tel: (1) 613 595 1151
Fax: (1) 613 595 1155

MAICSA: The Governance Institute
No 57 The Boulevard
Mid Valley City
Lingkaran Syed Putra
59200 Kuala Lumpur
Malaysia
Tel: (60) 3 2282 9276
Fax: (60) 3 2282 9281

Governance New Zealand
PO Box 444
Shortland Street
Auckland 1015
New Zealand
Tel: (64) 9 377 0130
Fax: (64) 9 366 3979

The Singapore Association of the Institute of Chartered Secretaries & Administrators
149 Rochor Road
#04–07 Fu Lu Shou Complex
Singapore 188425
Tel: (65) 6334 4302
Fax: (65) 6334 4669

The Chartered Governance Institute of Southern Africa
PO Box 3146
Houghton 2041
Republic of South Africa
Tel: (27) 11 551 4000
Fax: (27) 11 551 4027

The Chartered Governance Institute
c/o MCI UK
Durford Mill, Petersfield
Hampshire, GU31 5AZ
United Kingdom
Tel: (44) 1730 821 969

ICSA: The Chartered Governance Institute
Saffron House, 6–10 Kirby Street
London EC1N 8TS
United Kingdom
Tel: (44) 20 7580 4741
Fax: (44) 20 7323 1132

The Institute of Chartered Secretaries & Administrators in Zimbabwe
PO Box CY172
Causeway Harare
Zimbabwe
Tel: (263) 4 702170
Fax: (263) 4 700624

April 2022

CGj, the journal of the Institute, is published 12 times a year by Ninehills Media and is sent to members and students of the Institute and to certain senior executives in the public and private sectors.

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

Credits

Kieran Colvert
Editor
Ester Wensing
Art Director
Harry Harrison
Illustrator (cover)
Images
iStock

Contributors to this edition

Theodora Thunder
Dr Glenn Frommer
ESG consultants
Shevin Fan
Isaac Lee
Hellen Liu
Magnolia Wang
CityU

Advertising sales enquiries

Ninehills Media Ltd
Tel: (852) 3796 3060
Jennifer Luk
Email: jennifer@ninehillsmedia.com
Frank Paul
Email: frank@ninehillsmedia.com

Ninehills Media Ltd

12/F, Infinitus Plaza
199 Des Voeux Road
Sheung Wan
Hong Kong
Tel: (852) 3796 3060
Fax: (852) 3020 7442
Internet: www.ninehillsmedia.com
Email: enquiries@ninehillsmedia.com

ISSN 1023-4128

ninehills media

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A philosophical debate

Our cover story this month explores a thought leadership theme with very practical consequences for our profession – the meaning of compliance and governance in a principles-based regulatory regime.

The principles-based approach is a core component of Hong Kong's regulatory regime. This is evident not only in the Corporate Governance Code (the Code), which follows the UK-style 'comply or explain' approach, but also in the stated regulatory philosophy of our major regulators. As far as regulating corporate governance is concerned, Hong Kong Exchanges and Clearing Ltd (HKEX) adopts a principles-based approach, setting their expectations at a high level backed up by more detailed guidelines and recommendations.

In such an environment, the concepts of 'compliance' and 'governance' take on a slightly different meaning. The principles-based approach allows for more flexibility in how companies interpret the high-level and broadly stated standards, but this is a double-edged sword since there is less clarity about whether regulators will deem your chosen route to compliance to be in breach of the Code.

For these reasons, members of our profession may be rather daunted by the principles-based ethos. Wouldn't it be better if we all went back to having a simple, prescriptive set of rules that tell us explicitly what to do in every circumstance? That, of course, is not an option – not because our regulators have taken a liking to principles, but because such a rulebook does not exist. In a business environment as complex and fast-changing as ours, it would be impossible to draft such rules for corporate governance, and, even if it was, they would become outdated before the ink had dried.

What you lose in clarity in a principles-based regime, however, you can more than make up for in competitive advantage gains if you successfully adapt your compliance and governance frameworks to this approach. Our In Profile candidate this month, Paul Lau, Head of Capital Markets and Professional Practice, KPMG China, urges governance professionals not to lose sight of the fact that compliance and governance challenges, no matter how formidable, generally lead to improved performance and resilience. In a sense, what is needed is a different framing of the concept of the 'compliance burden' – rules can be springboards to better internal controls, better compliance frameworks and, ultimately, better governance.

Before I go, I would like to bring to your attention our upcoming Annual Corporate and Regulatory Update (ACRU). ACRU 2022 will be held online on Thursday 9 June 2022 and if you haven't already signed up for this, our most popular CPD event of the year, I would encourage you to do so. Our early bird discount is available until 30 April 2022.

CGj readers will know that our ACRU webinars are a valuable opportunity to hear directly from, and to put questions to, Hong Kong's major regulators. In order of appearance, HKEX, the Securities and Futures Commission, Companies Registry, Office of the Privacy Commissioner for Personal Data and Hong Kong Business Ethics Development Centre of the Independent Commission Against Corruption, will be presenting this year so don't miss out on this opportunity to catch up with all the latest issues at the top of the compliance and governance agenda.

I look forward to joining you at this year's ACRU.

Ernest Lee FCG HKFCG(PE)

一场哲学辩论

本期封面故事探讨了一个具有思想引领性质的主题，该主题对我们的专业具有非常实际的影响，即，以原则为本的监管制度下合规和治理的意义。

以原则为本的方法是香港监管制度的核心要素。这不仅体现在我们所遵循的英式“不遵守就解释”的《企业管治守则》之中，也体现在主要监管机构所主张的监管理念之中。在公司治理规管方面，香港交易及结算所有限公司采用以原则为本的方法，以更详尽的指引和建议为支撑，设定了高标准的预期。

此种情形之下，“合规”和“治理”的概念略有不同。以原则为本的方法可以使公司对于那些高层次和广义的标准的理解与运用更加灵活，但这是一把双刃剑，这使公司不能完全确定监管者是否认为公司所采取的合规操作符合守则要求。

鉴于这些原因，我们这些专业人士可能会对这种以原则为本的理念颇感畏惧。若能回到那套简单、规范性的原则来具体说明在某种情况下的具体做法，不是更好吗？这当然是不可能的 – 并非因为监管机构已经对这些规则有所依赖，而是因为这样的规则手册根本不存在。在当前复杂多变的商业环境中，不可能制定出这样一套公司治理规则，而且就算有这套规则，也会墨迹未干，就已过时。

尽管在以原则为本的制度下会失去明确性，但是，如果能够成功地使合规性和治理框架适应这一方法，便能够获得更多竞争优势。本期人物专访嘉宾，毕马威中国（KPMG China）资本市场和专业实务主管 Paul Lau 敦促治理专业人士不要忽略这样一个事实，即，合规和治理挑战无论多么艰巨，通常都会带来公司绩效和韧性的提升。从某种意义上说，对于“合规负担”，我们需要转换观念– 规则可以是实现更好的内部控制、更优的合规框架以及最终实现更佳治理的跳板。

最后，我想提请读者们关注我们即将召开的“企业规管最新发展研讨会”(ACRU)。2022 年 ACRU 将于 2022 年 6 月 9 日星期四在线举行，如果尚未报名这一年度最受欢迎的持续专业发展活动，我建议大家尽快报名参加。我们的早鸟折扣有效期至 2022 年 4 月 30 日。

读者们会了解到，参加 ACRU 网络研讨会可获得直接听取香港主要监管机构的意见并向其提问的宝贵机会。香港交易及结算所有限公司、证券及期货事务监察委员会、公司注册处、个人资料私隐专员公署及廉署香港商业道德发展中心都将在今年的研讨会上依次登场亮相，所以，请务必不要错过这一了解合规和治理议程中重要前沿议题的机会。

期待与大家共聚本年度的 ACRU 网络研讨会！

李俊豪 FCG HKFCG(PE)

Principles-based regulation

Is it working in Hong Kong?

On the 30th anniversary of the launch of the UK's Cadbury Code, which pioneered the 'comply or explain' approach to principles-based regulation, *CGj* looks at the effectiveness and appropriate role of this approach in Hong Kong.

The UK's Report of the Committee on the Financial Aspects on Corporate Governance, better known as the Cadbury Code, did not invent principles-based regulation. Regulatory regimes, historical and contemporary, have long been faced with the need to find the right balance between the principles-based and prescriptive approaches to rule-making. Nevertheless, the 'comply or explain' mechanism pioneered by the Cadbury Code has been hugely influential in the evolution of corporate governance regimes and securities regulation around the world.

Hong Kong signed up to this approach with its Corporate Governance Code (the Code) – first launched in 2005. The Code is non-statutory and non-mandatory in the sense that it requires listed companies to state whether they comply with the provisions of the Code or give reasons for any non-compliance. In addition to the Code, many key regulators have adopted elements of the principles-based ethos in their approach to regulation. But what exactly is the principles-based approach to regulation and how has it fared in the Hong Kong context?

Theory and practice

In theory, the distinction between prescriptive rules and high-level, broadly stated principles seems to be clear cut – the former tell you what you can and cannot do, while the latter set standards by which your behaviour will be judged. Regulators around the world favour different weightings between rules and principles when it comes to drafting their rulebooks, and the relative advantages and disadvantages of these different approaches have been well documented.

One of the reasons the principles-based approach has been so widely adopted by

Highlights

- the principles-based approach puts the onus on companies to reach a desired outcome rather than drafting explicit rules on what behaviour is acceptable
- this is both its strength and a potential weakness in that it requires more engagement from companies – they have to reverse-engineer the principles to determine what they mean on a practical level
- governance professionals have an important role to play in a principles-based regulatory environment, in particular by ensuring that directors are up to speed on relevant issues

> **I think there is still a good case for the largely principles-based approach we have, but I do expect it progressively to move more towards a prescriptive approach**

Tommy Tong FCG HKFCG, Partner, Herbert Smith Freehills

corporate governance regimes around the world is that it enables regulators to draft broadly stated principles that will be relevant and appropriate to the diverse range of companies under their jurisdiction. Such principles will also be less vulnerable than rules to becoming quickly outdated by changes in market dynamics.

Of most relevance to governance professionals, however, are the putative advantages of the principles-based approach for companies' compliance and governance frameworks. This approach is 'outcome-oriented' in the sense that it puts the onus on companies to reach a desired outcome rather than drafting explicit rules on what behaviour is acceptable. This, however, is both its strength and a potential weakness in that it requires more engagement from companies – they have to reverse-engineer the principles to determine what they mean on a practical level.

For this reason, the effectiveness of the principles-based approach depends heavily on the maturity of the markets it is applied to. Tommy Tong FCG HKFCG, Partner, Herbert Smith Freehills, believes that this approach has had major benefits for Hong Kong – its inherent flexibility has allowed it to cater to businesses facing unique issues and dynamics to make compliance more practical. 'However, I think the Code is still a work in progress,' he says. 'Hong Kong is, compared to the UK, still a less mature market and the backgrounds of listed issuers participating in the market can vary hugely,' he says.

Mr Tong believes that this is why a review of whether the principles-based approach is working for Hong Kong is timely. 'I think we're at a juncture where questions like this are very relevant. With the changes we're seeing in the dynamics of the market now, will the regime progressively develop in a way that we have seen in other markets like the UK and Singapore, and others?'

One key factor relevant here is the degree to which companies in Hong Kong are subject to institutional investor participation and research coverage. In theory, principles-based regulation relies on investor pressure to drive compliance and governance standards upward, and for those issuers with greater exposure to institutional investors the Code has worked well, Mr Tong says. Nevertheless, the Code and its required disclosures may have less impact for companies that are less sensitive to institutional pressure.

'I think there will be areas where we will become more prescriptive precisely for that reason. There has been and continues to be the hope that institutional influence will increase over time as it has done in Japan, Korea and jurisdictions in Europe where activism plays a part. I think there is still a good case for the largely principles-based approach we have, but I do expect it progressively to move more towards a prescriptive approach,' he says.

Regulators to the rescue?

Mr Tong's colleague, Hannah Cassidy, Partner, Herbert Smith Freehills, points out that Hong Kong does not have to rely on investor pressure alone to hold companies to account for their compliance with the Code. Regulatory enforcement is another way to reinforce the expectations of the Code and the Stock Exchange of Hong Kong (the Exchange) has been more active from an enforcement perspective – in particular holding senior management to account for breaches of regulatory expectations. Revised policy statements published by the Exchange earlier this year, for example, were intended as a clear warning to the market that the Exchange intends to hold individuals to account.

Moreover, while the Exchange may not have the same array of sanctioning powers as the Securities and Futures Commission (SFC), it has recently expanded the range of reputational sanctions available to it in cases of malpractice. 'Having a public notice out there criticising your behaviour as a director of a listed company is still potentially very damaging and, depending on the underlying issue or breach, there is always the possibility that the securities regulator might also be able to take parallel action,' Ms Cassidy says.

She also puts these issues in the context of global developments in securities regulation since the 2008 global financial crisis. Immediately after the crisis there was an expectation that there would be a large-scale shift towards more prescriptive rules. Many argued that the crisis demonstrated the limitations of the principles-based approach. Nevertheless, many jurisdictions, Hong Kong among them, concluded that the main lesson to learn was the need to hold individuals to account. Hence the regulatory shift towards ensuring senior management accountability described above.

Could legal reforms help?

There has been a long-running debate in Hong Kong about whether legal reforms – in particular adopting a class action legal regime and contingency fees – would improve shareholder rights. Given the discussion above, could this also improve the effectiveness of the principles-based regulatory framework in Hong Kong?

'This could be a very powerful tool,' Mr Tong says, but he warns that Hong Kong needs to be careful of the potential unintended consequences. Class action and contingency fees could, for example, open the system to abuse by those without a legitimate grievance. This could lead to higher legal costs for compliant companies, increased market volatility and a greater burden on the legal system.

Ms Cassidy agrees that Hong Kong isn't ready for that type of legal regime and she points out that regulators in Hong Kong can and do seek shareholder compensation in cases of malpractice. The SFC, for example, has investor compensation powers and it has shown itself very ready to exercise them. 'So, to the extent that a listed company has caused financial detriment, there is the ability to seek compensation for investors,' she says.

She also questions the inference that principles-based regulation reduces the ability of shareholders to get compensation. This is perhaps based on the notion that it is more difficult to prove a breach of a principle than a breach of a rule. She points out that, even where regulators can't point to a specific rule breach, they can hold individuals to account for failing to exercise the expected skill, care and diligence.

The role of governance professionals

The appropriate role of principles-based regulation in Hong Kong has a special relevance for governance professionals. This approach to regulation requires companies, and the governance professionals advising them, to raise their compliance and governance game. In short, it is easier to ensure that a company is doing what it is told than to build the organisational culture necessary to achieve desired governance and ethical outcomes.

Mr Tong points out that this is where having a good company secretary pays dividends. Boards comprise individuals with different skills and areas of expertise, and, while directors generally see the value of compliance and good governance practices, this may not be their primary focus. He welcomes company secretaries' transition from being often perceived as having a back office, administrative role to being key gatekeepers of good corporate governance.

'This promotes the profession and increases the value of working in the profession, but from the companies' perspective it also ensures a genuine source of information and advice on good corporate governance for directors,' he says.

Ms Cassidy adds that the board advisory roles of company secretaries has extra relevance and importance in the current operating environment. 'Companies need to ensure that their boards are up to speed on a whole range of different issues,' Ms Cassidy says. 'For example, boards are under increasing pressure to understand what their cybersecurity and their ESG risks are.'

Does that mean all companies now need to have cybersecurity or ESG experts on their board? Regulators certainly expect companies to be constantly looking at their board's composition and thinking about whether they have the right skills to be a public company in an environment where the biggest threats include issues like cybersecurity and climate risk. However, it also means that 'directors have to be constantly evolving – and having access to relevant training, whether from outside counsel or the advice of a governance professional, is therefore becoming increasingly important,' Ms Cassidy says.

Where are we heading?

Given the discussion above, will the principles-based approach continue to be a part of Hong Kong's regulatory philosophy in the years ahead? Both

> “directors have to be constantly evolving – and having access to relevant training, whether from outside counsel or the advice of a governance professional, is therefore becoming increasingly important”

Hannah Cassidy, Partner, Herbert Smith Freehills

Mr Tong and Ms Cassidy believe that it will. Apart from anything else, they point out that Hong Kong's regulatory regime has been an important part of maintaining Hong Kong's global competitiveness as an international financial centre.

'Regulators here have borrowed and leveraged a lot of what has been implemented at the global level, and, as long as Hong Kong remains part of the international regulatory community, I don't see an imminent move to the rules-based approach,' Ms Cassidy says.

She adds that Hong Kong is very visibly part of the international regulatory community. The SFC is a member of the International Organisation of Securities Commissions (IOSCO) and the SFC's CEO chairs the IOSCO board. Moreover, the international profile of regulators like the SFC and Hong Kong Monetary Authority enhances investor confidence by ensuring that Hong Kong's capital markets operate in a fair, efficient and transparent manner, in line with international standards.

Mr Tong adds that continuing with the principles-based approach is an essential part of this. 'Continuing with this approach has the benefit of allowing the Hong Kong framework to develop in a consistent manner to keep up with international standards and maintain investor familiarity,' he says.

Nevertheless, the principles-based approach was never meant to eliminate the need for rules and Hong Kong needs to find the right balance between the rules-based and principles-based approaches. There are areas of regulation where the principles-based approach simply isn't relevant. Some rules require regulators to set specific quantitative thresholds, for example, and taking a more prescriptive approach may also be desirable where the principles have failed to achieve desired outcomes.

Mr Tong cites board gender diversity as a good example of this. Despite many years of regulatory nudges and encouragements, the proportion of female directors on Hong Kong boards remains stubbornly low (women make up around 14% of listed company directors). Is it time, then, for a more prescriptive approach? The Institute certainly thinks so. In February last year, it published a report – Missing Opportunities? A Review of Gender Diversity on Hong Kong Boards – calling for an amendment to Hong Kong's Code to set a target of a minimum 30% female representation on listed company boards within a six-year transition period.

This target would be prescriptive in the sense that it sets a quantitative threshold, but, being part of the Code, it would be subject to the 'comply or explain' disclosure regime. It was therefore intended to achieve the right balance between the top-down imposition of a mandatory quota and the more principles-based approach of the Code. Mr Tong points out that such an amendment, if adopted, would prompt issuers to step up efforts to achieve genuine board diversity since if companies don't meet the minimum they could face significant adverse investor scrutiny. He adds that an effective quota for gender diversity now exists in the Listing Rules. With effect from 1 January this year, Rule 13.92 provides that 'the Exchange will not consider diversity to be achieved for a single gender board' and that listed companies with a single gender board will have to appoint at least one director of a different gender on the board no later than 31 December 2024.

This, he adds, is the right approach to take since, where the principles aren't working, more prescriptive requirements need to come into play. 'Sometimes the principles give too much room to senior management to argue their way out of accountability. When the regulators lose too many of these cases, they try to plug the gaps and that's where you see more specific rules put in place,' he says.

Hong Kong's listing regime

Some governance considerations

In 2018, Hong Kong brought in changes to its listing regime. *CGj* interviews Paul Lau, Head of Capital Markets and Professional Practice, KPMG China, on whether the governance safeguards built into the new regime are proving to be effective.

Many thanks for giving us this interview, can we start by discussing your background and career?

'I was born and grew up in Hong Kong. After graduating here in the late 1980s, I moved to the US and got my master's degree there. I started my professional career in the US with the accounting firm Arthur Andersen. When Andersen collapsed in 2002, I joined KPMG in Boston. In 2006, I got the opportunity to come back to Hong Kong to work on capital market-related transactions. I have stayed in Hong Kong, and in capital markets practice, since then. Currently, I head the Capital Markets Group and Department of Professional Practice for the China firm of KPMG, and I'm also a member of the Listing Committee of the Stock Exchange of Hong Kong (the Exchange).'

In 2018, Hong Kong Exchanges and Clearing Ltd (HKEX) made some changes to Hong Kong's listing regime. In general, do you think the new listing regime achieves the right balance between market competitiveness and good governance standards?

'I think, overall, Hong Kong's listing regime achieves that balance, but making Hong Kong competitive and having good governance should not be mutually exclusive. In fact, they are very much aligned since raising the quality of the market by maintaining good governance standards helps Hong Kong to be competitive in the long run. Having quality doesn't necessarily make you competitive, but, where you have an opportunity to make the market more competitive, you do need to consider whether that is going to create risks from a governance and investor protection perspective.'

Among other things, the changes to the listing regime permitted companies with weighted voting rights (WVRs) to list in Hong Kong. Four years on, do you think the governance safeguards relating to WVR are working as planned?

'I think it is difficult to just talk about one chapter of the new listing regime. Chapter 8A permits listings of innovative companies with WVR structures, but HKEX also brought in two other new chapters to the Listing Rules – Chapter 18A relates to pre-revenue biotech companies and Chapter 19C relates to secondary listings of overseas listed issuers.

These three chapters were designed to improve Hong Kong's competitiveness. Many companies in emerging and innovative sectors with high growth potential were listing in the US for a number of reasons – one of which was the fact that they preferred to have WVR structures. But if you look at the number of listings we have had under the three new chapters, we're only talking about around 80 companies. That is not a very large number compared with the total number of IPOs in Hong Kong and that was exactly the intention.

The idea was never to make WVR a common thing in Hong Kong, but to allow a selective route for companies with high-growth potential to have that sort of governance structure. I think, if we're talking purely about the number of companies that have listed with a WVR structure, excluding the secondary listings, that only amounts to eight companies. But the market capitalisation of the companies that have listed under the three chapters represents about 20% of the total. So that indicates that the new listing regime has attracted exactly the types of companies it was designed to attract.

From a theoretical perspective, I don't think anyone is going to argue with the fact that one share one vote is more equitable, but it's important to look at everything in context. I think we learned a lot from the healthy debate and the due process that took place back then. The rule changes didn't happen overnight; they were preceded by several years of debate and some good empirical studies of the risks and opportunities involved. Quite a number of safeguards were put in place and we haven't experienced any significant abuse or misconduct since 2018.'

Highlights

- the role of independent non-executive directors in overseeing due diligence will be a particularly important factor for the success of Hong Kong's new SPAC (special purpose acquisition companies) regime
- Hong Kong has taken a hybrid, flexible and agile approach to forming its governance framework, and considers both the international and Mainland approaches to governance issues
- raising the quality of the market by maintaining good governance standards helps Hong Kong to be competitive in the long run

On the question of the investor protection safeguards, was there anything that you think should have been built into the regime that wasn't? Hong Kong is a very different jurisdiction from the US of course, so are there safeguards specific to the Hong Kong market that you would like to see in place?
'Certainly, we are talking about two very different systems. The US takes a more risk-based, disclosure-based and "investor beware" approach. They complement that with class action rights and other measures that enable shareholders to seek remedies where corporate misconduct is involved. In Hong Kong, the approach from a regulatory perspective is more front-loaded. The regime tries to minimise the risk of misconduct by building extra safeguards into the framework.

So, in terms of WVR structures, Hong Kong only allows individuals to hold WVR shares. In other words, a corporate entity cannot hold such shares. Moreover, those individuals have to be directors – ensuring that they have fiduciary roles as directors of the company. One of the things that I think we could have added to the safeguards would have been a mandatory sunset clause, meaning that the extra voting rights cease after a fixed term. We have a sunset clause, but it is tied to the WVR beneficiary dying or retiring. I don't think it would hurt to have a fixed-term sunset clause, but I don't think investor protection is much worse off without it.'

Without such a clause is there a danger that, over time, WVR structures will become common in the Hong Kong market?
'You raise a good point and that is one reason why, personally, I think the fixed-term sunset clause is a good idea. Also, as the target companies get beyond their high growth stage and become more established listed entities, they will presumably have less need of WVRs. I think we should bear in mind that this is a journey. In 2018, WVR were very new to Hong Kong, but as we get used to them there are further opportunities for discussion. The debate over whether to permit corporate WVRs is a good example of that. HKEX launched a consultation on corporate WVRs three years ago, but the proposal to allow corporates to be WVR beneficiaries did not get enough support to proceed. HKEX listened to the market and put the thing on hold. The due process aspect of bringing in regulatory changes, in particular getting feedback from the market, including professional practitioners and investors, is very important.'

> **"making Hong Kong competitive and having good governance should not be mutually exclusive"**

More recently, Hong Kong has opted to allow special purpose acquisition companies (SPACs) to list here. What's your view of the risks and opportunities of this move?
'SPAC regimes allow a shell company to list with the sole objective of making an acquisition and turning it into a listed company. Introducing the SPAC regime in Hong Kong was preceded by a lot of discussion about how to manage the risks, as well as studies of SPAC regimes around the world.

Our SPAC regime had to reflect the special circumstances of Hong Kong, of course, and one requirement that emerged as non-negotiable for regulators was that any business acquired by a SPAC would have to meet all the usual requirements of an IPO. Regulators have done so much work over the years to prevent circumvention of Hong Kong's listing requirements via backdoor listings, so allowing SPAC acquisitions to bypass those requirements was not something they would consider.

During the pre-acquisition phase, however, there is a risk of investor losses as a result of misconduct, such as market manipulation. In this phase, a SPAC doesn't have any operations so the movement of the share price will largely be affected by news. If a SPAC enters into discussions to acquire a very promising target, for example, that is going to drive up the SPAC share price. There's nothing wrong with that, and Hong Kong already has a pretty robust regulatory framework to prevent market manipulation and to ensure the proper disclosure of price-sensitive information, but extra safeguards needed to be in place.

One such safeguard is for the shareholders to have redemption rights, another is to limit SPAC investments to professional investors only. The Hong Kong regime also focuses on the credentials and the suitability of the promoters. Similar to a normal IPO, at least one sponsor is required to be involved in a SPAC and the corporate governance requirements for the SPAC entity are the same as for any listed company.

I think this makes the roles of the independent non-executive directors (INEDs) very important. This is not something that has been widely addressed, but, because of the uniqueness of SPACs, I think the skill sets and the mindsets of the INEDs involved will need to be different. There is an inherent potential conflict of interest for the promoters because they need to make sure that the acquisition of a target business happens within the timeframe of the SPAC or they lose their investment. There is a risk, therefore, that they may wish to overestimate the potential of target companies. This is where it becomes especially important for INEDs to ensure due diligence – in particular ensuring that the quality of the target company is fairly assessed. This is something that needs to be emphasised because SPACs are new to Hong Kong. Even an INED who is experienced in ensuring due diligence for other companies may not know exactly what to look out for.'

Given the existing issues that regulators have about the independence of INEDs, could the issues you raise about the INED role in SPACs prove to be a serious weakness of the new regime?

'I would advise the INEDs to be laser focused on ensuring due diligence. It will be hard for them to say they did their due diligence if it turns out that problems with the acquisition target were overlooked. But having said that, there are other safeguards in place. We have had 10 applications and one listing under the new regime, and the vetting by the Exchange and the SFC has focused on the credibility and the suitability of promoters. I should add that the intention of the SPAC regime is not to make SPACs commonplace, so the bar is set pretty high.

In addition, we have talked a lot about the risks, but we should bear in mind that the SPAC regime provides opportunities to professional investors to participate in these activities, thus helping to develop Hong Kong as an asset management hub. From a business perspective, it also gives companies another channel to raise capital, so I think, if it's done right, we can achieve a situation where everybody wins.'

Hong Kong's regulatory regime is largely based on international governance principles and standards – do you expect to see that change in the years ahead? One issue in particular is whether there will be a move away from the principles-based approach to regulation towards the rules-based approach that is more common in the Mainland?

'Hong Kong has always been unique and has always been able to adapt well to changing circumstances. I think there is no question that Hong Kong has to continue to be aware of international standards of corporate governance to maintain its status as an international financial centre. We have to be aware of those developments and take them into consideration when formulating our own corporate governance requirements, but, since a lot of Hong Kong listed companies are Mainland-based companies, or have operations in the Mainland, we also need to take into consideration the Mainland requirements. This is just a part of the uniqueness of Hong Kong – we take a hybrid, flexible and agile approach to forming our governance framework.

Regarding the future of the principles-based approach, I think this and the rules-based approach are not mutually exclusive. There are usually principles behind rules and sometimes you need a bright-line requirement. For example, HKEX defines long-serving INEDs as those who have served on a board for nine years or more. But why not eight years? Why not 10 years? The point is that we use nine years as a benchmark – at some point INEDs risk losing their independence, their freshness, and may have a negative impact on succession planning. So is that a rule-based requirement? There is a principle behind it.'

Do you have any advice to governance professionals in terms of their roles in the issues we've discussed?

'One of the things that corporate governance professional practitioners have in common is that we have to focus on compliance risks. The word "risk" has negative connotations, but risks often create opportunities for improvement. About a decade ago, Hong Kong brought in much more stringent requirements relating to the disclosure of price-sensitive information and companies were very concerned about the new compliance risks. 10 years later, however, companies have turned those risks into opportunities – they have much better internal controls, governance frameworks, corporate communications and investor relations as a result. So, rather than purely looking at these issues through the lens of compliance, governance professionals can emphasise that compliance exercises are actually opportunities for improvement.' CGj

ESG and venture capital – the business case

In a two-part article, ESG consultants Theodora Thunder and Dr Glenn Frommer examine current ESG developments and practices in the global venture capital industry.

In this first part of our article, we explore the business case for adopting environmental, social and governance (ESG) principles in venture capital (VC) fund portfolio development, principally the benefits and costs of adopting an ESG roadmap for a portfolio of funds. The article examines significant challenges to be addressed, those inherent to industry and those closer to the management of the portfolio itself.

The benefits of developing an ESG mindset

The business case for a strong ESG strategy and its integration into a VC portfolio is an increasing industry reality. Regardless of the purpose, size or theme of a fund, its endgame is to create value while mitigating risks across its portfolio of companies and then exit a winner, leaving a sustainable company to pursue its next phase of development. Portfolio alignment to ESG principles and mindsets supports this endgame.

The benefits of developing an ESG mindset in a VC fund can significantly bolster its bottom line and standing within the industry.

Fundraising. A strong approach to ESG can be a differentiator, supporting

Highlights

- the solid adoption of an ESG mindset and its practical application at the very early stages of operations mitigates the trap of negative reputational impacts
- data availability, let alone standardised and verifiable ESG data, is one of the greatest challenges to the VC investor
- a company purpose and culture founded on an ESG mindset attracts, retains and incentivises skilled workers critical to the success of the start-ups that proliferate in Asia

fundraising efforts and helping a fund stand out in a crowded market. Limited partners (the investors who supply the fund with capital) and international investors increasingly expect funds to incorporate ESG issues into their investments as a risk mitigation strategy and to align with the United Nations' Sustainable Development Goals.

Screening. Early investment reviews of companies using a fund's ESG framework should identify excluded activities and ESG-related 'fatal flaws'. It also confirms the potential culture fit and management style to help target suitable companies.

Exits. The ESG expectations placed on a company will grow as the business scales. VC-backed companies can help facilitate investment from new sources by demonstrating progressive adoption of good ESG practices and the metrics to support performance.

Reputation. The solid adoption of an ESG mindset and its practical application at the very early stages of operations mitigates the trap of negative reputational impacts. Start-ups are particularly vulnerable in this area due to the power of social media backlash and often bad management oversight. WeWork and Uber are prime examples of the damage a negative reputation can do.

Talent attraction and retention. Start-ups typically comprise a skeletal team of overworked founders and management. However, with growth the dynamics change, requiring a socially aware and encompassing approach to talent, especially with the millennials who are now a significant employee component within the sector. A company purpose and culture founded on an ESG mindset attracts, retains and incentivises skilled workers critical to the success of the start-ups that proliferate in Asia.

Regulatory oversight. As the global markets adapt to innovation and technologies that are rapidly changing business as usual, the proactive management of ESG issues can help disruptors future-proof their business models against regulatory changes that are now gaining pace within the industry.

Market access. Strong ESG practices can help VC-backed companies increase their access to international markets. Tech companies often target the more developed global markets, where early adoption of good ESG standards can facilitate market entry and help de-risk the company in the eyes of business partners.

Data challenges

However, a clear-eyed assessment of the cost of these benefits when adopting an ESG pathway requires a substantial internal pivot within a fund's business model and operating strategy that is often underestimated in practice.

The more standardised approaches applied by traditional financial services markets to manage and analyse companies in terms of ESG risks do not sufficiently cater to the early stage investing model. VC-backed companies often disrupt the status quo by using new technologies or business models, and sometimes operate ahead of local regulatory frameworks. This has led to many VC funds creating their own frameworks for assessing and measuring impact and ESG risks when screening investment opportunities for their portfolios.

> “adopting an ESG mindset and enacting an internal framework and processes for portfolio sustainability is gaining traction with today's smart money”

Data availability, let alone standardised and verifiable ESG data, is one of the greatest challenges to the VC investor. A significant number of small and medium-sized companies, which are quite often the target of investment, remain outside the scope of mandatory corporate sustainability reporting requirements, such as the European Union's Corporate Sustainability Reporting Directive 2021. In Asia, adequate regulatory guidelines are in short supply and very few companies offer independently assured ESG performance data. Voluntary disclosures prepared by the investee companies may not contain all relevant ESG data needed for due diligence. They may also be subject to

greenwashing and exaggerations of performance, and may be incomplete for the VC fund's own compliance purposes.

VC managers increasingly reference the impact investment approaches of private equity around ESG risks management for guidance. However, in contrast to private equity, which often buys in at the proven stages of performance, a VC model typically invests at the early stages when companies are still testing and refining their business models as they grow. Such uncertainty, while stimulating innovation and agility in anticipation of outsized rewards, invites higher degrees of risk. A start-up, for example, can easily shift direction as it develops products and/or services in response to market demand, creating a new set of ESG issues and risks for the fund manager. Its brand can also be significantly damaged due to a lack of governance policy and expertise to attract and retain top talent as it grows. Poor ESG risk judgement is costly in terms of return on equity, reputation and the ability to raise future capital.

Structural and process challenges

When establishing a fund's internal framework, further structural and process challenges arise with the integration of an ESG mindset into the fund's operations and those of its portfolio companies.

Influence. VC funds often take minority stakes that are diluted through future funding rounds, just as the level of ESG risk grows. Fund managers may therefore become reliant on the strength of their relationship with a founder or management team to exert informal influence over ESG alignment. Additionally, they may be in conflict with later stage investors' parameters for risk management, which may differ from the VC fund's own ESG strategy.

Governance. Early stage companies in Hong Kong and perhaps across Asia largely lack formal governance and compliance processes, with little or no oversight or management competencies for ESG at the board level. VC fund managers themselves generally have comparatively small teams and may not be able to support all companies with the governance oversight needed.

ESG expertise. During the early stages of development, a VC-backed company's whole business model can shift direction in response to the market and value creation opportunities, potentially opening new and unforeseen ESG risks and opportunities. Unexpected changes in strategy or direction can be problematic for funds that have their own limited scope in ESG expertise and the ability to quickly assess any new risks as they come on the radar.

Timing of ESG actions. It is particularly challenging for VC funds to time ESG

> a strong approach to ESG can be a differentiator, supporting fundraising efforts and helping a fund stand out in a crowded market

interventions within its portfolio of high-growth start-ups. There is a fine balance between allowing companies the room to manoeuvre and innovate and adding portfolio value by formalising processes to support the fund's exit strategy.

ESG strategy

Establishing an overall ESG strategy and management system is foundational to the life cycle of a fund. At a minimum, the following core elements of an effective ESG strategy are necessary to address the emerging industry challenges and the individual portfolio risks.

ESG policy. Each fund should develop an ESG policy, outlining a core set of responsible investment principles and summarising the fund's approach for integrating ESG into its investment processes, locking onto both the aspirational and the actionable.

ESG requirements. Fund managers should identify a set of ESG requirements or standards relevant to the scope and purpose of the portfolio. This should include adherence to all applicable ESG laws and regulations as a minimum. Be mindful that the fund's limited partners will often have their own ESG investment criteria, which will contribute to the baseline of the portfolio's ESG requirements.

Roles and responsibilities. Clear allocation of responsibility for the ESG system and portfolio action plans is critical. This includes the allocation of resources and the expertise for day-to-day implementation (matching the fund's risk appetite) and the competencies and training of individual managers assigned. While many firms manage ESG through their investment teams, it is not uncommon to see ESG advisory committees attached to the board of directors and senior managers.

Reporting and disclosures. Publication of annual ESG performance to stakeholders provides the transparency and accountability increasingly demanded of institutions as a barometer of progressive performance. It also provides peer comparability in performance and supports limited partners and other professional investors' risk management strategies.

Managing failure. Many VC-backed companies will ultimately fail. VC managers take an important role in helping to ensure that these companies are wound up responsibly. This could include supporting the transparent communications to stakeholders and developing a common retrenchment framework aligned with international standards.

The big picture

In summary, adopting an ESG mindset and enacting an internal framework and processes for portfolio sustainability is gaining traction with today's smart money. The shift to integrating responsible investing via an ESG strategy is firmly on the VC investment radar for two broad reasons.

1. Sustainable investment practices are now tacitly credited for having a material impact on investment valuations and have recognised value with fund managers, not only in achieving environmental and social change and impact, but also in reducing costs, minimising risks, accessing talent and driving sales.

2. In today's climate-challenged operating environment and post-Covid social justice awareness, stakeholders display increased expectations of companies, not only for taking responsibility for their internal footprint, but also in terms of what and how that company contributes to the future well-being of the planet and societies.

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. *Look out for part two of this article in next month's CGj.*

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Working from home

The privacy and data security implications

The Office of the Privacy Commissioner for Personal Data provides new guidance on ensuring data security and personal data privacy when implementing work-from-home arrangements.

The Office of the Privacy Commissioner for Personal Data (PCPD) has published a guidance note setting out recommendations on how to minimise risks to data security and personal data privacy in organisations that implement work-from-home (WFH) arrangements. With the Covid-19 pandemic, WFH arrangements have become relatively common and the guidance note – Protecting Personal Data under Work-from-Home Arrangements: Guidance for Organisations – points out that the transfer of electronic or physical data in WFH arrangements inevitably leads to a higher risk of data breaches.

'In addition, cybersecurity threats, such as hacking and malware, remain an issue. Organisations should be vigilant and pay special attention to and ensure data security when implementing WFH arrangements. They should provide adequate guidance and support to their employees in order to reduce the risks of breaches of personal data privacy,' the guidance note says.

The guidance note also establishes the principle that organisations, as data users and employers, are primarily responsible for safeguarding the security of personal data and protecting their employees' personal data privacy. Moreover, regardless of whether one works in the office or works from home, the same standard should apply to the security of personal data and the protection of personal data privacy.

Organisations that implement WFH arrangements should:

1. set out clear policies on the handling of data (including personal data) during WFH arrangements – as required under Data Protection Principle (DPP) 5 in Schedule 1 to the Personal Data (Privacy) Ordinance (PDPO), and
2. take all reasonably practicable steps to ensure the security of data, in particular when information and communications technology is used to facilitate WFH arrangements, or when data and documents are transferred to employees – as required under DPP 4 of the PDPO.

The guidance note sets out the following measures organisations should implement to give effect to the two general principles above.

Risk assessment
WFH arrangements may be unprecedented or new to many organisations. Organisations should therefore assess the risks for data security and employees' personal data privacy in order to formulate appropriate safeguards.

Policies and guidance
In light of the results of risk assessment, organisations should review their existing policies and practices, make necessary adjustments and provide sufficient guidance to their employees. Such policies and guidance may cover the following areas:

- transfer of data and documents out of the organisations' premises and corporate networks
- remote access to corporate networks and data
- erasure and destruction of unnecessary data and materials, and
- handling of data breach incidents.

Staff training and support
Organisations should provide sufficient training and support to their employees for WFH arrangements to ensure data security. Training and support may cover the following areas:

- data security techniques, such as password management, use of encryption and secure use of wi-fi, and
- awareness about cybersecurity threats and trends, such as phishing, malware and telephone scams.

Highlights

- organisations are primarily responsible for safeguarding the security of personal data and protecting their employees' personal data privacy
- organisations should set out clear policies on the handling of data (including personal data) during work-from-home arrangements
- organisations should provide adequate guidance and support to their employees in order to ensure data security and to reduce the risks of breaches of personal data privacy

Organisations should deploy designated staff to answer questions from employees and provide necessary support.

Device management
Organisations may provide their employees with electronic devices (such as smartphones and notebook computers) under WFH arrangements. The following steps should be taken to ensure the security of the data, including personal data, stored in such devices.

- Instal proper anti-malware software, firewalls and the latest security patches in the devices.
- Perform regular system updates for the devices.
- Ensure that all work-related information in the devices is encrypted.
- Set up strong access controls, such as requiring the use of strong passwords (with a combination of letters, numbers and symbols). Require passwords to be changed regularly, using multifactor authentication and limiting the number of failed login attempts.
- Prevent the transfer of data from corporate devices to personal devices.
- Enable a remote wipe function so that information in the devices can be erased if the devices are lost.
- Avoid putting the names, logos and other identifiers of the organisations on the devices conspicuously to avoid unwarranted attention.

> “regardless of whether one works in the office or works from home, the same standard should apply to the security of personal data and the protection of personal data privacy”

Virtual Private Networks
Virtual Private Networks (VPNs) are an important and popular tool for WFH arrangements because they enable employees to access corporate networks remotely and more securely via the internet. The following steps should be taken to ensure the security of VPNs.

- Use multifactor authentication when connecting to a VPN.
- Keep the security settings of VPN platforms up-to-date.
- Use handshake protocols (such as Internet Protocol Security, Secure Socket Layers and Transport Layer Security) to establish secure communication channels between employees' devices and corporate networks.
- Use full-tunnel VPNs where possible (use split-tunnel VPN only when necessary, such as where there is insufficient bandwidth).
- Block connections with insecure devices.

Remote access
In addition to using VPNs, organisations should implement the further security measures for remote access to their corporate networks as listed below.

- Divide corporate networks into multiple segments or subnets, thereby reducing the risk and magnitude of data breach incidents, as well as enhancing the protection for critical and sensitive data.
- Only grant access rights to employees where necessary, for instance using role-based access controls.
- Enable an account lockout function to prevent logins by a user after multiple failed login attempts.
- Review logs of remote access to identify any suspicious activities.

The above guidance note can be accessed via the Publications section of the PCPD website: www.pcpd.org.hk. In addition to the guidance note for organisations, the PCPD has published guidance notes addressing the privacy implications of WFH arrangements for employees, and the use of video conferencing software.

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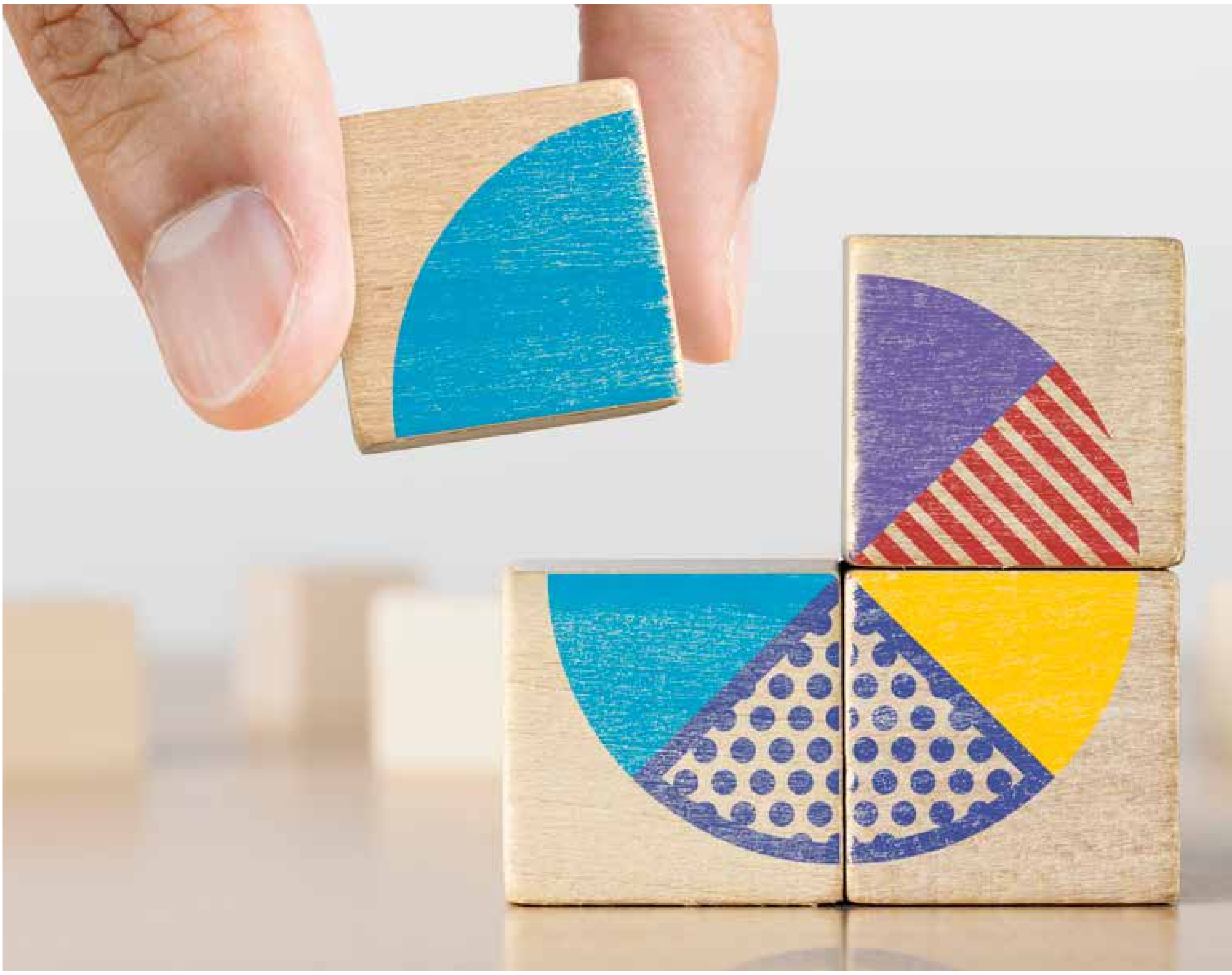
CHARTERED GOVERNANCE Hong Kong

Corporate purpose and stakeholder interests

Corporate Governance Paper Competition 2021 – Best Paper



This second and final part of the Best Paper of the latest Corporate Governance Paper Competition, held by the Institute, identifies the challenges involved in taking the stakeholder approach, and provides solutions for corporations to identify, implement and disclose their purpose.

The Institute holds its annual Corporate Governance Paper Competition and Presentation Awards to promote awareness of corporate governance among local undergraduates. This article is a summary of the Best Paper of the 2021 Corporate Governance Paper Competition. The first part of this paper, published in last month's *CGj*, focused on the incentives to exercising purposeful governance from three perspectives – profitability, sustainability and ethics.

The challenges involved in taking the stakeholder approach

Conflicting stakeholder interests

The term 'stakeholder' comprises, but is not limited to, financial stakeholders (including shareholders), societal stakeholders, employees, customers and business partners. It is difficult to make conclusions about or rank the importance of stakeholder groups without considering the actual situation of the specific company.

Furthermore, the objectives of corporate governance vary when taking different stakeholder groups into account – profit-maximising for financial stakeholders, contributions of sustainable solutions for societal stakeholders, favourable employment conditions for employees, adding value for customers, cocreating for business partners and so on.

Given the various concerns of different stakeholders, one critical task is to ascertain whether they are compatible or whether they are 'zero-sum' – which means that adopting one hinders the other – or to find a solution to turn the zero-sum into a win-win situation. Although some interests can be aligned, conflicts exist in some relationships. For example, there are inherent conflicts of interest in the relationship between principals and agents. In the relationship between shareholders and managers, managers may tend to pursue the short-term interest rather than the long-term interest that is preferable to shareholders. When the

Highlights

- it is impossible for a corporation to work for all stakeholders and to fulfil all their expectations
- the ambiguous boundaries between stakeholder groups inhibits the establishment of purposeful corporate governance and effective stakeholder management
- as fiduciaries, directors must disclose their interests when necessary and cannot turn their company's opportunities into their own personal opportunities

bondholder acts as the principal and the shareholder acts as the agent, the problem will be that the stockholder may prefer riskier projects due to the different payoff curves.

With unbalanced stakeholder pursuits, companies would find it difficult to achieve profitability and sustainability. In addition, a company could fall into an ethical dilemma if it ignores some of the minority voices. All these consequences lessen the possibilities for a company to conduct purposeful corporate governance. Only by solving the potential conflicts of multiple interests can a firm successfully manage its stakeholder relationships.

Ambiguous boundaries of stakeholder groups

Following the definition by Freeman, the concept of 'stakeholder' gave rise to over 60 explanations. Depending on the particular understanding of the meaning of stakeholder, a company may consider the stakeholder group in a broader or more restrictive range.

It is also challenging for the firm to figure out the exact stakeholder boundaries. Effort is needed to distinguish the constitution of one stakeholder group from another, and to identify which stakeholder group an individual belongs to. It is even more challenging for large conglomerates to determine and manage their stakeholder groups than it is for small enterprises. The difficulty in identifying stakeholders, especially secondary stakeholders, is a phenomenon called stakeholder ambiguity. The ambiguity may indeed undermine the competitive advantage gained by stakeholder managers.

First, without identifying the different stakeholder groups, it would be impossible for the company to balance their concerns. Second, without the classification of various stakeholders, it would be confusing for the company to realise the actual needs of the stakeholders. As a result, the ambiguity hinders the establishment and improvement of purposeful corporate governance with proper stakeholder management.

Theoretical possibilities

Potential alignment of multiple interests

Ultimately, there is no conflict between shareholders' and stakeholders' interests. In other words, it is possible to align their interests if a company is aiming for long-term sustainability. As illustrated above, stakeholders are parties who will be affected by any operation or activity of the company, the notion of which is derived from the very existence of a company. Without a long-term goal, and with a focus merely on short-term profit, a company is unlikely to be sustainable and it will therefore be impossible to properly provide for its stakeholders.

The reverse is also the case – a company will not be able to achieve long-term growth without concerning itself with stakeholders' interests as a whole. Therefore, all stakeholders would be presenting a unified front in terms of the sustainability of the company, at least, and this 'common expectation or interest' of all stakeholders appears to suggest the possibility of achieving purposeful governance. Through caring more about environmental, social and governance (ESG) issues, as already discussed, companies can generate

"only by solving the potential conflicts of multiple interests can a firm successfully manage its stakeholder relationships"

extra financial and ethical values, thereby setting up a virtuous cycle that mutually benefits financial and ESG considerations.

Apart from the common interest, there are unique and diverse interests of myriad stakeholders. However, it is noted that one particular purpose can serve more than one party. It is believed that the purpose beyond profit explains why the company exists, and the profit can be a by-product that is highly likely to be naturally created in the process of pursuing the initial purpose. In the same manner, even though various stakeholders exist, it is not necessary that merely a few groups are able to benefit from a decision.

However, it is unnecessary and impossible for a corporation to work for all stakeholders and to fulfil all their expectations. Stakeholder groups may have diverse special interests and it is

not easy to cater to all tastes. Moreover, this is similar to the theory of economies of scale, where only within a certain production level can the company keep reducing production costs to finally reach the most profitable point.

Minimum requirements for directors

As corporations are in the public domain, legally speaking, directors must comply with certain requirements when making decisions. As fiduciaries, directors must disclose their interests when necessary, and cannot take the opportunity for themselves when they come across an opportunity initially intended for the company. Besides, they must exercise their power bona fide in the best interests of the company. The 'interests of the company' means the financial interests of the members as a general body, flowing from maximisation of the company's profits. According to *Darvall v North Sydney Brick & Tile Co Ltd*, directors would be entitled to act in the long-term or short-term interests of the shareholders as a whole. However, we cannot find an exhaustive list of considerations that directors must take into account when making decisions.

Nevertheless, the disputable issue is whether directors can take account of ESG factors, even though that may not directly lead to profits in the short term. Courts have discussed this issue for several decades. As a result, even though there is no explicit requirement for directors to take ESG considerations into account, the current position – and the likely future direction – suggests that directors can take account of ESG factors, as long as it benefits the company at any stage or that the long-term benefit surpasses the short-term loss. Therefore, decisions such as attractive remuneration for employees and promotional offers for customers can be consistent with directors' duties.

Practical possibilities

In practice, companies can understand and identify their purpose by prioritising multiple interests and emphasising material ones. Several organisations, such as the International Integrated Reporting Council, the Sustainability Accounting Standards Board (SASB) and the Global Reporting Initiative (GRI), have published sustainability standards to assist companies in identifying, deciding on and prioritising material issues that ultimately indicate the companies' purpose. For example, SASB summarises and classifies material issues into five sections: environment, social capital, human capital, business model and innovation, and leadership and governance (see 'Material issues recognised by SASB').

The two most notable reporting standards, GRI and SASB, take distinct but complementary approaches to materiality. SASB emphasises the

Material issues recognised by SASB

Environment	Social capital	Human capital	Business model and innovation	Leadership and governance
• Use of nonrenewable natural resources • Harmful releases	• Human rights • Protection of vulnerable groups • Local economic development • Access to and quality of products and services • Affordability • Responsible business practices in marketing • Customer privacy	• Productivity of employees • Management of labour relations • Management of the health and safety of employees • Ability to create a safety culture	• Efficiency and responsibility in the design, use phase and disposal of products • Integration of environmental, human and social issues	• Regulatory compliance • Risk management • Safety management • Supply-chain and materials sourcing • Conflicts of interest • Anti-competitive behaviour • Corruption and bribery

influence of sustainability issues on the company's financial performance, whereas GRI focuses on the external impact of the company's operations and business activities on the economy, environment, people and human rights. Hence, the emerging best practice will be a matrix utilising both important dimensions.

Identification of material issues

Each company is unique and therefore must have its unique materiality portfolio. Before the materiality assessment process, companies should research and review industrial benchmarks, their own internal business and global standards to narrow the fields. For instance, product safety is essential in the auto industry, while data security has received much attention in the tech sector. Some stakeholders, such as investors, are crucial to almost all companies.

1. Communication with stakeholders. There is no doubt that stakeholder engagement matters. It is vital to understand and emphasise how stakeholders consider ESG factors in their decision-making, as well as to take account of their views on current and future ESG programmes. One possible way to obtain the relevant information is to establish a stakeholder board that runs over and above the board of directors, one that is determined by the shareholders. The stakeholder board could consist of representatives from shareholders, employees, significant consumers, significant suppliers, lenders, communities and investors, among others. Additionally, companies are advised to introduce some experienced corporate professionals and relevant experts who are competent in reporting, screening and prioritising processes. By doing so, critical internal and external stakeholders will be identified and engaged regularly in a structured manner.

The materiality identification is not a 'one and done' exercise, and should be refreshed frequently in order to address emerging issues and business contexts, which, as Covid-19 has shown, can rapidly shift.

2. Customer-related compliance and the 'right thing to do'. Customers are one of the most critical stakeholders. In terms of a customer-related compliance framework, the main focus for a corporation would be on the distinction between the minimum legal requirements and CSR. One example is the tax affairs of well-known companies such as Starbucks, Google and Facebook in 2013. These companies all managed to avoid being taxed on their UK revenues. While the measures adopted by the companies were legal, they were widely seen as unethical as they were utilising loopholes in the British tax system and robbing public services. The hostile public reaction to Starbucks' tax dealings, for instance, led them to pledge £10 million in taxes for each of the next two years, in an attempt to win back customers.

3. Internal control and risk management. Increased concerns have recently arisen regarding corporate accountability. A comparative study between Australia and Belgium suggested that a weaker focus on risk management and internal control within corporate governance guidelines may result in a less-developed system. Even though the external environment provides a different level of focus and support, corporations are competing in a relatively free global market. They should thus consider an internal control and risk management framework at an early stage, even without government or regulatory guidelines.

Striking a balance

Among the difficulties mentioned above, the most troublesome is balancing multiple interests, as stakeholder interests can conflict. Measures need to be taken to help with the balancing exercise, and the balanced scorecard (BSC) can be introduced for this purpose.

BSC could be applied to allow directors to analyse their business from four perspectives: finance, internal business, innovation and learning, and customers. This would enable them to emphasise the central issue and to help avoid being distracted by other gradually appearing measurements. It also guards against suboptimisation, as it allows managers to consider all critical factors together, rather than sacrificing one goal for another.

Implementation of material issues

Companies can sometimes struggle to get everyone on the same page, especially when other business units have different priorities and goals that may well align with corporate goals for the bottom line, but not necessarily with their ESG initiatives. To ensure the implementation of identified material issues, a company should integrate material ESG issues into its business strategy, functions and operations. Educational initiatives, training and a unified approach to internal business practices and controls can help secure employee engagement and support from the executive levels.

The stakeholder matrix may assist in executing the 'purpose'. After identifying materiality, four groups of stakeholders are formed using the significance of stakeholders' influence and their related interests. Different strategies are applied correspondingly: closely managing the stakeholder group with high interest and big influence, keeping satisfied those with low interest and big influence, keeping informed those with high interest and low influence, and continuously monitoring those with low interest and low influence. Tailored strategies targeting different groups help the company to optimise the implementation with the greatest efficiency.

Conclusion

In conclusion, it is possible for firms to institute purposeful corporate governance while taking into account a myriad of stakeholders' interests. Based on stakeholder theory, purposeful corporate governance requires a company's efforts in stakeholder management, which in turn benefits the company. Going beyond profit, the corporation is also driven by sustainability and ethics to take the stakeholder approach.

Although difficulties – including inherent conflicts and ambiguity of stakeholder groups – can still hinder stakeholder management, feasibility lies in the potential alignment of interests and the legal environment. In the meantime, firms' efforts are needed in pre-implementation, implementation and post-implementation. Before the implementation, the understanding and identification of stakeholders should be given emphasis, and BSC can help to strike a balance. During the implementation, separate strategies can be integrated by using the stakeholder matrix. After the implementation, disclosure can be made through ESG reports. With both pursuits and feasibility, there are possibilities for corporate governance tied with a myriad of stakeholders' interests.

Shevin Fan, Isaac Lee, Hellen Liu and Magnolia Wang

City University of Hong Kong

More information relating to the Institute's Corporate Governance Paper Competition and Presentation Awards was published in the Student News section of the November 2021 edition of this journal.

Professional Development

Seminars: February 2022

11 February

Technology series: hybrid general meetings – what governance professionals need to prepare

Speakers: Catharine Wong, Managing Director – Head of Share Registry & Issuer Services, Tricor Services Ltd, and Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive

16 February

BVI economic substance: case studies and practical implications – what have we learnt from a two-year regulatory compliance?

Chair: Edmond Chiu FCG HKFCG(PE), Institute Council member, Membership Committee Vice-Chairman, Professional Services Panel Chairman, AML/CFT Work Group member and Mainland China Focus Group member, and Managing Director, Corporate Services, Vistra Corporate Services (HK) Ltd

Speakers: Leon Mao, Head of Advisory and Managing Director, and Elsa Chow, Associate Director, Regulations & Compliance; Vistra Group, North Asia

17 February

INEDs – relevant issues for the governance professional and other thoughts

Speakers: Ernest Lee FCG HKFCG(PE), Institute President, Mainland China Focus Group member, and Technical Partner, Deloitte China; Ellie Pang FCG HKFCG, Institute Chief Executive; Zoe Lau, Vice President, BlackRock Investment Stewardship; and Professor CK Low FCG HKFCG, Institute Council member, Education Committee Vice-Chairman, Assessment Review Panel Chairman, Investigation Group Chairman, Technical Consultation Panel (TCP) member, TCP – Securities Law and Regulation Interest Group member and Editorial Board member, and Associate Professor in Corporate Law, CUHK Business School

21 February

Regulatory update – insider dealing

Chair: Bill Wang FCG HKFCG, Institute Council member, Professional Development Committee Chairman, Technical Consultation Panel (TCP) member, TCP – Securities Law and Regulation Interest Group member and Mainland China Focus Group member

Speaker: Donald Lai ACG HKACG, Solicitor, CPA

23 February

Technology series: AML/CFT regulatory update, TCSP licensing renewal and best practice by leveraging technology

Speakers: Bible Kwan, Head of Sales (Northeast Asia) – Channel & Partnership, and Irene Ip, Sales & Marketing Manager, Ingenique Solutions; and Desmond Ko, Head of Client Acceptance, Vistra Group, North Asia

Chair: Edmond Chiu FCG HKFCG(PE), Institute Council member, Membership Committee Vice-Chairman, Professional Services Panel Chairman, AML/CFT Work Group member and Mainland China Focus Group member, and Managing Director, Corporate Services, Vistra Corporate Services (HK) Ltd

25 February

Company secretarial practical training series: continuing obligations of listed companies – practice and application

Chair: Desmond Lau ACG HKACG(PE), Director and Head of Institute Professional Development

Speaker: Ricky Lai FCG HKFCG(PE), Company Secretary, China Renewable Energy Investment Ltd

28 February

CSP foundation training series: initial set-up of Hong Kong private limited companies

Chair: Desmond Lau ACG HKACG(PE), Director and Head of Institute Professional Development

Speaker: YT Soon FCG HKFCG(PE)

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
20 April 2022	4.00pm–5.30pm	Internal audit for corporate governance enhancement	1.5
21 April 2022	6.45pm–8.15pm	Share schemes: prepare for changes	1.5
25 April 2022	3.30pm–5.30pm	What makes corporate actions successful – practical sharing from financial advisory, company secretarial and proxy advisory perspectives	2
13 May 2022	10.30am-12.00pm	Tax audit on small and medium-sized enterprises	1.5

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

Membership

Application for concessionary subscription rate for 2022/2023

As a professional body established by members and for members, the Institute continues to offer concessionary subscription rates to members who fall into the criteria listed below.

1. Retired rate

This applies to members who:

- are fully retired from employment and will not be returning to gainful employment (neither full-time nor part-time), and
- are not receiving an income derived directly from labour or skill, and
  - have reached the age of 55 and have been members of The Chartered Governance Institute/HKCGI for at least 25 years on or before the beginning of the financial year (1 July), or
  - have reached the age of 60 on or before the beginning of the financial year (1 July).

Once approved, the retired rate will be granted from the following year and onwards. No reapplication is required.

2. Reduced rate

This is defined as a temporary relief for members or graduates, and applies to those who:

- have been unemployed for a minimum of six months prior to application or the beginning of the following financial year (1 July), or
- have ceased to receive income and/or remuneration due to health conditions (with substantial and sufficient supporting document(s) provided) for a minimum of three months prior to application or the beginning of the following financial year (1 July), or
- have encountered circumstances which, in the consideration of the Membership Committee, warrant the reduced rate.

Reduced rate applications are approved on an annual basis.

From the year 2019/2020 onwards, members and/or graduates are only eligible for the reduced rate for a maximum of five years. Reduced rates granted on or before the year 2018/2019 will not be counted towards this five-year limit.

Should members and/or graduates wish to continue to apply for the reduced rate for longer than a total of five years, adequate explanation and/or documentary proof must be provided to the Membership Committee for consideration.

3. Hardship rate

This applies to members/graduates who:

- have ceased to receive income and/or remuneration due to medical conditions for at least two years prior to application (with substantial and sufficient supporting document(s) provided), or
- other circumstances which, in the consideration of the Membership Committee, warrant the hardship rate.

Hardship rate applications are approved on an annual basis.

4. Senior rate

This applies to members who have reached the age of 70 or above before the beginning of the financial year (1 July). The senior rate is granted to eligible members automatically without prior application.

Important notes:

- For the above 1) retired rate, 2) reduced rate and 3) hardship rate, applications must be submitted to the Secretariat on or before Tuesday 31 May 2022. All applications are subject to the approval of the Membership Committee, the decision of which is final.
- A retired/reduced/hardship rate member who has i) returned to gainful employment (whether full-time or part-time), and/or ii) received income derived directly from labour or skills should pay the subscription at the full rate for the current financial year.

Members and graduates can submit their applications online via their user account. Application forms can also be downloaded from the Resources section of the Institute's website: hkcgi.org.hk.

For enquiries, please contact Rose Yeung: 2830 6051 or Vicky Lui: 2830 6088, or email: member@hkcgi.org.hk.

New graduates

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

Au Man Yu	Cheng Wai Man	Hu Wei	Li Ka Kiu	Tai Ka Man
Au Ming Yuk	Cheng Yee Hung	Hui Yuen Ki, Yuki	Lin Hoi Lap	Tang Sin Man
Au Siu Kit	Cheung Ho Kiu, Janice	Hung Yee Hei	Liu Tsz Kiu	Tang Wai Mui
Au Wing Han	Cheung Ho Yin	Ko Tsz Shan	Lo Hoi Yu	Tang Ying Hei
Chan Janet Wing Si	Cheung Yin Hei	Kwan Wing Ki	Lo Yip Shing	Tse Wai Wah
Chan Ka Ning	Ching Yiu Chung	Kwan Wing Sum	Man Sau Mei	Tsea Po Kwan
Chan Kim Yi	Chui Choi Mei	Kwok Hoi Lam	Mok Ho Wan	Tsoi Hoi Yin
Chan Nga Shan, Claudia	Chui Lai Ting	Lam Chi Lok	Ng Janet Ka Ying	Wong Ka Yin
Chen Jingquan	Chun Wai Chung, Carol	Law Hei To, Vela	Ng Ka Ki	Wong Wai Tung
Chen Min Ting	He Chen	Law Kwok Fai	Ng Kai Man, Carmen	Wong Wing Yee
Cheng Ming Yuen	Ho Chung Yan, Joanne	Law Yiu Sing	Qin Yingshi	Yeo Sze Hua
Cheng Siu Ha	Ho Hoi Fu	Lee Mei Sim	Sham Wing Yin	Yue Weiyu
Cheng Wai Kin	Ho Wing Kei	Leung Hoi Ting, Vanessa	Siu Ut Kun	Zhang Xiangyu

New Associates

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

Chan Chin Yip	Hu Yanan	Leung Kin Ping	Pak Yee Ping, Cheryl	Wong Lok Hang
Chan Hei Tung, Rafina	Hung Chau Yeung	Leung Ling Ching	Poon Cho Yee	Wong Sin Yi
Chan Ka Lun	Hung Hiu Ching	Leung Mei Yin	Poon Wing Sim	Wong So Ying
Chan Kit Lam	Ip Wing Man	Leung Shu Tak	Qi Weiwei	Wong Yee Nor
Chan Kwun Lam	Jor Ka Man	Leung Siu Han	Shek Tsui Ying	Wong Yik Tung
Chan Nga Yee	Koo Wing Yip	Leung Wing Shan, Vivien	Shiu Cheuk Sze	Wu Zhengyi
Chan Sau Ching, Gladys	Kwan Man Ying	Li Jingxian	Tam Wang Ngai	Xiao Zheng
Chan Wing Ling	Lai Wing Suen	Li Lok Fai	Tang Tat Him	Yan Chin Fung
Chan Yuk Wing	Lam Kang Chi	Li Wing Yu	Teo Wai Ham	Yeung Chi Shun
Chen Chao	Lam Lok Tin, Timothy	Liu Leah	Ting Chun Yip, Nelson	Yeung Fout Kei
Cheng Nga Wan	Lau Chun Long	Lo Shi Kwan	To Wing Ying	Yeung Kar Yan
Cheuk Sui Yee	Lau Chun Yan	Lou Pui Yu	Tong Pak Lam	Yip Hoi Lam
Cheung Ki Ching	Lau Po Chu, Edith	Luk Wing Han	Tong Sze Nga	Yip Ka Yi
Cheung Lim Chi, Cecilia	Law Chung Wing	Mak Kai Fung	Tsang Ching Yi	Zhang Shu
Choi Po Yee	Lee Hiu Wing, Hilwie	Man Yee Mei	Tsang Chun Ho	Zheng Yufeng
Cui Xinyue	Lee King Yao	Ng Tsz Yan	Tsang Pik Wah	
Fok Chau Tung	Lee Wing Sze, Connie	Ng Yin Fei	Tsang Pui Kwan	
Ho Ka Yan	Leung Chi Ho	Nip Suk Ching	Wong Cho Lun	

Membership (continued)

Membership activities: March 2022

19 March

Governance Professional Mentorship Programme – online mentees' training

24 March

A guide to wills and probate for estate planning in Hong Kong (free webinar)

Forthcoming membership activities

Date	Time	Event
23 April 2022	11.30am–12.30pm	Online mobile photography workshop
30 April 2022	11.00am–12.30pm	Online Chinese calligraphy workshop

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

Advocacy

Results of the Institute's survey on the new brand and services 2022

The Institute unveiled its new brand identity and revamped website in January 2022, with the aim of broadening its authority and to promote the concept of 'Better Governance. Better Future'. Amongst other things, the initiative was designed to enhance the employment and other business opportunities for members, whose roles and responsibilities as governance professionals have evolved to embrace a wider remit of practical governance concerns.

A related survey was circulated in March to further enhance the Institute's brand and services through constructive feedback from members, graduates and students. Results of the survey – which was accessible from 1 to 10 March inclusive and took 30 minutes, including related reading – were shared on 7 April 2022 at the President's Forum: A New Vision 2022, where Ernest Lee FCG HKFCG(PE), Institute President, Mainland China Focus Group member, and Technical Partner, Deloitte China, and Paul Stafford FCG HKFCG, Institute Vice-President and Regional Company Secretary and Head of Corporate Governance, Asia-Pacific, HSBC, also provided updates and responded to questions in relation to the new brand identity.

Advocacy (continued)

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

HKEX announced a number of changes to the Corporate Governance Code and Listing Rules in December 2021, the majority of which came into effect on 1 January 2022. Amongst the new adjustments to the Code were the introduction of culture to the board agenda and making board diversity mandatory.

To provide a holistic understanding of the implementation of, as well as practical issues related to, these changes, the Institute organised a masterclass on 25 March to showcase perspectives from regulators, representatives of major issuers and investors.

5 Years Plus Caring Organisation Logo

The Institute is delighted to announce that it has been awarded the 5 Years Plus Caring Organisation Logo in The Hong Kong Council of Social Service's 2021/2022 Caring Company Scheme.

The award, received for the fifth consecutive year, recognises the Institute's commitment to caring for the community, caring for its employees and caring for the environment.

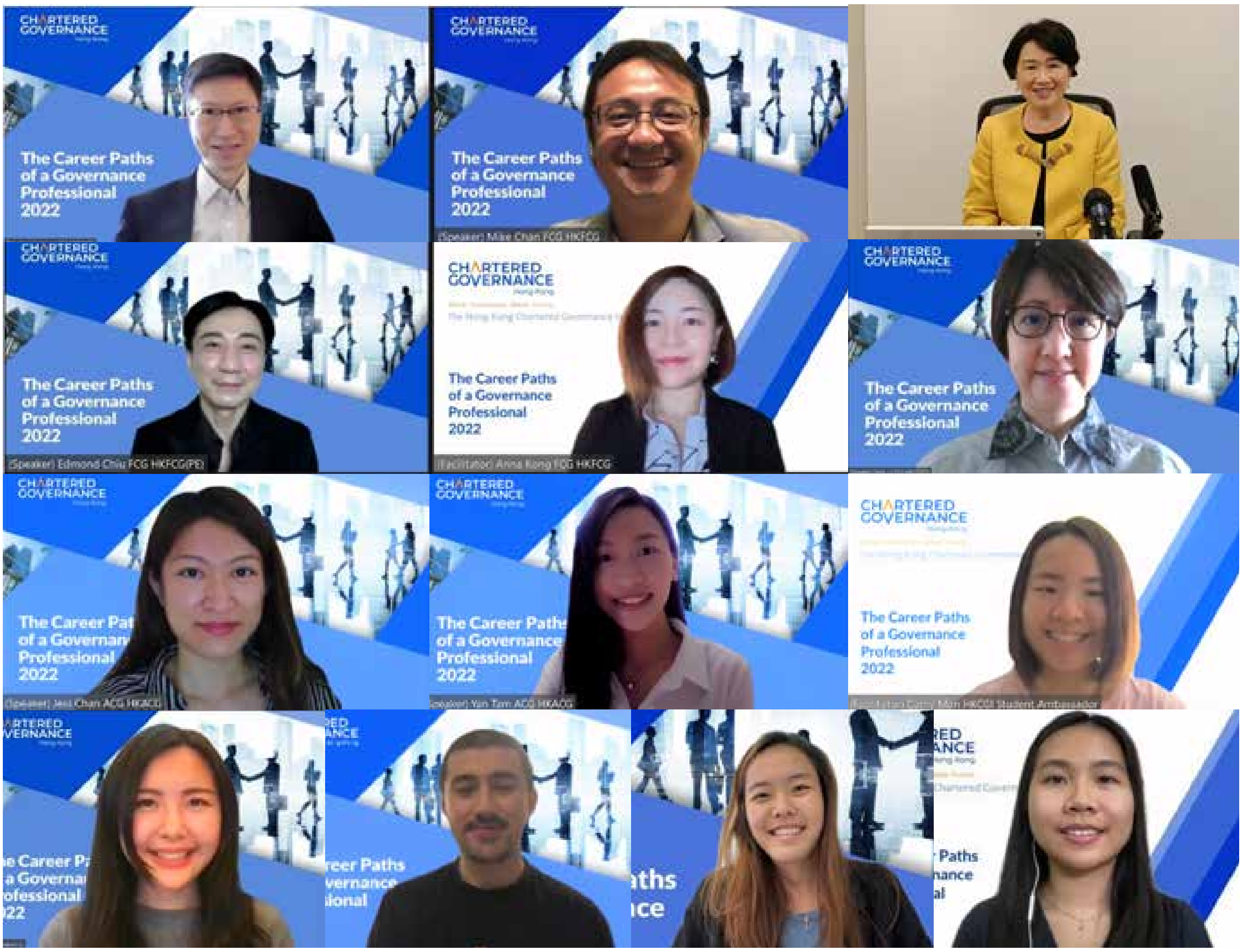
The Career Paths of a Governance Professional 2022 (formerly known as Governance Professionals Career Day)

On 26 March 2022, the Institute held The Career Paths of a Governance Professional 2022 (Career Paths 2022), which was attended online by 128 local undergraduates, Institute students and student ambassadors. Career Paths 2022 provided an overview of the roles of and career opportunities for Chartered Secretaries and Chartered Governance Professionals.

The event began with welcoming remarks from Ernest Lee FCG HKFCG(PE), Institute President, Mainland China Focus Group member, and Technical Partner, Deloitte China, who then highlighted the importance of the role of governance professionals in today's challenging business environment, as well as the extensive career prospects available.

The first session – Introduction of the Chartered Secretary and Chartered Governance Professional qualifications – kicked off with Ellie Pang FCG HKFCG, Institute Chief Executive, talking about 'The way of HKCGI rebranding and the evolving role of a governance professional'.

Discussions with senior members of the Institute were facilitated by Anna Kong FCG HKFCG, while Ernest Lee FCG HKFCG(PE); Edmond Chiu FCG HKFCG(PE), Institute Council member and Executive Director, Corporate Services, Vistra Corporate Services (HK) Ltd; and Mike Chan FCG HKFCG, Fraud Control Officer & General Manager, Head



of Operational Risk Management at a sizable PRC bank, provided an overview of industry developments and shared their success stories with participants.

Stella Lo FCG HKFCG(PE), Institute Council member and Education Committee Chairman, introduced the entry requirements for and route to membership of the Institute. The session on 'Interview sharing with young members' was facilitated by student ambassador Cathy Man, and led by Jess Chan ACG HKACG, Student Ambassadors Programme (SAP) mentor and Company Secretary, Huasheng International Holding Ltd, and Yan Tam ACG HKACG, SAP mentor and Assistant Manager, In.Corp Corporate Services (HK) Ltd, during which time they shared their experience as governance professionals.

The second session – Practical workshops – included an online interview skills workshop conducted by Sharon Li and a CV review workshop conducted by Kamil Butt and JJ How. Last but not least, Institute Chief Executive Ellie Pang FCG HKFCG delivered the closing remarks to conclude this meaningful event.

The Institute would like to thank Baker & McKenzie and Intertrust Group for being the silver sponsors for this event, as well as all the supporting universities and higher educational institutions. The Institute would also like to thank all helpers, including Institute members, students, student ambassadors and undergraduates, for their contributions to Career Paths 2022, as well as Natalie Ma, Year 3 student of The Hong Kong University of Science and Technology for her role as MC.

Advocacy (continued)

Schedule of the Institute's Mainland seminars and webinars for 2022

时间 Time	地点/方式 Venue and mode	(网络)讲座/主题 Seminar/webinar themes
5月18至20日 18–20 May	网络 Webinar	第六十二期联席成员强化持续专业发展讲座(董秘及财务总监联合培训)(3天,16学时) 主题:并购与交易管控 The 62nd AP ECPD webinar (for board secretaries and CFOs) (Three days, 16 ECPD hours) Theme: M&A and Transaction Control
6月28至30日 28–30 June	北京 Beijing	第六十三期联席成员强化持续专业发展讲座(香港公司治理公会/上海证券交易所 A+H股董事会秘书联合培训)(2.5天,15学时) 主题:信息披露与交易规管及治理 The 63rd AP ECPD seminar (joint training with Shanghai Stock Exchange for A+H board secretaries) (Two-and-a-half days, 15 ECPD hours) Theme: Information Disclosure and Transaction Regulations and Governance
7月20至22日 20–22 July	网络 Webinar	第六十四期联席成员强化持续专业发展讲座(董事监事专场)(3天,16学时) 主题:董事/监事的持续责任与义务及其监管处罚 The 64th AP ECPD webinar (for directors and supervisors) (Three days, 16 ECPD hours) Theme: Directors/Supervisors' Continuing Responsibilities and Liabilities and Penalties for Violation
9月21至23日 21–23 September	成都/重庆 Chengdu/Chongqing	第六十五期联席成员强化持续专业发展讲座(香港公司治理公会/上海证券交易所A+H股独董与财务总监联合培训)(2.5天,16学时) 主题:市值管理与股权激励 The 65th AP ECPD seminar (joint training with Shanghai Stock Exchange for independent directors and CFOs) (Two-and-a-half days, 16 ECPD hours) Theme: Market Value Management and Equity Incentives

时间 Time	地点/方式 Venue and mode	(网络)讲座/主题 Seminar/webinar themes
10月25至28日 25–28 October	香港 Hong Kong	2022年香港中国企业规管高级研修班 (4天,22学时) 2022 Advanced regulatory seminar for Chinese enterprises in Hong Kong (Four days, 22 ECPD hours)
11月9日至11日 9–11 November	网络 Webinar	第六十六期联席成员强化持续专业发展讲座(董秘/董事/财务总监联合培训)(3天,16学时) 主题:财务监控与风险管理 The 66th AP ECPD seminar (for board secretaries, directors and CFOs) (Three days, 16 ECPD hours) Theme: Financial Control and Risk Management
12月14日至16日 14–16 December	北海/昆明 Beihai/Kunming	第六十七期联席成员强化持续专业发展讲座(董秘/财务总监联合培训)(2.5天,16学时) 主题:年度财务审计与业绩报告 The 67th AP ECPD seminar (for board secretaries and CFOs) (Two-and-a-half days, 16 ECPD hours) Theme: Annual Financial Audit and Annual Report

Note: 香港公司治理公会保留根据情况变化调整/取消以上(网 络)讲座安排之权利。
Note: The Institute reserves the right to adjust or cancel any of the above seminars and webinars as circumstances dictate.

Chartered Governance Qualifying Programme (CGQP)

June 2022 examination diet – key dates

The June 2022 examination diet of the CGQP is open for enrolment from 15 February to 31 March 2022. All examination enrolments must be made online via the Login area of the Institute's website.

Key dates	Description
3 May	Pre-released case study for CGQP June 2022 examination diet
Late May	Release of examination admission slips
7–17 June	Examination period for June 2022 examination diet
8 July	Closing date for examination postponement application
Mid-August	Release of examination results
Mid-August	Release of examination papers, mark schemes and examiners' reports
Late August	Closing date for examination results review application

Note: The Institute reserves the right to change the dates and details without prior notice.

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.

Career talks and fairs at local universities and educational institutes

The Institute continues to liaise closely with local universities and institutions to promote the dual qualification of Chartered Secretary and Chartered Governance Professional, as well as the related career opportunities, to undergraduates. The Institute arranged with local universities and educational institutes to hold the following career talks or fairs for their respective students from January to March 2022.

Date	University/institution
13 January	The Hong Kong Management Association
23 February	The Hong Kong Polytechnic University
1–31 March	Hong Kong Shue Yan University
15 March	Hong Kong Baptist University
24 March	The Hong Kong Polytechnic University

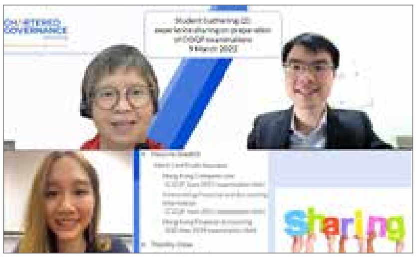
Studentship activities: March 2022

9 March

Student Gathering (2): experience sharing on preparation of CGQP examinations

24 March

Guest lecture at The Hong Kong Polytechnic University



Forthcoming studentship activities

Date	Time	Event
7 April 2022	1.00pm–2.00pm	Student Ambassadors Programme (SAP): Fireside Chat with the Dr Ricky Szeto, CEO and Executive Director, Hung Fook Tong Group Holdings Ltd

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 pay 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.

Notice (continued)

Featured Job Openings

Company name	Position
Conyers Dill & Pearman	Corporate Administrator
Conyers Dill & Pearman	Corporate Administrative Assistant
Conyers Dill & Pearman	Supervisor
Sit, Fung, Kwong & Shum Solicitors	Company Secretarial Assistant/Officer

For details of job openings, please visit the Jobs in Governance section of the Institute's website: www.hkcgi.org.hk.

Review of 2020 annual reports: compliance lessons

The Stock Exchange of Hong Kong Ltd (the Exchange) has published a report (the Report) on the findings and recommendations from its annual review of issuers' annual reports for the 2020 financial year-end. In light of the review, the Exchange highlights the following recommendations and observations of the commonly omitted disclosures in issuers annual reports.

Continuing connected transactions

About 90% of the issuers reviewed fully complied with the annual reporting requirements for continuing connected transactions (CCTs). The most common omission continued to be a confirmation of whether the reported related-party transactions were connected transactions under the Listing Rules. 'Issuers should ensure there are appropriate internal controls to review the related-party transactions to ensure connected transactions are properly reported and the connected transaction Listing Rules are complied with,' the Report states.

Share schemes and pension schemes

A large majority of the issuers reviewed fully disclosed the information required under the Listing Rules. This year, about one-third of issuers reviewed granted share options to non-employee participants, and most of these issuers did not disclose the identities of the grantees and rationale for the grants. The Exchange reminds issuers to disclose information on the identities of the grantees, terms of the options and the rationale for making the grants. This would provide accountability to shareholders on the alignment of the grants with the objectives of the schemes.

With regard to pension schemes, the Exchange highlights the following commonly omitted disclosures. For contribution plans, issuers need to disclose:

- details of whether forfeited contributions may be used by the employer to reduce the existing level of contributions (where there was no such reduction arrangement, issuers should make a negative statement to that effect), and
- how the contributions or expenses were calculated.

For benefit plans, issuers should disclose:

- the level of funding expressed in percentage terms, and
- comments on any material surplus or deficiency in funding.

Issuers are encouraged to assign appropriate personnel and implement internal control measures to ensure the disclosure on share scheme and pension scheme complies with relevant Listing Rules.

Fundraisings through the issue of equity/convertible securities and subscription rights

There was a notable increase in compliance with the disclosure requirements this year. The most common omission was a plan for the unused proceeds including a breakdown and expected timeline. Issuers should align their proposed use of proceeds with their business plans and disclose such plans in their annual reports.

Significant investments

Over 70% of the issuers fully disclosed information on their significant investments as required by the Listing Rules. The Exchange identified isolated cases where issuers failed to comply with the notifiable transaction Listing Rules when acquiring securities and investment products. It recommends that issuers refer to the Exchange's published frequently asked questions on this issue for guidance.

Results of performance guarantees after acquisitions

To provide accountability to shareholders, the Listing Rules require issuers to report on the results of these performance guarantees. The Exchange has reviewed issuers' disclosure and, in cases where the performance of the acquired business fell short of the guarantee, whether the issuers have taken appropriate actions. In general, the Exchange was satisfied that the issuers had taken appropriate actions to enforce the guarantees and updated shareholders.

Material other expenses/income

Over 95% of the issuers reviewed provided additional breakdowns of material other expenses or other income in the notes to financial statements or explanations in the

MD&A section. In determining the appropriate level of disclosure, the Exchange recommends that issuers should have regard to the overriding principle that information disclosed must be meaningful, accurate and complete in all respects. Where the other expenses/income are material, they should provide additional information to facilitate investors' understanding of their cost structure and their financial performance.

Other annual report disclosure

This year, the Exchange continued to review issuers' compliance with other disclosure provisions for annual reports under Appendix 16 to the Main Board Listing Rules using its artificial intelligence model. Issuers continued to achieve a very high compliance rate this year. The most common areas of non-disclosure were:

- certain emolument details of the five highest-paid individuals, and
- the principal country of operation of their subsidiaries and the legal forms of their subsidiaries established in the Mainland.

In addition some issuers omitted disclosure of:

- the percentages of revenue/purchases attributable to the largest customer/supplier
- the percentages of revenue/purchases attributable to the five largest customers/suppliers combined, and
- the interests of any of the directors, their close associates, or any shareholder (who owns more than 5% interests in the issuers) in the five largest customers/suppliers.

The Exchange was generally satisfied with issuers' compliance with annual report disclosure requirements under the Listing Rules and its recommended disclosure in previous reports, as issuers continued to achieve a high rate of compliance this year. Issuers are urged to note the observations and recommendations discussed in the Exchange's latest report and to follow this guidance in their future annual reports to improve transparency and accountability to investors.

More information is available on the Hong Kong Exchanges and Clearing Ltd website: www.hkex.com.hk.

Ethical governance of AI

The latest thought leadership paper of The Chartered Governance Institute, published in February this year, looks at the ethical issues involved in using artificial intelligence (AI) and the roles of governance professionals in helping organisations to ensure that their AI systems do not lead to compliance or ethical breaches.

The paper, Ethical Governance of AI, acknowledges the many benefits that AI has brought organisations around the world. AI systems have vastly increased organisations' ability to derive useful insights from data sets, for example. Nevertheless, given the ever-increasing worldwide usage of AI, it is increasingly important for governance professionals to be mindful of the potential risks of using AI. There have been an increasing number of instances, for example, where AI has exacerbated intentional and unintentional biases, and led to discrimination and breaches of privacy. These risks can lead to loss of trust and substantial reputational costs for organisations.

The paper cites a prominent example of this. In 2018, Amazon was forced to abandon an AI recruiting application after the system was found to be biased against women. Amazon's computer systems were trained to vet applicants by observing patterns in resumes submitted to the company over a 10-year period. Due to the male dominance of the tech industry, the machines taught themselves to downgrade resumes from women. 'The ability of AI systems to make decisions and perform tasks, which used to be the preserve of people, raises issues and concerns about fairness,

Ethical governance of AI (continued)

accountability and integrity. This in turn is increasing the demand for sound ethical governance of AI that places human values at the forefront,' the paper states.

The paper concludes by offering practical solutions to help governance professionals navigate this challenging terrain, both locally and within the wider remit of promoting good governance internationally. 'Governance professionals have a role to play in mitigating the impact of such biases in their organisation, by identifying opportunities for human oversight at various governance stages. These include data policy development, AI procurement guidelines, appropriate staffing and awareness, capacity building strategies, monitoring and continued meta-evaluation of AI applications,' the paper states.

Ethical Governance of AI was produced by the CGI Thought Leadership Committee and written by principal author Gertrude Takawira, Policy Advisor – CGI Global. It is available via the CGI website: www.cgiglobal.org.

Further alignment of sustainability standards

The International Financial Reporting Standards (IFRS) Foundation announced the launch of the International Sustainability Standards Board (ISSB) at COP26 – the 26th Conference of the Parties to the United Nations Framework Convention on Climate Change. The ISSB has since been working to develop a global baseline of sustainability disclosure standards. In a new development, the IFRS Foundation and Global Reporting Initiative (GRI) have announced a collaboration agreement under which their respective standard-setting boards, the ISSB and the Global Sustainability Standards Board (GSSB), will seek to coordinate their work programmes and standard-setting activities. GRI is the leading global standard-setter for multi-stakeholder focused sustainability reporting and the ISSB is focused on developing investor-focused capital market standards. The IFRS Foundation and GRI further announced that they will join each other's consultative bodies related to sustainability reporting activities.

The regulation of stablecoins

On 12 January, the Hong Kong Monetary Authority (HKMA) issued a discussion paper seeking views on possible ways forward in its regulation of virtual assets, in particular payment-related stablecoins. The Discussion Paper on Crypto-assets and Stablecoins (the Paper) looks at the adequacy of the existing regulatory framework in the context of the growing use of stablecoins and other types of virtual assets (also known as crypto-assets) in financial markets.

There have been a number of developments in this space in Hong Kong in recent years – including proposed amendments to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), that will be presented to the Legislative Council this year, to bring in a licensing regime for virtual asset service providers. The proposed amendments to the AMLO are not primarily targeted at stablecoins however, and the Paper proposes to implement a new regulatory regime focusing on activities relating to payment-related stablecoins.

In its submission to the Paper on 29 March, the Institute expressed support for the adoption of a risk-based approach to address the various risks posed by virtual assets to users and the financial system, while embracing the potential benefit of financial innovations.