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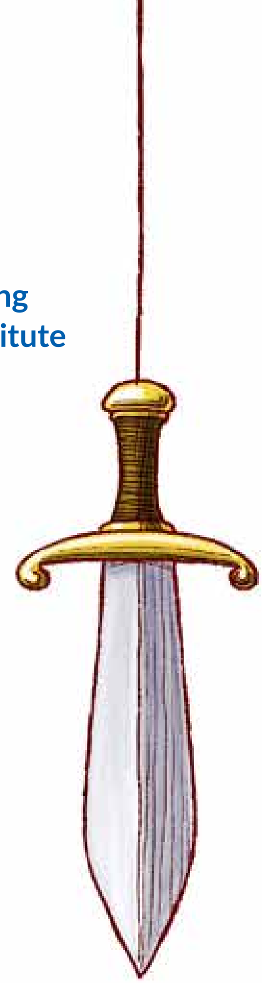

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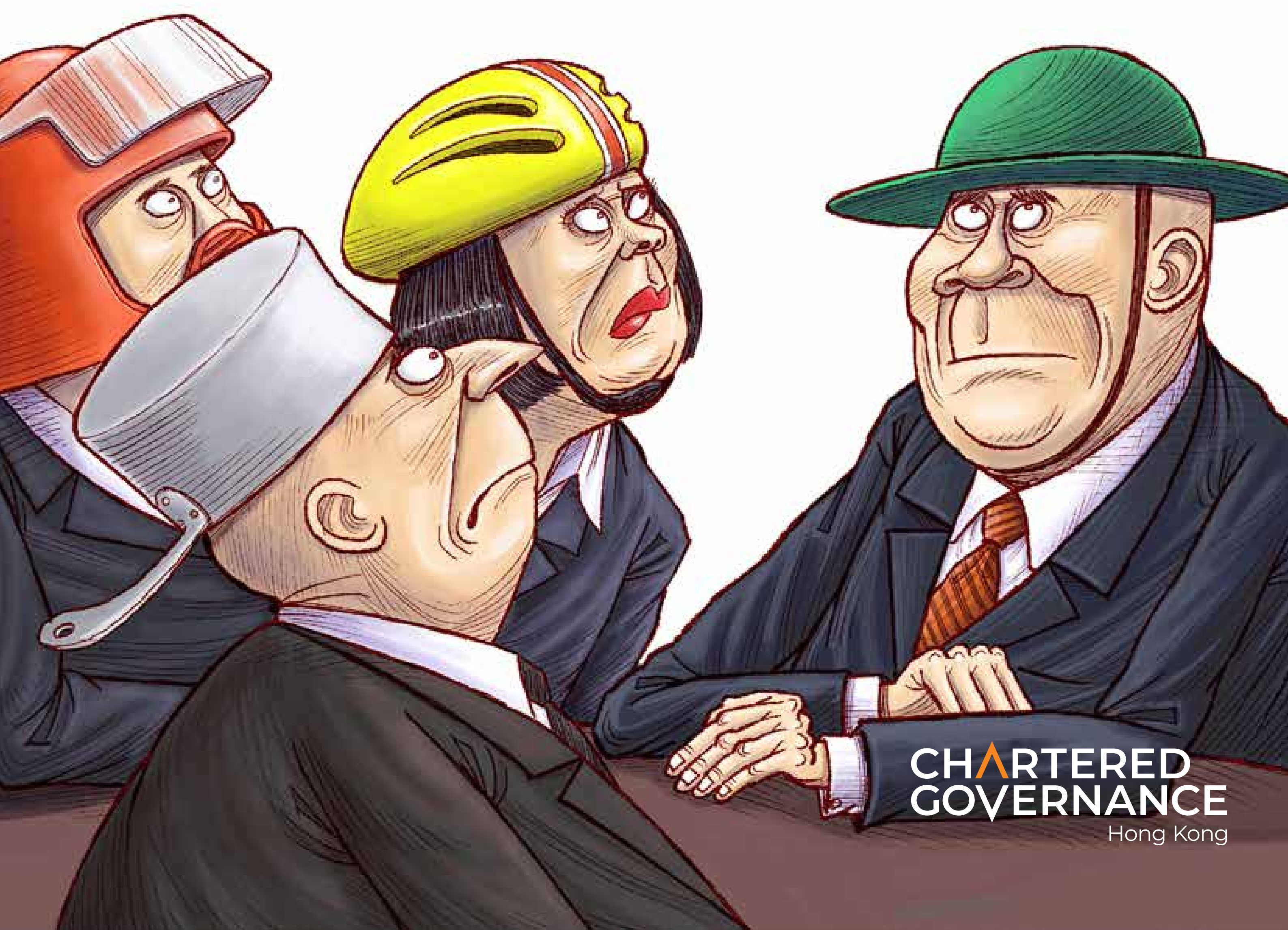

CHARTERED GOVERNANCE
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13th Biennial Corporate Governance Conference 2022

Repurposing in Changing Times - the Company, Governance and the Governance Professional

23 September 2022 (Hybrid Mode)

9.00am – 5.00pm

JW Marriott Hotel Hong Kong

The 13th Biennial Corporate Governance Conference (CGC 2022) aims to examine the economic, social and environmental issues that are contributing to the changing risk environment for the governance professionals. Whilst there will be some focus on listed companies, the conference aims to discuss how other entities, be they statutory bodies, non-governmental organisations, social enterprises and private companies can adapt and evolve to find a new purpose in changing times.

As governance professionals play a vital role in providing advice and assisting the board in driving business performance and create resilience, they must take into account areas of the latest developments in applied governance. One of the objectives of the conference is to provide thought leadership from the applied governance perspective to generate an awareness on these global issues.

For enquiries, please contact the Institute's Professional Development Section: 2881 6177, or email: cpd@hkcgi.org.hk.

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Good governance comes with membership

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.

HKCGI has over 6,800 members, more than 300 graduates and around 3,000 students.

Membership and studentship statistics update

As of 30 June 2022, the statistics were as follows:
Students: 2,845 **Graduates:** 390 **Associates:** 6,158 **Fellows:** 800

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Risk report review

Our Institute has stepped up its thought leadership output in recent years at both the international and local level. This is particularly visible in the number and quality of the research reports we have published recently. This edition of our journal reviews one such report – Roles of Governance Professionals in Today's Post-Pandemic and Dynamically Changing Risk Environment (the Report), jointly published by the Institute, the Corporate Secretaries International Association Ltd (CSIA) and Ernst & Young Advisory Services Ltd in May this year.

Since the global financial crisis of 2008, risk management has been climbing the governance agenda and boards are much more aware of the need to keep pace with the broad scope of risks their organisations are facing. The Report points out that this presents both a challenge and a major opportunity for members of our profession. Advising on risk in today's operating environment is no easy task. It requires governance professionals to go beyond their traditional focus on regulatory risks to ensure that the board is not blindsided by the many other areas of risk management – including the fast-moving areas of ESG and technology-related risks.

In this context, the survey on which the Report was based is a timely reminder of the need for practitioners to stay ahead of this trend. The survey of 1,752 CSIA members, carried out in December 2021, found that ESG and technology-related risks still receive significantly less attention from governance professionals. This is partly a reflection of the degree to which other specialists are involved in providing the board with advice on these critical areas, but as the primary strategic advisers to the board on all governance matters, practitioners cannot afford to neglect these issues. Moreover, there will be significant benefits for both individual practitioners and the profession as a whole if we succeed in rising to this challenge.

If you haven't done so already, I highly recommend you download the report from the thought leadership section of our website. I would also like to congratulate and thank our research and advocacy team here in Hong Kong, as well as CSIA and Ernst & Young, for their hard work in putting the report together.

You will also find our latest research report, Climate Change Reporting: Imminent, Challenging & Mandatory – The Opening Moves, produced in partnership with KPMG China and CLP Holdings Limited (CLP), and published last month. As readers of this journal will know, we are poised for a very significant tightening of ESG reporting requirements both globally and here in Hong Kong – in particular relating to climate change. This latest report gives practical guidance to help organisations raise their game in this area.

To conclude, I would like to add that our flagship CPD event is just around the corner. Under the theme, Repurposing in Changing Times – the Company, Governance and the Governance Professional, our 13th biennial Corporate Governance Conference will address key issues at the top of the governance agenda, including climate change governance and reporting, and managing technology-related and diversity and inclusion issues. The forum will be held on 23 September 2022 in hybrid mode – with participants joining online but speakers and panel members attending in person. Please add the date to your calendars and I look forward to joining you next month at the forum.

Ernest Lee FCG HKFCG(PE)

风险报告回顾

近年来，公会在国际和本地区层面都加强了其思想引领输出，这在我们最近发表的研究报告的数量和质量上的体现尤为明显。本月会刊对其中一份报告进行了回顾——治理专业人士在后疫情和动态变化的风险环境中所扮演的角色（报告），该报告由公会、公司秘书国际联合会(CSIA)和安永咨询服务有限公司（安永）于今年五月份联合发布。

自2008年全球金融危机以来，风险管理在治理议程中的地位日益突出，董事会也更加意识到需要密切关注组织面临的广泛风险。报告指出，这对我们治理专业人士来说既是挑战，也是重大机遇。在当今的运营环境中就组织所面临的风险提供建议并非易事。它要求治理专业人士超越他们对监管风险的传统关注内容，以确保风险管理的许多其他领域——包括快速发展的ESG领域和技术相关风险，不会成为董事会的盲区。

在此背景下，本报告所基于的调查结果及时提醒了治理专业人士需要在这一趋势中保持领先。我们于2021年12月对1,752名CSIA会员进行的调查发现，治理专业人士明显仍未给予ESG和技术相关风险足够关注。这部分反映了其他专家向董事会提供有关这些关键领域的建议的参与程度，但作为董事会在所有治理事务上的主要战略顾问，治理专业人士不能忽视这些问题。此外，如果我们能够成功应对这一挑战，将对从业人员个人和整个行业都有显著益处。

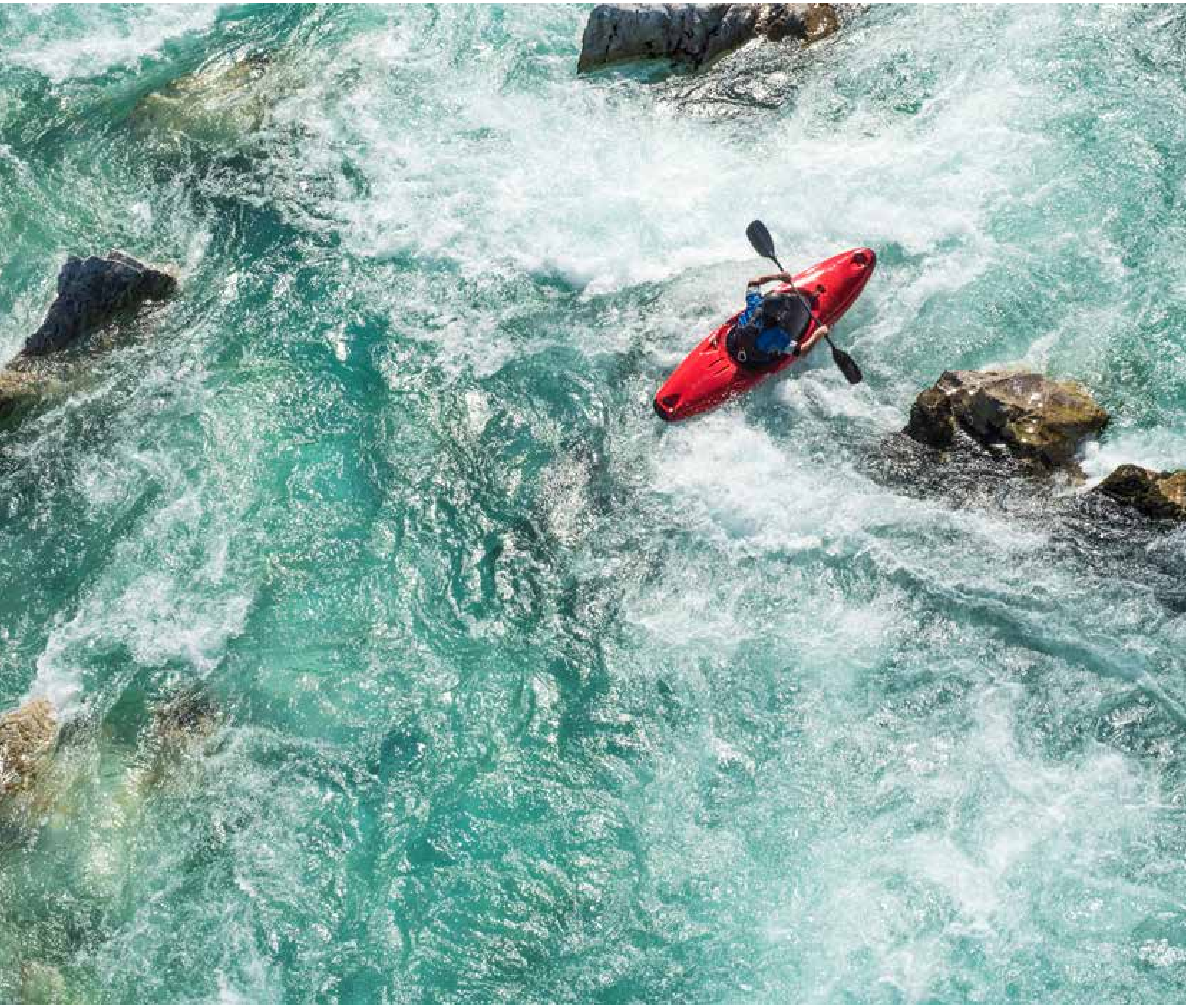
如果您尚未如此行动，本人强烈建议您从公会网站的“思想引领”栏目下载该报告。本人也要祝贺并感谢我们在香港的研究团队，以及CSIA和安永， 他们为编写这份报告付出了辛勤的劳动。

读者也会注意到公会与毕马威中国和中电控股有限公司联合开展并于上月发布的最新研究报告《气候变化报告：如何就这项迫在眉睫、充满挑战的任务做出部署》。正如本刊的读者所知，我们已经做好准备迎接全球和香港大幅提升ESG报告要求——尤其是与气候变化有关的要求。这份最新报告提供了实务指引，以帮助组织提高在该领域的竞争力。

最后，我想补充一点，公会持续专业发展的重量级活动，即，公会第13届两年一次的公司治理研讨会，即将举行。此次研讨会主题为“在变革时代的重新定位——公司、治理和治理专业人士”，研讨会将讨论治理议程中的关键问题，包括气候变化之治理和报告，以及如何管理技术相关、多样性和包容性问题。该研讨会将于2022年9月23日以线上线下混合的方式举行——参会者在线观看，但演讲者和现场讨论成员亲临现场。请将此研讨会日期加入您的日程表中，本人期待下个月与大家共同参会！

李俊豪 FCG HKFCG(PE)

Risk management and the governance professional



As risk management becomes more relevant to the governance professional role, a new report highlights the unique contribution practitioners can make to ESG and technology risk management in organisations of all types.

It would be something of an understatement to say that risk is front of mind at the moment in organisations of all types and across all industries. When faced with shocks on the scale of the Covid-19 pandemic, interstate conflict, climate change, biodiversity loss, cyberthreats and digital transformation, it is small wonder that risk management has found its way to the top of the agenda.

A new report – Roles of Governance Professionals in Today's Post-Pandemic and Dynamically Changing Risk Environment (the Report), jointly published by the Institute, the Corporate Secretaries International Association Ltd (CSIA) and Ernst & Young Advisory Services Ltd, looks at the implications of this for governance generally and the roles of governance professionals specifically.

'The current environment has prompted boards to seize the opportunity to reframe their risk management approach and improving risk management has become a top priority to keep pace with disruptions,' the Report says.

The Report was based on a global survey (the Survey) of 1,752 CSIA members carried out in December 2021. Respondents were governance professionals in diverse industry sectors and organisation types (including listed companies, private enterprises, government and regulatory bodies, and non-governmental organisations), and based in Hong Kong and the Asia-Pacific region, as well as Europe, Middle East, India and Africa (EMEIA).

The growing relevance of risk

As you might expect, the greater focus on risk management across all types of entities has had an impact on the work of governance professionals. The Survey indicates that risk management has become a larger part of the governance function in all of the geographical areas included.

Figure 1 (see 'Survey findings'), for example, shows that 83.5% of respondents overall reported that they are involved in risk management activities. The figure is particularly high in Asia-Pacific (excluding Hong Kong) (95.1%) and EMEIA (87.3%).

The Survey also assessed which specific areas of risk management governance professionals are involved in and here the findings are particularly apposite to the recommendations of the Report because the areas of ESG and technology risk receive significantly less attention from governance professionals than their traditional domain of regulatory risk (Figure 2). While 57.8% of Hong Kong respondents reported that they play a role in regulatory risk management activities, for example, only 36.5% and 10.6% play a role in ESG and technology risk management activities, respectively.

These findings are also reflected in the data for other geographical areas included in the Survey. In particular, Figure 3 shows that technology risk management lags significantly behind regulatory risk and ESG risk in terms of the degree to which it features in the work of respondents to the Survey. 23.2% of respondents in EMEIA and 36.6% of respondents in Asia-Pacific (excluding Hong Kong) are involved in technology risk management.

Highlights

- by entrenching risk management in their role, governance professionals can elevate their position as trusted strategic advisers to the board and proactive key members of their organisations
- only by being well versed in ESG and sustainability factors can governance professionals effectively advise the board on the integration of ESG value drivers into sustainable business models
- while technological issues may traditionally not be considered as part of the core responsibilities of governance professionals, it is not an area they can afford to ignore

The Report explores possible reasons for these findings and makes recommendations on how governance professionals can step up their game in ESG and technology risk management. In an environment of closer stakeholder scrutiny of organisations' social and environmental impacts, together with the increasing importance of technology to the future prospects of organisations of all types, these issues are certain to have an increasing impact on their evolving roles. Moreover, their unique position as trusted advisers to the board gives governance professionals an opportunity to significantly enhance the value they add to, and their status within, the organisations they serve.

ESG risk management

Societal and environmental risks dominate the top risks identified in The World Economic Forum's Global Risks Report 2022. In particular, the health of the planet dominates concerns with climate action failure, extreme weather and biodiversity loss ranking as the top three most severe risks.

You might expect governance professionals, therefore, to be heavily involved in ESG risk management. Apart from anything else, ESG compliance and disclosure are increasingly becoming a regulatory risk. While ESG reporting requirements vary significantly in different jurisdictions, organisations globally are expected to measure, manage and communicate their environmental performance in areas such as emissions, waste production, and energy and water consumption. Moreover, regulatory requirements

Survey findings

Figure 1: Do you play any role in risk management activities?

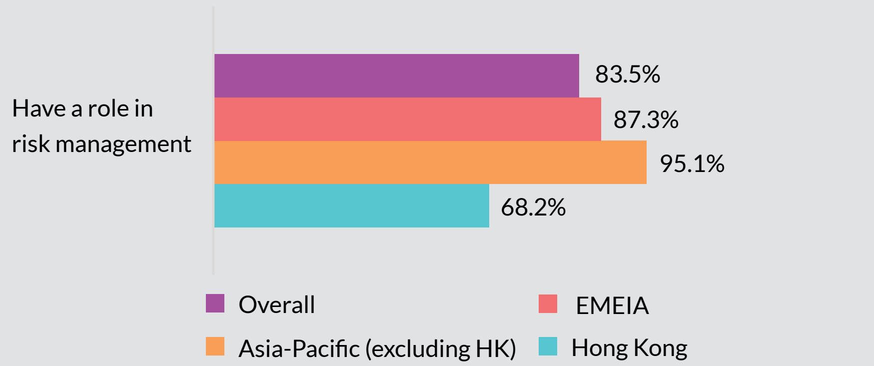


Figure 2: Do you play a role in the following emergent risk areas?

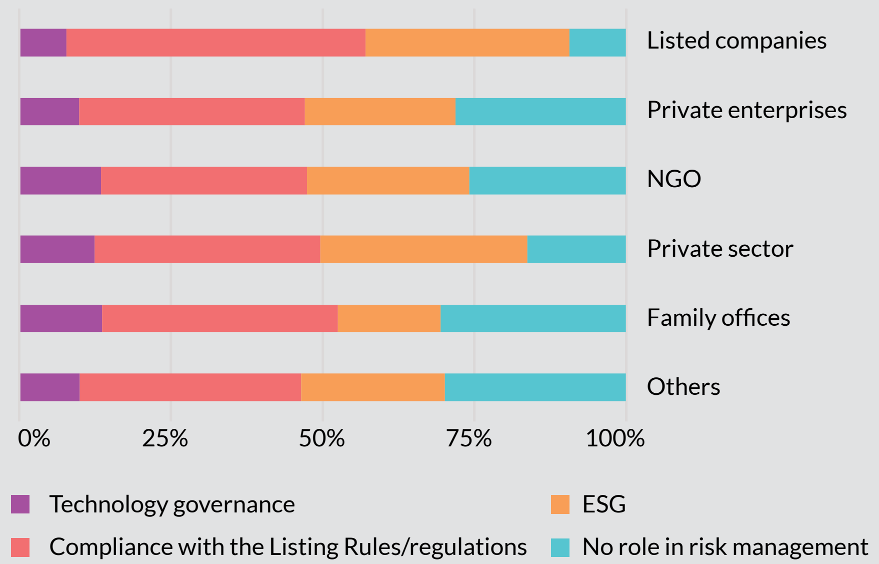
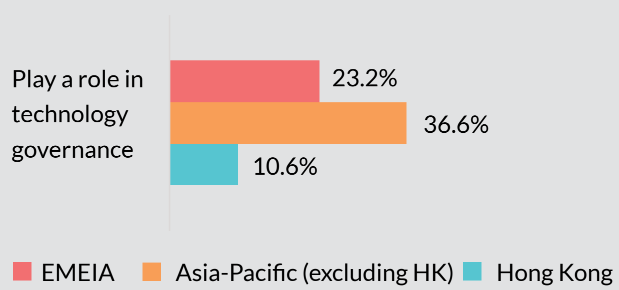


Figure 3: Do you play a role in technology governance risk management activities?



Source: Roles of Governance Professionals in Today's Post-Pandemic and Dynamically Changing Risk Environment (jointly published by the Hong Kong Chartered Governance Institute, the Corporate Secretaries International Association and Ernst & Young Advisory Services Ltd, in May 2022) are becoming tougher in areas such as climate change, and diversity and inclusion. Organisations globally are having to adapt to much greater expectations of the metrics and targets they disclose relevant to their ESG performance and they are having to expand the scope of their reporting ever further into their supply chain and indirect impacts.

Despite the trends highlighted above, the Survey indicates that overall about half the respondents are currently involved in ESG risk management. The reasons that this critical area of risk management does not feature more highly in the work of governance professionals are probably diverse. The Report speculates that the following factors may be involved:

- governance professionals being underutilised
- governance professionals being of insufficient seniority in the organisations to lead or participate in ESG initiatives
- lack of awareness and acknowledgment of ESG as a board-level issue, and
- governance professionals not having access to the board or key stakeholders within the organisations.

To enhance their contribution to ESG risk management, the Report recommends that governance professionals should start by improving their own awareness and understanding of ESG issues. 'To facilitate ESG development within organisations under the ever-changing business landscape, it is vital for governance professionals to continually build on their relevant knowledge base through training and professional development programmes. Only by being well versed in ESG and sustainability factors can governance professionals effectively advise the board on the integration of ESG value drivers into sustainable business models,' the Report says.

This will enable governance professionals to play a key role in helping the board stay in touch with ESG developments and enhancing the board's oversight of ESG risks and opportunities. The Report adds that this also applies to staff at other levels in organisations. It suggests some measures governance professionals can consider to achieve this, including:

- circulating newsletters and articles in relation to ESG within the organisation
- conveying the board's ESG message to staff through internal communication channels, and
- conducting periodic ESG workshops.

Technology risk management

A similar picture to the one described above emerges in the Report's discussion of the involvement of governance professionals in the management of technological risks. The management of risks arising from issues such as digital transformation, data privacy, cyberthreats and the adoption of emergent technologies is, and will continue to be, a critical concern for organisations of all types, but the Survey indicates that a relatively small percentage of governance professionals are involved in technology risk management.

> "the current environment has prompted boards to seize the opportunity to reframe their risk management approach and improving risk management has become a top priority to keep pace with disruptions"

The Report suggests that this is likely to be at least partially the result of the lack of consistency about the role that governance professionals can play in technology governance. A common misunderstanding, for example, is that technology is the solely the responsibility of IT personnel and therefore not within the governance remit. Nevertheless, ensuring compliance with cybersecurity and data privacy regulations would usually be included in a governance professional's remit as part of their regulatory compliance function. Moreover, governance professionals will ideally be involved in promoting awareness of technology-related issues at the board level. 'As trusted advisers to the board, governance professionals are in a perfect position to drive and embrace the change from

> **governance professionals are in a unique position to support and assist the board in overseeing all high-risk issues in organisations, including regulatory management, ESG and technology governance**

regarding technology as an IT matter to recognising it as a board-level business risk,' the Report says.

In addition to ensuring that the many critical issues relating to technology get the attention they deserve from the board, governance professionals can also play a role in equipping the board with tech tools that will increase the effectiveness and efficiency of their oversight of risks. This is another relatively underutilised opportunity for the governance function. The Report points out that one-third of Survey respondents indicated that their organisations are still taking a back seat in the adoption of advanced technologies to support risk management activities. It urges governance professionals to consider getting more involved in promoting digital transformation as a long-term benefit.

Tools such as board portals, data analytics and artificial intelligence (AI) have already become widely used to enhance board decision-making generally. 'AI can monitor authoritative sources and quickly analyse large volumes of data, which allows the gap between external regulations and current organisational practice to be highlighted and compliance needs to be immediately transversed,' the Report points out.

Moreover, other tech tools are available to enable integrated risk management – from incident reporting, top down and bottom up data privacy assessment to compliance declaration. These tools offer governance professionals real-time oversight of the compliance matters for alerting, reporting and escalations, the Report points out.

A glimpse of the future

The Report emphasises that, while better risk management is a critical issue for organisations of all types to get right, it also represents an opportunity for governance professionals. 'Governance professionals are in a unique position to support and assist the board in overseeing all high-risk issues in organisations, including regulatory management, ESG and technology governance,' it says.

To fulfil this role, however, governance professionals will clearly need to have the relevant skills and competencies. The Report recommends that, to keep pace with the dynamic risk landscape, they will have to continually develop their skill sets to enhance their level of awareness required for an expanded role in risk management.

The Institute has been working on playing its part in building these skills and competencies. Its ECPD training programme, together with its research and advocacy functions, have been giving greater prominence to risk management issues for some time. Moreover, the Institute in Hong Kong is one of a number of professional organisations in different jurisdictions that provide training and professional development programmes for governance professionals. The findings of the Survey suggest that training provided by professional bodies is rated the highest in terms of providing the required knowledge and skills to keep updated on regulations, technology, ESG and corporate governance.

Risk management is a complex area and practitioners may be daunted by the scale of what they are taking on, but the Report points out that successfully mastering this aspect of their evolving role will have huge benefits, both for individual practitioners and the profession as a whole.

'Recognising that changes may lead to risks as well as opportunities, governance professionals are expected to be able to help their organisations to establish an effective system to identify risks and opportunities, as well as to manage the risks and explore the opportunities. By entrenching these activities in their role, governance professionals would further elevate their position as trusted strategic advisers to the board and proactive key members of their organisations.' CGj

> ***The report reviewed in this article, published in May 2022, is available on the Institute's website: www.hkcgi.org.hk.***

CHARTERED GOVERNANCE
Hong Kong

Corporate Governance Paper Competition and Presentation Awards 2022

Date: 17 September 2022

The annual Corporate Governance Paper Competition and Presentation Awards organised by the Institute aims to promote the importance of good governance among local undergraduates. This is a great opportunity for students to learn about teamwork and to research, write and present their thoughts on a selected theme. The topic this year entices applicants to evaluate the question – 'Do you think better governance leads to a better future for organisations?'

Awards

Best Paper: HKD11,000.
The best paper will be published in the HKCGI monthly journal
Best Presentation: HKD6,000
Audience's Favourite Team: HKD2,000

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For enquiries, please contact Ivy Ho: 2830 6013 or email: student@hkcgi.org.hk

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Sustainable investment: regulatory priorities

Ashley Alder SBS JP, Chief Executive Officer, Securities and Futures Commission (SFC), looks at the enormous potential of the global standards for corporate sustainability reporting currently under consultation by the International Sustainability Standards Board and at the role of securities regulators, both globally and in Hong Kong, in the implementation of the new standards.

Sustainable finance is now at the top of the global regulatory agenda for central banks, as well as regulators of securities markets. This is especially the case for climate finance, recognising both the considerable opportunities and the challenges in this complex area.

Two years ago, the International Organization of Securities Commissions (IOSCO), whose board I Chair, published its first major report on the role of securities regulators in sustainable finance. The report identified three main areas of concern. First, the existence of multiple, mainly private-sector, sustainability standards – what is sometimes referred to as the 'alphabet soup'; second, a lack of common definitions for sustainable activities; and third, mounting concerns about greenwashing.

It was absolutely clear that there was an urgent need to improve the consistency, comparability and reliability of sustainability reporting, especially at the corporate level. The availability of credible real-economy data is absolutely essential to all investment activity that attempts to take account of sustainability issues.

A global standard for corporate sustainability reporting

An important aspect of IOSCO's work since 2020 has been to support and engage with the efforts of the International Financial Reporting Standards (IFRS) Foundation to develop a common set of global corporate sustainability reporting standards. The IFRS Foundation's new International Sustainability Standards Board (ISSB) was announced at COP26, the United Nations Climate Change Conference, last November.

Sitting alongside the well-established International Accounting Standards Board, the ISSB aims to set a global baseline for jurisdictions to use when setting or implementing their own sustainability reporting requirements. The ISSB is now consulting the public on its first set of proposed standards for general sustainability and climate disclosures.

In parallel, IOSCO is conducting a thorough review of these proposals based on criteria set out by its corporate reporting workstream in 2021. This review will help IOSCO decide whether to formally endorse the standards to its members, as it did 20 years ago in relation to the IFRS Foundation's accounting standards. That endorsement was a major reason why those are the accepted accounting standards in force across much of the world.

IOSCO will pay close attention to some key tests when deciding whether to endorse the ISSB standards. Naturally, the standards will need to meet investors' core information needs and also enable financial markets to more accurately price sustainability risks and opportunities. Crucially, they will also have to solve the alphabet soup problem of too many inconsistent or competing standards, which is a sure-fire way for greenwashing to undermine the whole sustainable finance effort.

In this respect, the consolidation of existing standard-setters such as the Climate Disclosure Standards Board and Value Reporting Foundation into the ISSB sends a hugely important message that the ISSB standards should not be seen as just another set amongst many other global standards.

Next is market acceptance. It is imperative that the standards command sufficient acceptance to serve as a global baseline for consistent and comparable approaches across jurisdictions. They also need to be interoperable with regional or jurisdiction-specific requirements and form the basis for the development of a sound audit and assurance framework. These two tests are fundamental.

Highlights

- the global standards under consultation by the ISSB are designed to serve as a global baseline for consistent sustainability reporting requirements across jurisdictions
- to ensure the reliability of the sustainability information disclosed, more technical expertise will be needed within companies, as well as in audit and assurance firms and in external consultancies
- as a priority, the SFC is evaluating a climate-first approach to implementing the ISSB standards for Hong Kong listed companies

> "it is essential that the international standards are designed in such a way that they can be applied in a flexible and scalable way across different jurisdictions"

To ensure that the standards are developed in a way that works in the public interest, IOSCO also chairs the IFRS Foundation Monitoring Board, which includes securities regulators and other public authorities. If the IOSCO board endorses the final ISSB standards, hopefully by the end of the year, this will provide the more than 130 IOSCO member jurisdictions with a strong signal to consider how they might adopt them domestically.

Jurisdictional interoperability

I would like to focus in on the two fundamental tests I just mentioned. The first is interoperability with jurisdiction-level standards now in development. This is a complex topic. In essence, it means that the ISSB standards must be compatible with detailed proposals emerging in a few advanced economies, whilst ensuring that they also work to accelerate corporate sustainability reporting across other economies, especially in the developing world. It is essential that the international standards are designed in such a way that they can be applied in a flexible and scalable way across different jurisdictions.

Two domestic proposals for corporate climate reporting are especially significant: the US Securities and Exchange Commission's climate disclosure proposal and the exposure drafts for the European Financial Reporting Advisory Group sustainability reporting standards. Both are now out for consultation. The last thing we want to see is a situation where there are three competing, incompatible standards – from the US, the European Union (EU) and the ISSB. That would risk defeating the main goal, which is to achieve compatible and comparable corporate reporting on a global level.

The need for interoperability is especially crucial because international standards are not just concerned with investment in the US and the EU, and we are not solely concerned with how the standards could affect companies exporting into the EU or listed in New York. The fact is that Asia contributes half of the world's carbon emissions, and so it is essential that corporate reporting of climate-related risks and opportunities in Asia, and in developing economies elsewhere, are adequate to properly inform providers of capital in this part of the world.

Interoperability will therefore be important to ensure that as many jurisdictions as possible are on board with the new standards. The good news is that the EU and US are both fully aware of this issue and show every sign of engaging to ensure that jurisdiction-level standards are interoperable with each other, as well as with the emerging global baseline.

Also taking place is a very important discussion about the proportional and scalable implementation of ISSB standards, particularly for smaller companies and those developing countries which need to address critical challenges around data availability and data interpretation.

Assurance

The second key criteria for IOSCO is assurance. To instil trust in the quality of sustainability disclosures, independent assurance will be essential. There are obvious challenges. Assurance opinions for sustainability information will be based on very different methodologies compared to a conventional audit.

Some of the data to be reviewed will be external to the company, which may have little influence over its validity and availability, for example, information about Scope 3 emissions – the indirect emissions which occur in a company's value chain. This contrasts with the information used to construct traditional financial statements, which is largely sourced from internally generated data. In many cases, the forward-looking analyses or estimates in sustainability disclosures, such as warning scenarios, will be far more uncertain than the disclosures we are used to seeing in traditional financial statements.

Another big challenge is determining measures of materiality and how issues that are assessed to be material in sustainability reporting have an impact on traditional financial statements and audits. Nonetheless, it is important to investors that companies connect these metrics with conventional financial information, such as capital expenditure for emissions reduction or purchases of

> **to instil trust in the quality of sustainability disclosures, independent assurance will be essential**

carbon offsets to hit net zero targets. This is a new area where more explicit guidance will be needed.

In my view, auditors and chief financial officers need to start paying far more attention to the relevance of sustainability disclosures to financial statements, because investors look first at hard numbers over and above qualitative disclosures. This is a key reason why IOSCO favoured the establishment of the ISSB within an IFRS Foundation framework, which already houses global accounting standards.

I would also like to briefly mention two other current IOSCO priorities. The first relates to the expected rapid growth of carbon markets. We are looking at whether, from a regulatory perspective, these can be integrated into the global financial market infrastructure. IOSCO will also carry out a review to identify vulnerabilities in voluntary carbon markets, which have been a particular focus of greenwashing concerns.

Another priority is to engage with national regulators and market participants to encourage them to implement IOSCO's existing recommendations for asset managers to address greenwashing risks, as well as its recommendations for the providers of ESG ratings and data, who are set to play a significantly larger role.

Implementation in Hong Kong

Before I conclude, I would like to say a few words about our approach to sustainability reporting in Hong Kong. As a priority, the SFC is evaluating a climate-first approach to implementing the ISSB standards for Hong Kong listed companies. A large proportion of these are Mainland companies and many of them have a very large operational footprint in the Mainland. It is essential to ensure that we implement these standards in a manner which is proportional and practical for these companies and properly synchronises with the Mainland's domestic industry standards and regulations, which continue to develop.

Obviously, we cannot reasonably expect companies to meet all of the ISSB climate standards on day one. Companies in some industries will need to do more to comply, in particular when it comes to data collection and sustainability reporting in their Mainland operations. Some may face challenges due to a lack of information from their supply chains or inconsistencies in local standards.

To ensure the reliability of the information disclosed, more technical expertise will be needed within companies, as well as in audit and assurance firms and in external consultancies. We are taking up these issues with the industry and the Stock Exchange as part of our discussions of how to introduce ISSB requirements in the Listing Rules and how audit and assurance professionals can play a role.

Let me end by saying that the adoption of the ISSB standards in Hong Kong can have enormous global significance. Regionally, a large amount of the capital flowing through Hong Kong is invested in Asia and its many energy-intensive developing economies, especially the Mainland. These economies have very large greenhouse gas emissions footprints and the greatest need for investment to fund the transition to net zero.

This is where the new ISSB promises to make such a difference, supporting the standards which individual jurisdictions may find it hard to develop on a domestic or regional basis. With the ISSB set to establish the global baseline for sustainability reporting, the months ahead should represent an inflection point for climate finance.

Ashley Alder SBS JP, Chief Executive Officer
Securities and Futures Commission

This article is based on the speech by Mr Alder at the PRI China Conference held on 27 May 2022.

CHARTERED GOVERNANCE Hong Kong

Calling for Nominations of HKCGI Prize 2022

Prize Awardees from 2010 to 2021:

2010
Mike Scales
FCG HKFCG
Past Chairman, The Institute of Chartered Secretaries and Administrators in Hong Kong

2011
Duffy Wong
BBS JP FCG HKFCG
Past Chairman, The Association of The Chartered Secretaries and Administrators in Hong Kong

2012
John Brewer
Past Chairman, The Association of The Chartered Secretaries and Administrators in Hong Kong

2013
Edwin Ing
FCG HKFCG
Past President, HKCGI

2014
Neil McNamara
FCG HKFCG
Past President, HKCGI

2015
Anthony Rogers
GBS QC JP FCG HKFCG
Former Vice-President of the Court of Appeal of Hong Kong

2016
Gordon Jones
BBS FCG HKFCG
Former Registrar of Companies

2017
Natalia Seng
FCG HKFCG
Past President, HKCGI

2018
Peter Greenwood
FCG HKFCG
HKCGI Representative to CGI Council and Chairman of CGI Thought Leadership Committee

2019
Edith Shih
FCG(CS, CGP) HKFCG(CS, CGP)(PE)
Immediate Past International President, CGI; Past President, HKCGI; Executive Director and Company Secretary, CK Hutchison Holdings Ltd

2020
Ada Chung
FCG HKFCG
Privacy Commissioner for Personal Data

2021
Mrs April Chan
FCG HKFCG
Past President and Chairman of Technical Consultation Panel, HKCGI

The Hong Kong Chartered Governance Institute Prize 2022

The Hong Kong Chartered Governance Institute Prize will be awarded to a member or members who have made significant contributions to the Institute, and the Chartered Secretary and Chartered Governance Profession over a substantial period. Awardees are bestowed with the highest honour – recognition by their professional peers.

For details, please visit www.hkcgi.org.hk or contact Melani Au: 2830 6007, or email: member@hkcgi.org.hk

Investor compensation remedies

The Hong Kong Securities and Futures Commission (SFC) seeks to bolster investor compensation remedies as part of a package of enforcement-related reforms

Hannah Cassidy and team from Herbert Smith Freehills take a close look at the SFC's recent proposals for amending the Securities and Futures Ordinance (SFO) to enhance investor protection and remediation against wrongdoing, as well as to upgrade insider dealing provisions.

The SFC has proposed a number of sweeping enforcement-related reforms that would significantly enhance the SFC's ability to obtain investor compensation orders against regulated persons who have committed wrongdoing.

In addition, the ambit of the professional investor (PI) exemption for the purposes of the offers of investments regime would also be realigned with its original intended purposes, and would be limited to unauthorised investment advertisements issued only to PIs. Finally, the proposed changes would allow the SFC to tackle cross-border insider dealing offences more effectively.

As the SFC is the driving force behind these proposed reforms, there is little doubt that, once granted, they will be quick to use their new powers, significantly impacting the enforcement landscape in Hong Kong.

The SFC launched its two-month consultation on 10 June 2022, with a deadline for comments on 12 August 2022. The proposed amendments are divided into three main parts, as set out below.

Increasing focus on investor protection and remediation

Although the package of reforms relates to three separate parts of the SFO, they all highlight the SFC's focus on investor protection.

- The proposed amendments to section 213 would mean the SFC can more readily act in a representative capacity on behalf of investors where there has been wrongdoing. This perhaps signals a move away from the SFC's deterrent approach to one that is even more focused on investor remediation, complementing the SFC's front-loaded approach to regulation. The prospect of section 213 proceedings will also no doubt shift the dynamic of future regulatory discussions in the context of disciplinary actions – the mere threat of a newly augmented section 213 application may be enough to ensure that firms compensate investors who are impacted by wrongdoing, without the SFC having to actually instigate proceedings.
- The proposed amendments to the offers of investments regime are designed to protect retail investors from risky and unsuitable products.
- The enhanced insider dealing provisions seek to put Hong Kong on a level footing with other international financial centres, and make it easier for the SFC to take action against wrongdoers who disrupt the market.

If the package of proposals is adopted as currently drafted, firms and individuals will need to prepare themselves for the prospect of more aggressive enforcement action and potentially greater financial consequences.

Highlights

- the SFC's recently proposed enforcement-related amendments to section 213 of the SFO are designed to enhance investor protection and remediation
- proposed amendments to the offers of investments regime under section 103 would restore the original narrower construction of the professional investor exemption for advertisements, better protecting retail investors against unauthorised advertisements of investment products, including certain virtual asset–related products
- the proposed reforms would also bring Hong Kong's insider dealing laws more in line with other major common law jurisdictions and strengthen the SFC's powers to tackle cross-border insider dealing

Part 1: Expansion of section 213 of the SFO

Background to section 213

Section 213 is an important tool used by the SFC to obtain compensation for investors who have sustained loss as a result of another person's wrongdoing. It is a statutory regime allowing the SFC to apply to the Hong Kong Court of First Instance (CFI) as a claimant on behalf of a class of investors and obtain civil remedies. Orders made under section 213 are 'by their nature designed' to ensure that certain of the SFC's objectives are advanced, including protecting investors.

Section 213(2) of the SFO currently enables the SFC to apply for the following remedial and other orders:

- an order restraining or prohibiting a breach of the 'relevant provisions'
- an order requiring a person to take such steps as the CFI may direct, including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into (Restoration Order)
- an order restraining or prohibiting a person from dealing in specified property
- an order appointing an administrator
- an order declaring that a contract is void or voidable, and
- an order directing a person to do or refrain from doing any act to ensure compliance with any other court order made.

Section 213(8) of the SFO further sets out that the CFI may, in addition to or in substitution for an order made against a person under the relevant provisions of section 213, make an order requiring the person to pay damages to any other person (Damages Order).

There have been a number of successful actions by the SFC to obtain remedies for investors who have suffered loss as a result of misconduct, such as insider dealing and the disclosure of false or misleading information by listed companies. This includes the landmark Court of Final Appeal case in 2013: *Securities and Futures Commission v Tiger Asia Management LLC & Ors (Tiger Asia).*

However, whilst the SFC has successfully obtained orders to provide remedies for investors, the SFC's ability to apply for relief under sections 213(2) and 213(8), including Restoration and Damages Orders, is limited by section 213(1) of the SFO, which requires the contravention by a person of any of the 'relevant provisions' (which includes any provision of the SFO, the prospectus regime under the Companies (Winding Up and Miscellaneous Provisions) Ordinance and other legislative provisions), and terms and conditions of a licence or registration under the SFO, among others.

Crucially, a breach of the SFC's codes and guidelines (for example, the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct)) by a regulated person, however serious, cannot currently give rise to a cause of action under section

> "the proposed changes would allow the SFC to tackle cross-border insider dealing offences more effectively"

213 if it does not constitute a breach of the 'relevant provisions' or other specified requirements or conditions. Furthermore, the SFC does not currently have any statutory powers under sections 194 and 196 of the SFO (which set out the SFC's disciplinary powers) to directly require a regulated person to take any steps to restore, compensate or otherwise protect the interests of investors or clients who may have been adversely affected by the regulated person's conduct.

Proposed amendments

To close this gap, the SFC proposes the following amendments:

- introduce an additional ground under section 213(1) for the SFC to apply for orders under section 213 where it has exercised any of its disciplinary powers under sections 194 or 196 of the SFO against a regulated person
- introduce an additional order that may be made by the CFI under section 213(2) to restore the parties to any transaction to the position in which they were before the transaction was entered into, where the SFC has exercised any of its disciplinary powers under

sections 194 or 196 against a regulated person (ie, a Restoration Order), and

- in line with previous revisions to section 213 to ensure that the grounds for seeking additional orders in respect of open-ended fund companies (OFC) were consistent with those set out in section 213(1), make a consequential amendment to section 213(3A) to add an additional ground to enable the SFC to apply for orders under section 213, where it has exercised any of its disciplinary powers against a regulated person who is a director, investment manager, custodian or sub-custodian of an OFC.

Once the SFC's proposed amendments have been implemented, section 213(8) would, without any further amendments, also enable the CFI to make an order against a regulated person to pay damages where the SFC has exercised any of its disciplinary powers against the regulated person (ie, a Damages Order).

Impact on regulated firms and individuals

Such expansion, if implemented, would significantly enhance the SFC's ability to act as 'the protector of the collective interests' of investors who may have been adversely affected by misconduct, where such investors might otherwise be deterred by cost and other considerations from instituting proceedings to obtain redress for their losses. As Hong Kong's legislation currently only provides for a very limited class action regime (via representative proceedings under the Rules of the High Court), and there are restrictions on litigation funding, this has limited the ability for individuals to seek class redress for violations, in particular for breaches of securities legislation.

Regulated firms and individuals should take note of the proposed broader threshold requirement for the SFC to apply for remedial orders under section 213, given the wide spectrum and breadth of requirements under its codes and guidelines. For example, a breach of General Principle 2 (due skill, care and diligence) or General Principle 7 (compliance with all regulatory requirements) under the Code of Conduct would suffice. It is also important to note that a 'regulated person' includes individuals involved in the management of the business constituting the regulated activity of a licensed corporation or registered institution, which can include individuals who are not licensed nor registered.

Given the SFC Code of Conduct does not currently have the force of law, the SFC's proposals also call into question the legal status of the SFC Code of Conduct. If the proposals are accepted, firms and individuals should prepare by being fully aware of the new broader circumstances in which the SFC may institute section 213 proceedings, in order to manage and mitigate their enforcement risk.

The SFC is also able to impose disciplinary fines of up to a maximum of HK$10 million, or three times the profit gained or loss avoided (if greater). Although the SFC will determine the appropriate approach to levying fines based on the facts of each case, when these are imposed in conjunction with the remedial orders made by the CFI, the potential financial impact to the regulated person may be substantial.

It is unclear how the courts would calculate the size of the Restoration and Damages Orders under these proposals, although, in theory, it is open for the SFC and the regulated person to agree the quantum of compensation (section 213(2) is a restitutionary and compensatory rather than punitive provision). We would expect any financial penalty levied in disciplinary proceedings to take into account proposed Restoration or Damages Orders, although this is not certain.

Finally, the current legislation allows the SFC to seek interim relief when it appears that a breach had occurred or might occur, as well as final orders, such as Restoration Orders. Case law has also established that there is no need for the SFC to secure a judgment for breach of a relevant provision before applying for orders under section 213. Under the current proposals, the SFC will only be empowered to seek remedies for investors where it has exercised any of its powers under section 194 or 196 in respect of the regulated person, that is, only where it has already taken disciplinary action.

This may be in light of the arguments run in the *Tiger Asia* case (albeit unsuccessfully) that civil remedies could only be obtained in relation to breaches after there had been a successful conviction in a criminal court or a finding in the Market Misconduct Tribunal. This gives rise to an interesting question as to whether

> **as the SFC is the driving force behind these proposed reforms, there is little doubt that, once granted, they will be quick to use their new powers, significantly impacting the enforcement landscape in Hong Kong**

the CFI can look into the merits of the SFC's disciplinary decision in determining a section 213 application. Under section 213(4), the CFI needs to satisfy itself, 'as far as it can reasonably do so', that it is desirable for the requested order to be made, and the making of the order will not unfairly prejudice any person. In the context of a section 213 application made on the back of a disciplinary decision, it is not clear how the CFI could do so without looking into the grounds of the disciplinary decision. Indeed, the conclusion of a disciplinary action brought by the SFC in respect of misconduct would not automatically mean that the CFI would make an order under section 213, given the inherent general discretion afforded it under section 213(1). One other observation is that the Securities and Futures Appeals Tribunal is the first port of call to review a disciplinary decision, and not the CFI, which decides on section 213 applications.

Going forward, we expect the SFC to use its new, enhanced powers under section 213 in a range of circumstances, for example where there has been wide-scale investment product mis-selling, fraud or misappropriation of client assets, market misconduct, corporate misfeasance and IPO-related misconduct.

Part 2: Amendment to the PI exemption to the offers of investments regime under section 103 of the SFO

Background to section 103

The offers of investments regime under section 103(1) of the SFO provides that it is a criminal offence to issue (or have in possession for the purposes of issue), whether in Hong Kong or elsewhere, an advertisement, invitation or document which to the defendant's knowledge is or contains an invitation to the public to make certain investments, unless such issue is authorised by the SFC.

This includes an invitation to the public to:

- enter into or offer to enter into (i) an agreement to acquire, dispose of, subscribe for or underwrite securities, or (ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product, or
- acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme.

The PI exemption under section 103(3)(k) provides that the offers of investments regime does not apply to the issue (or the possession for the purposes of issue) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to professional investors.

In the 2014 case of *SFC v Pacific Sun Advisors Ltd and Mantel, Andrew Pieter (Pacific Sun)*, the Court of Final Appeal gave a wider construction and held that the PI exemption applies to any advertisement having some connection or relation to investment products that are or are intended to be disposed of only to PIs. The Court of Final Appeal considered that the words 'that are or are intended to be disposed of' in section 103(3)(k) provide the substance of the exemption.

The SFC is concerned that unauthorised advertisements of investment products which may not be suitable for retail investors may be issued to the general public even though the products are intended for sale only to PIs. As a result, retail investors may be exposed to unauthorised offers or solicitations to invest in unsuitable risky or complex products.

Proposed amendments and impact

To address this issue, the SFC proposes to amend section 103(3)(k) to restore the narrower construction of the PI exemption, by exempting from the authorisation requirement those advertisements which are issued

> if the package of proposals is adopted as currently drafted, firms and individuals will need to prepare themselves for the prospect of more aggressive enforcement action and potentially greater financial consequences

only to PIs. This would realign the PI exemption with the underlying policy and alleviate the difficulty of enforcing the regime, such that the SFC would not need to wait until the sale of a product has taken place in order to determine to whom it has been sold and whether the PI exemption applies.

Following such amendments, if implemented, unauthorised advertisements of investment products which are, or are intended to be, sold only to PIs may only be issued to PIs who have been identified as such in advance by an intermediary through its know-your-client and related procedures, regardless of whether or not such an intention has been stated in the advertisements.

As section 103(3)(j) – which provides for an exemption in relation to investment products sold, or intended to be sold, only to persons outside Hong Kong – is phrased in terms which are identical to the PI exemption, the SFC considers that for good order, this provision should be amended in identical terms for consistency and to avoid confusion.

It has been almost seven years since the *Pacific Sun* case, but the SFC is clearly intent on resolving the position through these amendments. A narrower PI exemption may also offer better protection for retail investors against unauthorised advertisements of virtual asset–related products, assuming that such products fall within the scope of section 103, that is, they constitute securities, structured products or collective investment schemes.

Part 3: Broadening the territorial scope of the insider dealing provisions under the SFO

Background to insider dealing regime

The SFO has established parallel and mirroring civil (section 270) and criminal (section 291) regimes in respect of insider dealing. Both regimes apply to insider dealing with respect to Hong Kong–listed securities or their derivatives, and securities dual-listed in Hong Kong and another jurisdiction, or their derivatives.

However, these regimes currently do not apply to the offence of insider dealing perpetrated in Hong Kong with respect to overseas-listed securities or their derivatives, nor do they expressly apply to any acts constituting insider dealing perpetrated outside Hong Kong in respect of Hong Kong–listed securities or their derivatives.

As a result of this statutory gap, the SFC has not been able to effectively deal with suspected insider dealing of overseas-listed securities or their derivatives. The SFC referred to the case of *Securities and Futures Commission v Young Bik Fung & Ors*, which involved insider dealing in overseas securities, as an example where it had to resort to seeking civil remedies under section 213 by establishing a breach of section 300 of the SFO as the insider dealing provisions were not applicable. However, the SFC has highlighted that there is an important conceptual difference between the nature of the conduct prohibited in section 300 and that prohibited in sections 270 and 291. Section 300 is designed to cover acts of fraud or deception involving transactions between specific persons, rather than fraud that deceives, and conduct that misleads the market as a whole, threatening the integrity of financial markets. Section 300 was not included in the market misconduct regime when the SFO was drafted.

Further, in the absence of express provisions specifying the territorial scope of the existing insider dealing regimes, the SFC has to apply the common law test to determine the territorial jurisdiction in each case.

Proposed amendments and impact

The SFC therefore proposes the following amendments:

- the definition of 'listed' as defined in sections 245(2) (civil regime) and 285(2) (criminal regime) of the SFO be amended to include overseas-listed securities or their derivatives, and

- a new section be added to Part XIII and Part XIV of the SFO to expand the territorial scope of the insider dealing regimes to include: (i) any acts of insider dealing involving Hong Kong–listed securities or their derivatives, regardless of where they occur, and (ii) any acts of insider dealing involving overseas-listed securities or their derivatives, if any one or more of such acts occur in Hong Kong.

These amendments, if implemented, would allow the SFC to tackle cross-border insider dealing given the increasing interconnectivity of global financial markets. It would also make Hong Kong's insider dealing laws more in line with other major common law jurisdictions, such as Australia and Singapore. Furthermore, following the launch of Stock Connect, the proposed amendments would also strengthen the SFC's regulatory powers in tackling insider dealing conducted in Hong Kong involving A shares listed in the Mainland.

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Herbert Smith Freehills

Human rights and the environment

What Asia-based companies need to know about the European Union (EU) draft corporate sustainability due diligence directive

Mark Uhrynuk, Partner in the Corporate & Securities practice, and Wei Na Sim, Counsel in the Litigation & Dispute Resolution practice, Mayer Brown, Hong Kong, outline the EU's proposed standard for human rights and environmental due diligence, and provide practical tips for organisations to prepare for the expected increase in related requirements and obligations.

On 23 February 2022, the European Commission published its much-anticipated draft corporate sustainability and due diligence directive (the Draft Directive). The Draft Directive sets out a proposed EU standard for human rights and environmental due diligence (HREDD) which, importantly, would apply to any Asia-based company and its subsidiaries if those group companies have aggregate annual net turnover in the EU of:

- more than €150 million (Group 1), or
- more than €40 million with at least 50% of net worldwide turnover generated in a 'high-risk' sector, which includes textiles, clothing and footwear, agriculture, forestry, fisheries, food and extractives (Group 2).

Notably, HREDD applies even if the Asia-based companies and their subsidiaries do not have a physical presence in the EU, if the above net turnover threshold is met.

The Draft Directive requires both Group 1 and Group 2 companies to take appropriate measures to identify, and mitigate, actual and potential adverse human rights and environmental impacts arising from their own operations anywhere in the world

Highlights

- the EU's recent draft corporate sustainability and due diligence directive (Draft Directive) also applies to any Asia-based company and its subsidiaries with a certain aggregate net turnover in the EU, even without having a physical presence there
- the Draft Directive requires applicable companies to take measures to identify, and mitigate, actual and potential adverse human rights and environmental impacts from their operations globally, not just in the EU
- the Draft Directive requires Member States to implement new rules on sanctions for non-compliance and a new civil liability regime, which could set the stage for an increase in human rights and environmental-related litigation

(not just in the EU) and, where related to their value chains, from their 'established business relationships'.

EU Member States are required by the Draft Directive to:

- designate a supervisory authority to supervise compliance with the due diligence and climate change–related obligations with adequate powers and resources to request information, carry out investigations, order remedial action and, in certain situations, impose fines, and
- ensure that individuals and entities can bring civil claims.

The Draft Directive provides for director responsibility and accountability in relation to EU companies' HREDD programmes (this would apply to directors of subsidiaries based in the EU but not, for example, directors of the Asia-based parent company). Group companies that meet the turnover threshold will also be required to appoint an EU-based representative to liaise with EU supervisory authorities.

While the Draft Directive remains subject to further legislative scrutiny and approval, it provides the most detailed insight yet as to the scope and form of prospective HREDD obligations, and it provides a helpful template for corporates to continue developing their due diligence policies and procedures designed to identify, assess and mitigate adverse human rights and environmental impacts – both in their operations and in their value chains.

> **"mandatory human rights and environmental due diligence (HREDD) is coming, and companies based in Asia should already be anticipating upcoming HREDD legal obligations and preparing for increasing stakeholder expectations in this area"**

Furthermore, the Draft Directive will have implications for Asia-based banks, insurers and other financial institutions that meet the EU net turnover threshold. They will have to undertake further due diligence on clients and their subsidiaries to whom they extend loans, credit and 'other financial services' (not expressly defined in the Draft Directive) in line with the Draft Directive's requirements.

Global growth in the HREDD trend

The overall message is clear: mandatory HREDD is coming, and companies based in Asia should already be anticipating upcoming HREDD legal obligations and preparing for increasing stakeholder expectations in this area. Although HREDD laws initially focused on child labour and slavery (UK, Australia, California), the trend is for a broader and more global view of human rights and the environment. We see this with recent laws passed in the past year in Norway, Germany and the Netherlands. Japan is also expected to release human rights guidelines for businesses sometime this year. In addition, certain securities exchanges in Asia have adopted or proposed ESG-related disclosure requirements that are broad enough to cover disclosure of information relating to certain social matters, including human rights.

Key highlights of the Draft Directive

Due diligence obligations

Key takeaway: Fundamentally, the Draft Directive would require Group 1 and Group 2 companies to implement HREDD measures that cover their entire value chains, looking beyond Tier 1 suppliers to include 'established business relationships' throughout the value chain. This includes contractors, subcontractors and other entities in the supply chain. This will add further complexity to supply chain risk assessments and ongoing supply chain risk management in practice.

Directors' duties

Key takeaway: The Draft Directive provides for directors of applicable EU-based subsidiaries of Asia-based companies to take into account 'human rights, climate and environmental consequences' in acting in the best interests of a company. This includes a requirement to ensure a company's business model and strategy are compatible with the 1.5°C goal of the Paris Agreement. This appears to be more expansive than existing and anticipated national HREDD laws.

Sanctions
Key takeaway: The Draft Directive provides that Member States shall implement rules on sanctions for non-compliance and ensure such sanctions are 'effective, proportionate and dissuasive', and may include financial penalties based on a company's turnover.

New civil liability regime
Key takeaway: A new civil liability regime could set the stage for an increase in human rights and environmental-related litigation (such as those brought by civil society organisations). Furthermore, this regime will have implications for existing national due diligence laws that do not currently provide for such a regime (for example, the German supply chain law).

Model clauses and guidance
Key takeaway: It is anticipated that the European Commission will issue guidance and a set of voluntary model clauses to support companies in complying with their obligations under the Draft Directive.

Timing and implementation

The Draft Directive will now be presented to the European Parliament and the Council for approval. Once adopted, Member States will have two years to transpose the Directive into national law.

How can your organisation prepare for the requirements in the Draft Directive?

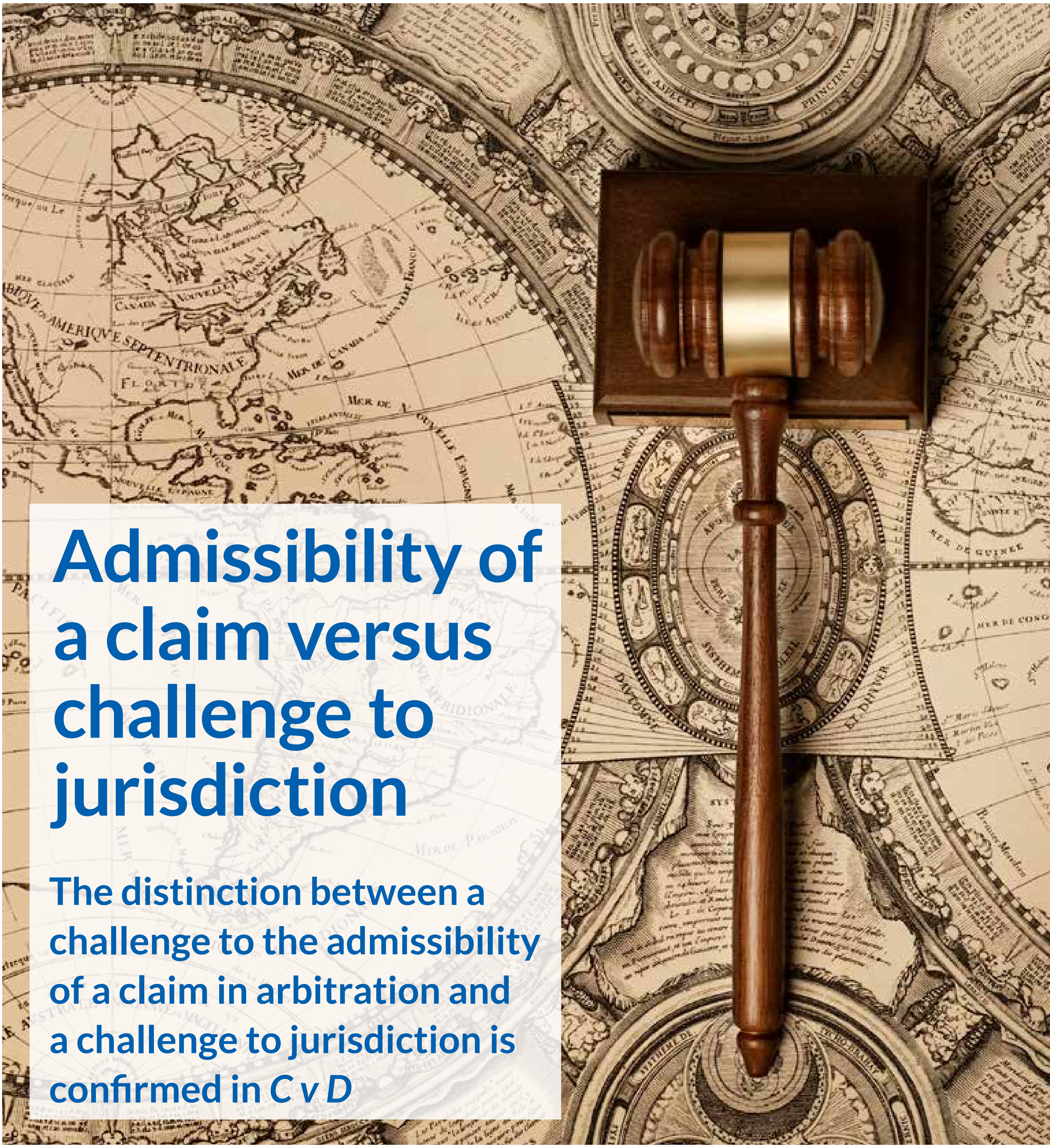
The outline of the due diligence obligations in the Draft Directive gives a good indication of the scope and likely expectations of the design and implementation of a human rights and environmental due diligence programme. Asia-based groups who are likely to be in scope should start to map, align and leverage their existing policies and procedures to the requirements in the Draft Directive (particularly those set out in Articles 5 to 11) to identify gaps and areas for enhancement and improvement ahead of the adoption of the Draft Directive. For many large companies, designing and implementing appropriate systems and controls and embedding them into 'business as usual' could be, in many cases, a multi-year multi-stakeholder exercise, and so it is imperative for companies to prepare for these new obligations in haste.

> "the trend is for a broader and more global view of human rights and the environment"

More generally, businesses can position themselves for the Draft Directive and other mandatory HREDD laws emerging at a national level by:

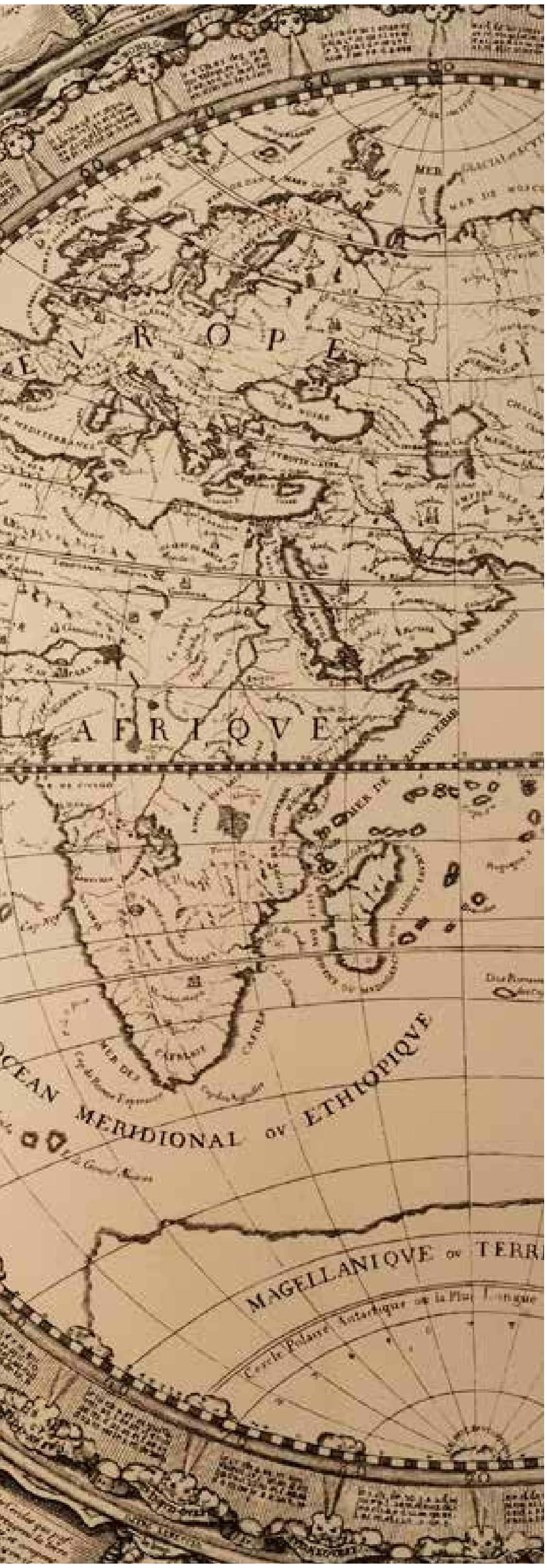
- integrating human rights into group policies and strategic planning processes
- disclosing how human rights considerations are integrated into strategies, policies and procedures
- carrying out a human rights impact assessment and taking proportionate countermeasures, as well as communicating internally and externally on what measures have been taken
- reviewing and reinforcing complaints mechanisms and speak-up programmes
- ensuring the business is well equipped to deal with 'crises'
- reviewing the extent to which their board is equipped to address supply chain risks, and
- reviewing the role, resources and expertise of the legal and compliance functions, who should play a key part in addressing these new challenges.

Mark Uhrynuk, Partner in the Corporate & Securities practice, and Wei Na Sim, Counsel in the Litigation & Dispute Resolution practice
Mayer Brown, Hong Kong



Admissibility of a claim versus challenge to jurisdiction

The distinction between a challenge to the admissibility of a claim in arbitration and a challenge to jurisdiction is confirmed in *C v D*



Wynne Mok, Partner, Jason Cheng, Associate, and Audrey Li, Associate, Slaughter and May, explain the recent decision by the Court of Appeal that clarifies when recourse against an arbitral award goes to the admissibility of the claim, rather than to the jurisdiction of the tribunal.

Nowadays, it is common for contractual parties to adopt arbitration as a way to resolve any dispute arising out of their contracts. It is indeed not uncommon for the parties to also agree that certain steps be taken in an attempt to resolve their dispute before it is referred to arbitration, for example, negotiation involving the parties' respective senior management teams, conciliation and mediation. In the unfortunate event of a dispute, questions often arise as to whether those pre-arbitration steps are obligatory and when is the right timing to commence formal arbitration.

The case of *C v D* [2022] HKCA 729 raised an issue of general significance as to whether an arbitral tribunal has the power to determine whether certain pre-arbitration steps have been fulfilled and, should it so determine, whether the determination would be subject to recourse to a Hong Kong court under Article 34 of the UNCITRAL Model Law on International Commercial Arbitration (the UNCITRAL Model Law), which sets out the only grounds upon which the court may be asked to set aside an arbitral award.

This article discusses the Court of Appeal's recent decision in *C v D* and the implications for arbitration users.

Background

C (a Hong Kong company) and D (a Thai company) are both satellite operators. They entered into an agreement (the Agreement) for the development, building and deployment of a satellite

Highlights

- while arbitration is now a common means of resolving contractual disputes, parties also often agree on various pre-arbitration steps prior to formal arbitration – but questions often arise about whether these are obligatory and if they have been fulfilled
- the Hong Kong Court of Appeal has recognised the distinction between an objection to an arbitral award which goes to the admissibility of a claim and one which goes to the jurisdiction of the tribunal
- the intention of the parties, which will be ascertained as a matter of construction of their agreement, will be considered when deciding whether a particular objection is jurisdictional in nature and therefore reviewable by the courts

> the Judge took the view that whilst the distinction between admissibility and jurisdiction is not expressed in the Arbitration Ordinance, it is well recognised both in court decisions of other jurisdictions and in various academic writings

at a certain orbital slot. A dispute subsequently arose between the parties relating to the video content of the broadcast from the transponders belonging to D. The parties had entered into discussions with a view to finding an amicable solution, but in vain. This was followed by the exchange of correspondence between their respective legal representatives. Eventually, C ceased the video transmission of the transponders concerned, which D considered constituted a repudiatory breach of and a material default under the Agreement.

The Agreement contained a dispute resolution clause and an arbitration clause. The dispute resolution clause provided that: 'The Parties agree that if any controversy, dispute or claim arises between the Parties out of or in relation to this Agreement, or the breach, interpretation or validity thereof, the Parties shall attempt in good faith promptly to resolve such dispute by negotiation. Either Party may, by written notice to the other, have such dispute referred to the Chief Executive Officers of the Parties for resolution. The Chief Executive Officers (or their authorised representatives) shall meet at a mutually acceptable time and place within ten (10) Business Days of the date of such request in writing, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute through negotiation' (the Dispute Resolution Clause).

The arbitration clause provided that if the dispute could not be resolved amicably within 60 business days counting from the date of 'a Party's request in writing for such negotiation (or such other time period as may be agreed)', the dispute shall be referred to arbitration in Hong Kong at the Hong Kong International Arbitration Centre, in accordance with the UNCITRAL Arbitration Rules. The parties also agreed that any award made by the arbitral tribunal shall be final and binding on each of them and, to the extent permissible under the relevant laws, any right of appeal against the award be waived (the Arbitration Clause).

In this regard, D's CEO had written to C's Chairman expressing D's willingness to refer the dispute to the parties' respective senior management teams in accordance with the Dispute Resolution Clause. However it was also made clear that unless the dispute could be resolved swiftly and amicably, D would take all relevant steps to safeguard its rights.

There does not seem to have been any direct response from C's Chairman. Neither party referred the dispute to their respective CEOs with a view to resolving the dispute through negotiation. D eventually commenced arbitration. C, however, argued that the arbitral tribunal did not have the jurisdiction to hear the dispute as there had not been a request for negotiation which, it said, was a condition precedent to arbitration.

Notwithstanding C's objection, the arbitral tribunal decided that it had jurisdiction to determine whether it was premature to commence arbitration. More specifically, it was decided that whilst the parties were mandatorily required to attempt in good faith to resolve any dispute by negotiation, the reference to the respective CEOs was only optional. Further, the condition for arbitration referred to a written request for good faith negotiation and the condition was fulfilled by the letter from D's CEO.

The arbitral tribunal decided against C and found that it had breached the Agreement (the Partial Award).

C applied to the court to set aside the Partial Award under section 81 of the Arbitration Ordinance (which adopts Article 34 of the UNCITRAL Model Law) on the principal ground that the Partial Award dealt with 'a dispute not contemplated by or not falling within the terms of the submission to arbitration'. Under Article 34 of the UNCITRAL Model Law, recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with Article 34(2). Article 34(2)(a)(iii), which is the paragraph concerned in this case, provides that an arbitral award may be set aside by the court only if the party making the application furnishes proof that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.

Court of First Instance decision

The matter came before G Lam J (as he then was) (the Judge). The Judge dealt with two questions, the first one being whether the question of D's compliance with the pre-arbitration procedure set out in the Dispute Resolution Clause was a question of admissibility of the claim or a question of jurisdiction. Only a question of jurisdiction falls under Article 34(2)(a)(iii). If the first question is answered in C's favour, the Judge would need to answer the second question, that is, what the condition precedent to the arbitration was on proper construction of the Agreement and whether the condition was fulfilled.

On the first question, the Judge decided that C's objection went to the admissibility of the claim, rather than the jurisdiction of the arbitral tribunal. In particular, the Judge took the view that whilst the distinction between admissibility and jurisdiction is not expressed in the Arbitration Ordinance, it is well recognised both in court decisions of other jurisdictions and in various academic writings. The distinction therefore may be properly relied upon to inform the construction and application of Article 34(2)(a)(iii). Since the court held in favour of D on the first question, it was unnecessary to determine the second question.

Court of Appeal decision

C appealed against the Judge's decision, seeking to challenge the Judge's conclusion that its objection to the Partial Award did not fall within Article 34(2)(a)(iii). C said that the Judge had erred in holding that it had failed to show that the Partial Award dealt with a dispute not falling within the terms of the submission to arbitration.

Distinction between 'admissibility' and 'jurisdiction' adopted

C's case was that the distinction between admissibility and jurisdiction ought not to be adopted. The court should only be concerned with the question of whether the Partial Award dealt with a dispute 'not contemplated by or not falling within the terms of the submission to arbitration'. In any case, C argued that its objection was jurisdictional in nature.

The Court of Appeal decided that for the purpose of determining whether C's challenge falls under Article 34(2)(a)(iii), the distinction between admissibility and jurisdiction is well recognised. In so deciding, the Court of Appeal considered case law in other jurisdictions (including the UK, Singapore, New South Wales and the United States) and relevant academic writings which support this approach. Being a concept rooted in the nature of the arbitration itself, the distinction, though not expressly written into the Arbitration Ordinance, could be given proper recognition through the route of statutory construction, namely, that a dispute which goes to the admissibility of a claim rather than the jurisdiction of the tribunal should be regarded as a dispute 'falling within the terms of the submissions to arbitration' and that an award in respect of such a dispute is not reviewable under Article 34(2)(a)(iii).

Parties' intention concerning the fulfilment of the condition precedent to arbitration

As to whether the tribunal's decision on whether the condition precedent to arbitration had been fulfilled was jurisdictional in nature, the Court of Appeal considered that the true and proper question to ask was whether the parties intended or agreed that the question of fulfilment of the condition precedent be determined by the tribunal. The answer depended on the parties' intention or agreement, to be ascertained as a matter of true construction of their agreement.

The Court of Appeal agreed with the Judge on the parties' intention. The parties' commitment to arbitrate was not doubted. C's objection was simply that the tribunal should reject the reference to arbitration as premature as the pre-arbitration procedures had not been followed through. The Agreement did not contain any provision which indicated the parties' intention that the compliance with the Dispute Resolution Clause and the Arbitration Clause be a matter of jurisdiction. On this basis, the Court of Appeal considered it to be clear that C's objection went to the admissibility of the claim.

The Court of Appeal went on to consider whether the dispute on the

> **if the parties intend certain matters to be excluded from the tribunal's jurisdiction, they are expected to include clear wording in their agreements so as to rebut the presumption that they intend to refer any disputes arising out of the agreements to arbitration**

question of fulfilment of the pre-arbitration procedure requirements was in fact a dispute falling within the terms of the submissions to arbitration under Article 34(2)(a)(iii).

Both the Dispute Resolution Clause and the Arbitration Clause referred to 'any' dispute. The Court of Appeal did not see any reason to confine the scope of arbitrable disputes to substantive disputes in relation to the Agreement, and exclude disputes on whether the pre-arbitration procedural requirement had been fulfilled. The court construed the relevant provisions in the Agreement with the presumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of their relationship into which they have entered to be decided by the same tribunal. Such presumption, however, is rebuttable by clear language that certain questions were to be excluded from the arbitrator's jurisdiction.

Indeed, the Court of Appeal took the view that the question of fulfilment of pre-arbitration procedural requirement was a question intrinsically suitable for determination by an arbitral tribunal, in order to give effect to the parties' presumed intention to achieve a quick, efficient and private adjudication of their dispute by arbitrators of their choice.

Scope of Article 34(2)(a)(iv)

C also tried to argue that its objection fell within Article 34(2)(a)(iv) of the UNCITRAL Model Law, which provides that an arbitral award may be set aside by the court if it is proved that the arbitral procedure was not in accordance with the agreement of the parties. This ground of appeal was premised upon the contention advanced under the first ground discussed above, namely that the parties intended the non-fulfilment of the condition precedent to arbitrate to bar a party from initiating an arbitration. Since the condition precedent had not been fulfilled, the arbitration was not commenced in accordance with the parties' agreement.

This ground of appeal was rejected by the Court of Appeal. Since the Court of Appeal had concluded that the parties intended the question of fulfilment of the pre-arbitration procedural requirement to be determined by arbitration, it followed that the parties did not intend that non-satisfaction of such requirement would bar arbitration altogether.

It is interesting to note that the Judge decided that Article 34(2)(a)(iv) did not apply to C's case because that provision concerns the way in which the arbitration was conducted, but not contractual procedures preceding the arbitration. The Court of Appeal, however, did not address the issue concerning the scope of Article 34(2)(a)(iv).

Takeaways

The decision in *C v D* provides welcome clarity in that, if a contract contains a multi-tiered dispute resolution clause, in the absence of clear and unequivocal language otherwise, a determination by an arbitral tribunal that such a clause has been complied with will not be reviewable by the court in Hong Kong (being the seat court).

Apart from the question of fulfilment of pre-arbitration proscedure requirements, questions of time-bar and as to whether a prior decision has any *res judicata* effect would generally be considered as matters going to admissibility, rather than jurisdiction.

Having said that, if the parties intend certain matters to be excluded from the tribunal's jurisdiction, they are expected to include clear wording in their agreements so as to rebut the presumption that they intend to refer any disputes arising out of the agreements to arbitration.

Wynne Mok, Partner, Jason Cheng, Associate, and Audrey Li, Associate
Slaughter and May

Professional Development

Seminars: June 2022

15 June

New Corporate Governance Code: culture – an organisation's foundation and fingerprint

Chair: *Jerry Tong FCG HKFCG, Institute Assessment Review Panel member, and Financial Controller and Company Secretary, Sing Lee Software (Group) Ltd*

Speaker: *Amily Lam, Associate Director, Risk Advisory, Deloitte China*

17 June

What you need to know about insider dealing and the legal implications for senior management

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

Speakers: *Emily Lam, International Counsel, and Allison Lau, Associate, Debevoise & Plimpton HK*

21 June

How are governance professionals' DNA expected to change in today's risk environment?

Chair: *April Chan FCG HKFCG, Institute Past President, TCP Chairman, Appeal Tribunal Chairman, TCP – Public Governance Interest Group Chairman, Special Entry Scheme Interview Panel member, and Nomination Committee member, and CSIA Inaugural President*

Speakers: *David Samy, Partner, Consulting, and Hilary Yung, Senior Manager, Consulting, Ernst & Young Advisory Services Ltd; Marilyn Chinwe Eze, Council member, The Institute of Chartered Secretaries and Administrators of Nigeria (ICSAN), and Legal Specialist, Nigerian National Petroleum Corp; and Robert Likhang FCG, ACMA, CGMA, CA(L), Past President, the Lesotho Institute of Accountants and The Chartered Governance Institute of Southern Africa, and Managing Partner, HLB Lesotho*

22 June

How to tackle governance challenges in setting up and maintaining Greater China entities with an integrated approach

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

Speakers: *Donald Tsang, Executive Director, Head of Corporate Services of Greater China, Intertrust Group, and Jack Yan, General Manager, Intertrust Group Shanghai*

24 June

Company secretarial practical training series: share capital, capital raising and share option scheme – practice and application

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

28 June

Economic substance in the British Virgin Islands: FAQs + what's new

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 Head of Corporate Services, Vistra Corporate Services (HK) Ltd*

Speakers: *Leon Mao, Head of Advisory and Managing Director, North Asia, and Catherine Lee, Manager, Advisory, Vistra North Asia*

30 June

Shareholder protection: core standards & investor relations

Chair: *Stella Lo FCG HKFCG, Institute Council member, Education Committee Chairman and TCP – Public Governance Interest Group member, and Company Secretary, Guoco Group Ltd*

Speakers: *Wendy Ho FCG HKFCG(PE), Institute Council member, Professional Development Committee Vice-Chairman, Professional Services Panel Vice-Chairman, AML/CFT Work Group member and Rebranding Working Group member, and Executive Director, Corporate Services, and Mavis Lai FCG HKFCG, Director, Corporate Services, Tricor Services Ltd*

ECPD Videos on Demand

Some of the Institute's previous ECPD seminars/webinars can now be viewed on its online platform – ECPD Videos on Demand.

Details of the Institute's ECPD Videos on Demand 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
18 August 2022	6.45pm–8.15pm	Hong Kong Profits Tax – basic principles you need to know as a company secretary	1.5
23 August 2022	4.00pm–5.30pm	Cayman Islands regulatory requirements: updates & future developments	1.5
24 August 2022	4.00pm–5.30pm	AML/CFT compliance: customer due diligence - live with them from compliance, risk and operational perspectives	1.5
29 August 2022	6.45pm–8.45pm	CSP foundation training series: share capital & share transfer	2

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

Membership

Membership/graduateship renewal for the financial year 2022/2023

The renewal notice, together with the debit note for the financial year 2022/2023, was sent to all members and graduates by email at the beginning of July 2022 to their registered email address. Members and graduates are encouraged to settle their annual subscription online via their user account on or before Friday 30 September 2022.

Failure to pay by the deadline will constitute grounds for membership or graduateship removal. Reinstatement by the Institute is discretionary and subject to payment of the outstanding fees, and with levies determined by the Council.

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

New graduates

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

Liu Yingying

Membership (continued)

New Fellows

The Institute would like to congratulate the following Fellows elected in May and June 2022.

Eng Ka Wah FCG HKFCG

Ir Eng is a Senior Engineer who is currently Head of the Contract Advisory Unit of the Water Supplies Department. He has extensive experience in engineering, contractual matters, arbitration and mediation. He holds an LLB from Manchester Metropolitan University and an LLM, an MBA and a postgraduate diploma in corporate administration from City University of Hong Kong. He is a Fellow of both the Chartered Institute of Arbitrators and Hong Kong Institute of Arbitrators, and a member of the Hong Kong Institution of Engineers.

Hu Wei FCG HKFCG

Mr Hu is the Vice President, Secretary of the Board and Company Secretary of Zhubajie Co Ltd. Mr Hu holds a bachelor's degree of business and a master's degree in technology economics and management from Harbin Institute of Technology, as well as a master's degree in financial mathematics from the University of Edinburgh. He is also a qualified lawyer in the Mainland.

Michael Lintern-Smith FCG HKFCG

Mr Lintern-Smith is one of the few solicitors on the Roll of Honour of Solicitors, in recognition of his services to the legal profession and the practice of law in Hong Kong. He is former Senior Partner and currently Consultant at Robertsons Solicitors. He joined the firm in 1981. As well as practicing as a solicitor in Hong Kong for almost 40 years, he has also practiced as a Notary Public since 1992. He has established a wide following of multinational clients, having practised in areas related to litigation, commercial law and administrative law.

Mr Lintern-Smith's vast experience and reputation has led to him being nominated to serve on a number of local and international committees. He is a former president of the Law Society of Hong Kong and a past member of the Judicial Officers Recommendation Commission, which is responsible for making recommendations to the Chief Executive on the appointment and promotion of judges. He was previously on the High Court Rules Committee and the Court of Final Appeal Rules Committee.

Additionally, Mr Lintern-Smith was previously the Chairman of the Buildings Appeal Tribunal and the Deputy Convenor of the Disciplinary Tribunal of the Hong Kong Society of Notaries.

He is an active member of the International Bar Association. He also chairs the Hong Kong Law Society's Committee on Anti–Money Laundering (AML) and is in regular contact with the government's Financial Services and the Treasury Bureau on AML matters.

Liu Wenjing FCG HKFCG

Ms Liu was the CFO and Company Secretary of Live Group, with more than 16 years experience in strategy management, financial management, IR, corporation financing and investment management, as well as internal control. Ms Liu obtained an MBA from the University of Macau and a master's degree in corporate governance from Hong Kong Metropolitan University. At present, Ms Liu is pursuing a doctorate in international real estate and construction from The Hong Kong Polytechnic University.

Pooja Shukla FCG HKFCG

Ms Shukla is a Senior Lecturer at Hong Kong Metropolitan University. With 18 years experience in the corporate sector, she has served as a board secretary in various listed companies. She has also served as a consultant to FTSE 100 companies, advising on corporate governance matters in Asia, the Middle East and Africa. Ms Shukla holds an LLB from the University of Mumbai, a bachelor's degree and a master's degree in commerce from Panjab University, and a postgraduate diploma in journalism from Hyderabad University. Ms Shukla is a frequent keynote speaker and panellist at numerous seminars on corporate governance.

So Hang Fung FCG HKFCG

Mr So is the Chief Financial Officer and Company Secretary of Universe Printshop Holdings Ltd (Stock Code: 8448). He obtained a bachelor's degree in business administration from Hong Kong Metropolitan University and a master's degree in corporate governance from The Hong Kong Polytechnic

University. He also holds professional qualifications as a member of the Hong Kong Institute of Certified Public Accountants (HKICPA), the Association of Chartered Certified Accountants and the Institute of Chartered Accountants of England and Wales.

Wong Tze Ling FCG HKFCG
Ms Wong is a Partner and Head of Regulatory Practice at Howse Williams. Her areas of practice are financial services and corporate regulatory and compliance issues. She is regularly identified as a leading lawyer in legal directories.

Ms Wong was Deputy General Counsel at the Hong Kong Monetary Authority and was in-house counsel at Credit Suisse. In addition, she has also worked in leading international law firms in Hong Kong. This combination of different legal roles allows her to provide constructive insights into the issues and challenges facing financial institutions and listed companies, as well as their senior managers and professional advisers.

Ms Wong has extensive experience advising on banking and securities laws, data privacy, cybercrime and financial crime issues. She advises on contentious (investigations, dawn raids, penalties etc) and non-contentious (business initiatives, licensing, client documents and disclosures, regulatory gap analysis) matters, and is eminently well placed to advise clients from both perspectives. She is also active in advising clients on emerging regulatory issues such as ESG, virtual assets and NFTs.

Ms Wong has represented clients, both institutions and individuals, in numerous regulatory investigations and disciplinary inquiries. She has hands-on practical experience in liaising with regulators, advising on regulatory compliance and implementing changes to internal practices, conducting internal investigations and advising on corporate governance.

Ms Wong is one of the authors of Securities and Futures Ordinance: Commentary and Annotations, published by Thomson Reuters (now preparing its 5th edition), and she speaks regularly at client events and industry conferences. She served on the Disciplinary Panel of HKICPA for several years and is currently the Chairman of the British Chamber of Commerce's Financial Markets Committee in Hong Kong. She is on the Editorial Board of LexisNexis's Practical Guidance series and issues the SFC Enforcement Tracker for the series.

Chen Chun FCG HKFCG(PE)
Joint Company Secretary and Senior Vice President, China Shandong Hi-Speed Financial Group Ltd

Fung Ching Man Ada FCG HKFCG
Company Secretary and Administration Manager, China Medical & HealthCare Group Ltd (Stock Code: 383)

Ho Suk Yee FCG HKFCG
Assistant Company Secretary, Global Enterprises (HK) Ltd

Koo Mei Ling FCG HKFCG
Senior Company Secretarial Manager, Cosmo Lady (China) Holdings Co Ltd (Stock Code: 2298)

Lee Jonathan Chi Yee FCG HKFCG
Assistant General Counsel and Chief Compliance Officer, Allied Banking Corporate (HK) Ltd

Ng Kai Man Carmen FCG HKFCG

Ng Wing Suen FCG HKFCG

Membership (continued)

Forthcoming membership activities

Date	Time	Event
13 August 2022	1.30pm–3.00pm	Fun & Interest Group – preserved flower decoration workshop
13 August 2022	3.30pm–5.00pm	Fun & Interest Group – pastel *nagomi* art workshop
20 August 2022	1.50pm–4.15pm	Community Service – happy gathering with the elderly
17 September 2022	1.00pm–4.30pm	Fun & Interest Group – natural tie-dye workshop at heritage site
24 September 2022	2.00pm–3.00pm	Wellness series: gong bath workshop (session A)
24 September 2022	3.30pm–4.30pm	Wellness series: gong bath workshop (session B)

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

Membership activities: June 2022

7 June

Embrace your tomorrow: helping you be financially confident and in control (free webinar)

11 June

Wellness series: back care yoga workshop (free webinar)

18 June

Wellness series: detox yoga workshop (free webinar)

21 June

Why 'coaching' is more effective than 'managing' in the workplace (free webinar)

Advocacy

Nomination for the HKCGI Prize 2022

The Institute takes great pride in presenting The Hong Kong Chartered Governance Institute Prize 2022. This award celebrates the outstanding contributions of governance professionals who have made significant contributions to the Institute, and to the Chartered Secretary and Chartered Governance profession as a whole, over a considerable period.

We have a thriving community of over 6,800 members in Hong Kong and the Mainland. Celebrating the achievements of leaders in the governance profession will inspire others to play their part in moving the profession forward. You are cordially invited to nominate one or more candidates who have made ongoing and pivotal contributions to the Institute and our profession.

These may include those with a track record of outstanding contributions to:

- the Institute's technical and research, education and examinations, and professional development work
- the development of the profession and/or the Institute in Hong Kong and the Mainland, and
- work that significantly enhances the status of the Chartered Secretary and Chartered Governance Professional within the local community, the Mainland and/or internationally.

The nomination deadline is Friday 30 September 2022. Submit your nominations now!

For enquiries, please contact Melani Au: 2830 6007, or email: member@hkcgi.org.hk.

CPD policy change (effective from 1 July 2022)

As a professional body representing over 10,000 members and students, the Institute is committed to the promotion of applied corporate governance best practices in Hong Kong and the Mainland. In today's fast-changing corporate governance regulatory landscape, governance professionals face a plethora of complex governance issues, and it is imperative for all of us to keep abreast of the latest developments in governance areas through continued learning and sharing processes. Our ECPD programme has been tailor-made to cater for such demand.

With the support and encouragement of Hong Kong Exchanges and Clearing Ltd, the Institute first introduced its ECPD programme in 2004 with the aim of maintaining high professional standards by requiring its members to engage annually in a specified number of hours of professional development activities organised by the Institute.

Since 2004, the Institute has arranged many professional development events for the benefit of its members and other interested parties, such as directors and senior management, in Hong Kong and the Mainland. These events are widely recognised as relevant, informative, insightful and practical, and are thus well attended.

The Institute continuously works to improve the design and variety of ECPD course offerings and, since 2020 and Covid-19, has accelerated the pace in the wider use of an online platform. Currently hosting over 90 ECPD courses annually, as well as making over 40 ECPD videos available to members, the Institute intends to further expand the scope of its training topics and the number of videos in the near future.

Against this backdrop, and with the increasing need for quality and relevant training to maintain and enhance members' professional standards, the Institute will implement certain changes to its ECPD-related provisions in its Institute CPD policy.

For details of the amended CPD policy, effective from 1 July 2022, please visit the Professional Development section of the Institute's website: www.hkcgi.org.hk.

Advocacy (continued)

ESG interviews with Hong Kong listed companies

The Institute is publishing a series of interviews with governance professionals, company secretaries and heads of ESG in Hong Kong listed companies that examines best practices, challenges and opportunities in the five key industry sectors for which the Task Force on Climate-related Financial Disclosures has issued specific guidance.

These interviews will inform the design of an Institute survey to assess the current ESG people, processes, technology and data capabilities, as well as the challenges and opportunities to meet climate change and sustainability requirements from diverse stakeholders. The Institute is grateful to Professor Lapman Lee, Hong Kong Polytechnic University, for conducting the interviews.

Please visit the Guidance Notes/Guidance/Thoughts subpage under the Thought Leadership section of the Institute's website to view the first three articles.

How are governance professionals' DNA expected to change in today's risk environment? (webinar)

The Covid-19 pandemic and other global business disruptions have highlighted the emerging trend of dynamic risk environment. Governance professionals are in a unique position to support and assist the board in overseeing all high-risk issues in organisations. What future DNA should be embedded in the role of the governance professional in order to support the board in its quest to align strategy with the ever-changing regulatory landscape, technological advances and environmental and social concerns?

In June, the Institute, Corporate Secretaries International Association Ltd (CSIA) and Ernst & Young Advisory Services Ltd (EY) jointly organised a webinar titled 'How are governance professionals' DNA expected to change in today's risk environment?', at which April Chan FCG HKFCG, Institute Past President, and Chairman of the Institute's Technical Consultation Panel and of the Appeal Tribunal; David Samy, Partner, Consulting, and Hilary Yung, Senior Manager, Consulting, EY; Marilyn Chinwe Eze, Council member, The Institute of Chartered Secretaries and Administrators of Nigeria (ICSAN), and Legal Specialist, Nigerian National Petroleum Corp; and Robert Likhang FCG, ACMA, CGMA, CA(L), Past President, the Lesotho Institute of Accountants and The Chartered Governance Institute of Southern Africa, and Managing Partner, HLB Lesotho, shared their insights and practical experience on how governance professionals can play a more effective role.

For more information, please visit the Institute's website: www.hkcgi.org.hk.

The 63rd Governance Professionals ECPD seminars (virtual)

The Institute held its 63rd Governance Professionals ECPD seminars (virtual) in collaboration with the Shanghai Stock Exchange, from 13 to 15 July 2022, under the theme of Information Disclosure & Transaction Regulations and Governance. The seminars, previously known as the Affiliated Persons ECPD webinars, attracted over 126 participants, mainly comprising board secretaries and equivalent personnel, directors, CFOs, supervisors and other senior management from companies listed or to-be-listed in Hong Kong and/or the Mainland.

Officials from the Shanghai Stock Exchange, senior professionals and board secretaries shared their insights on the following topics:

- interpretation and practices of the latest regulations on information disclosure of A share listed companies
- update on the Shanghai Stock Exchange's self-regulatory rules and case analysis
- latest amendments to the disclosure of the Hong Kong Stock Exchange (the Exchange)'s ESG Report and its practical guidelines
- overview of the latest developments in Hong Kong's capital market and an interpretation of its cutting-edge issues
- the Exchange's enhanced regulatory focus on disciplinary actions and case analysis
- interpretation of the Institute's Guidelines on Practices of Connected Transactions of Companies Listed in the Mainland and Hong Kong
- experience sharing: sustainable development management and practices of Goldwind Science & Technology Co Ltd
- ESG information disclosure and investor communication practices under the globally enhanced regulations, and
- case study: the GAC Group's equity incentive plan and implementation.

The Institute would like to express its appreciation to all the speakers and participants for their generous support and participation.

Advocacy (continued)

New online features

Following the launch of its new brand and revamped website on 20 January 2022, the Institute continues to enhance its online platforms to ensure a premium user experience.

The Institute is excited to introduce the following new features, including:

1. An enhanced interface and UX design in the members' login area that is more user-friendly.

2. A new self-developed online platform, called ECPD Videos on Demand, which allows members, graduates and students, as well as non-members, to gain knowledge from ECPD seminars at the click of a button:

    - over 40 ECPD seminars on a wide range of governance-related topics, delivered by industry professionals and experts in the field
    - accessible 24/7, and
    - complete ECPD hours and obtain certificates with ease.

    For more information, please visit the FAQs section of the Institute's website: www.hkcgi.org.hk.

3. New electronic member, graduate and student card (E-card). The Institute's new E-card will replace the former physical card for all members, graduates and students, and can be obtained by logging in to your user account. Alternatively, the physical card remains available to members, graduates and students upon successful application and settlement of the prescribed fee.

Chartered Governance Qualifying Programme (CGQP)

June 2022 examination diet

The examination results of the June 2022 diet will be released on 11 August 2022. Candidates can access their examination results from their accounts on the Institute's website. The examination papers, mark schemes and examiners' reports are also available to download from the Login area of the Institute's website.

Candidates may apply for a review of their examination results by application to the Secretariat within 10 working days from the release date of the examination results.

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.

November 2022 examination diet timetable

The November 2022 examination diet of the CGQP opened for enrolment on 25 July 2022, with a cut-off date of 5 September 2022. All examination enrolments must be made online via the Login area of the Institute's website.

Week one

Date/Time	15 November Tuesday	16 November Wednesday	17 November Thursday	18 November Friday
9.15am–12.30pm*	Hong Kong Taxation	Hong Kong Company Law	Interpreting Financial and Accounting Information	Corporate Secretaryship and Compliance

Week two

Date/Time	22 November Tuesday	23 November Wednesday	24 November Thursday	25 November Friday
9.15am–12.30pm*	Corporate Governance	Risk Management	Strategic Management	Boardroom Dynamics

* Including 15 minutes reading time (9.15am–9.30am).

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

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

Studentship renewal for the financial year 2022/2023

The renewal notice for the financial year 2022/2023 was sent to all students to the email address registered with the Institute in early July 2022. Students are encouraged to settle their annual renewal fee online via their user account on or before Friday 30 September 2022.

Failure to pay by the deadline will constitute grounds for studentship removal. Reinstatement by the Institute is discretionary and subject to payment of the outstanding fees, and with levies determined by the Council.

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

Chartered Governance Qualifying Programme (CGQP) (continued)

Corporate Governance Paper Competition and Presentation Awards 2022

The Corporate Governance Paper Competition and Presentation Awards, organised by the Institute, is designed to foster an appreciation of corporate governance among local undergraduates. The theme this year asks applicants to evaluate the question: 'Do you think better governance leads to a better future for organisations?'

The submitted papers will be reviewed and assessed by a panel of judges comprising the following academics (in alphabetical order):

Reviewer's name	University/institution
Professor Dennis Chan	The Chinese University of Hong Kong
Dr Derek Chan	The University of Hong Kong
Professor Steven Cheung	The Hong Kong University of Science and Technology
Alice Chung	Hong Kong Shue Yan University
Dr Lisa Goh	The Hang Seng University of Hong Kong
Carmen Lam FCG HKFCG	Hong Kong Metropolitan University
Dr Bruce Li FCG HKFCG	The Hong Kong Polytechnic University
CK Low FCG HKFCG	The Hong Kong Chartered Governance Institute
Dr Raymond Wong	City University of Hong Kong
Tommy Wong	Caritas Institute of Higher Education
Dr Davy Wu	Hong Kong Baptist University

The six finalist teams will be announced in mid-August 2022. These teams will then be invited to present their papers on Saturday 17 September 2022 to compete for the Best Presentation Award and Audience's Favourite Team Award. Members, graduates and students who are interested in observing the presentation competition are welcome to attend.

For details of the competition, please visit the Corporate Governance Paper Competition and Presentation Awards page under the Student Promotion & Activities subpage of the News & Events section of the Institute's website: www.hkcgi.org.hk.

Theme	Do you think better governance leads to a better future for organisations?
Date	Saturday 17 September 2022
Time	10.00am–1.00pm
Fee	Free of charge
Venue	Webinar session; no physical attendance is required.
CPD points	2

Forthcoming studentship activities

Date	Time	Event
17 September 2022	10.00am–1.00pm	Corporate Governance Paper Competition and Presentation Awards 2022
20 September 2022	1.00pm–2.00pm	Governance Professionals Information Session (Cantonese session)

Studentship activities: July 2022

27 July

Student Ambassadors Programme (SAP): experience sharing on paper research and presentation skills

Learning support for the CGQP examinations preparation

HKU SPACE CGQP Examination Preparatory Programme – autumn 2022 intake

HKU SPACE has been endorsed by the Institute to organise the CGQP Examination Preparatory Programme, which helps students to prepare for the CGQP examinations. One assignment and one take-home mock examination will be provided to students. There are 36 contact hours for each module, except for Hong Kong Company Law, which has 45 contact hours. The autumn 2022 intake will commence in September 2022.

For details, please contact HKU SPACE: 2867 8485, or email: hkcgi@hkuspace.hku.hk.

Examination technique online workshops and student seminars

Video-recorded examination technique online workshops and student seminars are available for subscription to assist with preparing for the CGQP examinations.

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

Notice

Update of the CGQP exemption policy

With effect from 1 July 2022, all exemption appeal applications are subject to an application fee of HK$1,400.

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

Update of the CGQP syllabus and study materials

The syllabus and online study materials for the following CGQP modules have been updated. With effect from the November 2022 examination diet and onwards, the new syllabus will be incorporated into the following examinations:

- Corporate Governance
- Corporate Secretaryship and Compliance
- Boardroom Dynamics
- Interpreting Financial and Accounting Information
- Risk Management

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

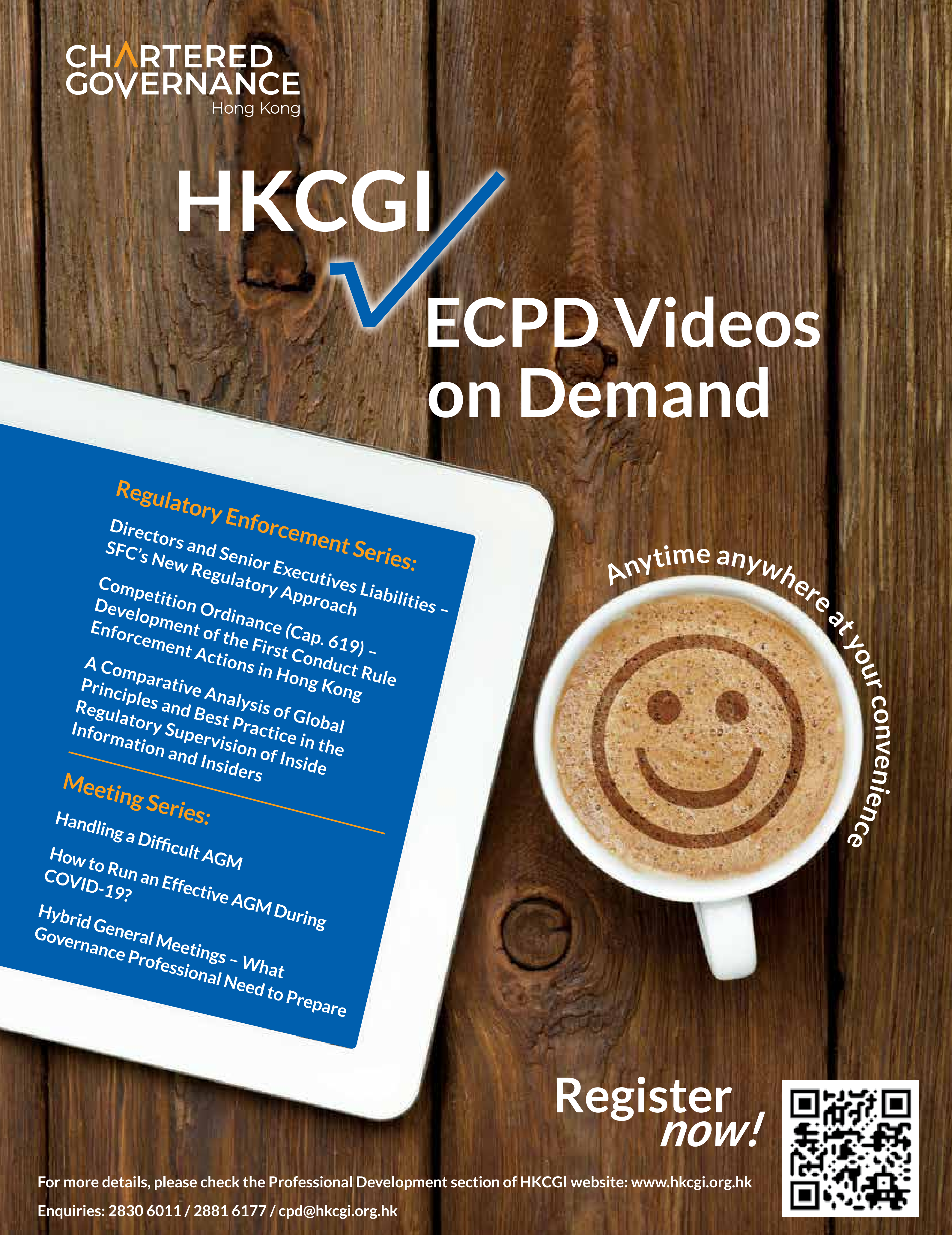
In addition to the updated study materials mentioned above, a list of resources from the Companies Registry and Hong Kong Exchanges and Clearing Ltd for the relevant modules, and the syllabus, examination paper, mark scheme and examiners' report for all eight CGQP modules are available on the PrimeLaw online platform.

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

Featured job openings

Company name	Position
CK Asset Holdings Ltd	Company Secretarial Officer
Computershare	Officer, Governance Services
CS Legend Corporate Services Ltd	Company Secretarial Assistant
Hui Xian Asset Management Ltd	Compliance Officer
LC Management (International) Ltd	Assistant Company Secretary
Sing Tao Management Services Ltd	Assistant Company Secretary
The Hong Kong University of Science and Technology	Senior Manager/Manager

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


CHARTERED GOVERNANCE
Hong Kong
HKCGI
ECPD Videos on Demand
Regulatory Enforcement Series:
Directors and Senior Executives Liabilities – SFC's New Regulatory Approach
Competition Ordinance (Cap. 619) – Development of the First Conduct Rule Enforcement Actions in Hong Kong
A Comparative Analysis of Global Principles and Best Practice in the Regulatory Supervision of Inside Information and Insiders
Meeting Series:
Handling a Difficult AGM
How to Run an Effective AGM During COVID-19?
Hybrid General Meetings – What Governance Professional Need to Prepare
Anytime anywhere at your convenience
Register now!
For more details, please check the Professional Development section of HKCGI website: www.hkcgi.org.hk
Enquiries: 2830 6011 / 2881 6177 / cpd@hkcgi.org.hk

HKU SPACE
香 港 大 學 專 業 進 修 學 院
HKU School of Professional and Continuing Education

CHARTERED GOVERNANCE
Hong Kong

Certificate for Module

(The Hong Kong Chartered Governance Institute Examinations Preparatory Programme)

This programme is endorsed by The Hong Kong Chartered Governance Institute (HKCGI). The aim is to develop students with the knowledge and skills necessary to write the professional examinations of the Chartered Governance Qualifying Programme (CGQP), which is recognized worldwide.

COURSE INFORMATION

Intake: 3 intakes per year (Spring, Summer & Autumn)

Teaching Venue: Any of the HKU SPACE's Learning Centres on Hong Kong Island

SUBJECT

- Corporate Governance
- Corporate Secretaryship and Compliance
- Hong Kong Company Law
- Interpreting Financial and Accounting Information
- Strategic Management
- Risk Management
- Boardroom Dynamics
- Hong Kong Taxation

TARGET STUDENTS

Be 21 years old or above. (Students should be either a Hong Kong permanent resident or have valid permit to study in Hong Kong)

Fee per subject:

HK$4,300 (36-hour lectures)

HK$5,600 (45-hour lectures)

All fees paid are NOT refundable, unless the programme is oversubscribed or cancelled. All fees are subject to revision.

Award:

Certificate for Module

CONTACT INFORMATION
Programme Enquiries (HKU SPACE)

(852) 2867 8485

hkcgi@hkuspace.hku.hk