



December 2022

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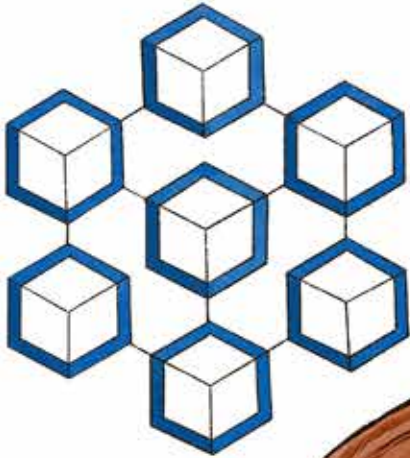
The journal of the Hong Kong  
Chartered Governance Institute  
香港公司治理公會會刊

## Future focus

CGC 2022 review

Adapting to new technology

Governance leadership



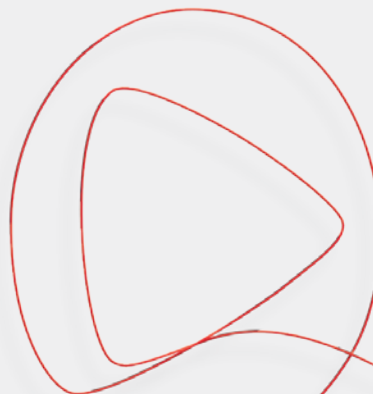
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ANNUAL CELEBRATION  
UPPING THE GAME

2023

FRIDAY 13 JANUARY

LOCATION

The Hong Kong Club  
GARDEN  
LOUNGE

Guest of Honour:

Mr Christopher Hui, GBS, JP, Secretary for  
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Hosted by:

Ms Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE)  
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Registration starts at: 6.30pm

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About The Hong Kong Chartered Governance Institute

The Hong Kong Chartered Governance Institute (HKCGI, the Institute) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of the Chartered Secretary and Chartered Governance Professional in Hong Kong and the mainland of China (the Mainland).

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

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## Adapting to change

In today's business environment, how well organisations are able to adapt to a fast-changing operating environment has become a critical factor for their future success. Our Institute's 13th Biennial Corporate Governance Conference, held in hybrid mode on 23 September 2022, focused on a number of areas where a successful adaptation to rapid change is particularly crucial.

The first part of our CGC 2022 review, published in last month's CGj, looked at two such areas – climate change, and diversity and inclusion. This month our journal looks at the CGC key takeaways on the challenges involved in adapting to technological change and at how governance leadership can boost Hong Kong's competitiveness in the years ahead.

The following pages offer many specific and practical insights, but I would like to focus here on a consistent theme of the forum, which is particularly relevant to both of these themes – namely that high standards of governance will be all the more relevant as organisations and societies adapt to the changing times.

In the context of Hong Kong's future competitiveness, this is a particularly important point. Speakers and panellists in session four of

the conference discussed many different strategies for encouraging innovation. Nevertheless, there was a general consensus that Hong Kong's reputation as a quality market subject to a corporate governance regime aligned with global best practice has been a key element in maintaining its position as a leading international financial centre. Any deregulatory measures, therefore, need to be considered in the context of maintaining high standards of governance and investor protection.

This issue has a particular relevance to the issue of how to adapt to technological change. Session two of the conference addressed, for example, the issue of how far governance frameworks can be 'automated' via blockchain and smart contract technologies. This process is already underway in decentralised autonomous organisations (DAOs) and may seem to be an alarming development for members of our profession – does this mean that we will soon be out of a job?

Speakers and panellists in the second session of the conference emphasised that, while technological change will continue to transform every sector of our economy and indeed our very way of life, governance issues aren't going to magically disappear in the process. Ultimately, it is people that set up and run technology systems. Setting up an automated framework in a DAO still requires engagement with the critical governance issues

facing any organisation. For example, how do you build an effective governance framework to oversee risk management? How can you ensure compliance and transparency? How do you set up effective internal controls for handling conflicts of interest?

Moreover, some of the decisions organisations need to take when addressing these governance issues will be ethical decisions and achieving good ethics is not subject to an easy 'tech fix'. Ada Chung Lai-ling FCG HKFCG, Privacy Commissioner for Personal Data, Hong Kong, and a panellist in session two of the conference, pointed out that our company law, not to mention the core governance principle of accountability, is predicated on there being humans in charge of such decisions.

The key takeaway, then, from these interesting discussions is that our expertise as governance professionals will be just as relevant to the organisations of the future as they are to the organisations of today. We will certainly need to be more tech savvy and our roles will need to adapt to the changes that technology will bring, but fundamentally there will always be a need for human beings trained in the art of good governance.

Ernest Lee FCG HKFCG(PE)

# 适应变化

在当今的商业环境中，一家组织如何能够适应快速变化的运营环境已经成为其未来成功的关键因素。公会于2022年9月23日以线上与线下混合模式举行的第13届公司治理研讨会（两年一届）集中讨论了成功适应快速变化需要特别关注的关键领域。

上个月的会刊发表了2022年公司治理研讨会回顾的第一部分，探讨了两个这样的领域 -- 气候变化、多元化及包容性。本月会刊将关注公司治理研讨会就应对技术变革所涉及的挑战，以及治理领导力如何在未来几年内提高香港的竞争力这两个议题所提供的见解。

后续文章将提供许多具体和实用的观点，但我想在这里重点谈谈研讨会的一个一贯主题，它与以上两个议题特别相关，即，随着组织和社会适应不断变化的时代，高标准的治理将更加重要。

就香港未来的竞争力而言，这是一个特别重要的观点。研讨会第四部分的发言者和专题讨论小组成员讨论了许多鼓励创新的不同策略。然而，大家普遍认为，香港之所以是一个高质量的市场，得益于其与全球最佳做法对标的公司治理制度，这也是保持其领先国际金融中心地位的关键因素。因

此，任何放松监管的措施都需要在保持高标准的治理和投资者保护的前提下加以考虑。

这与如何应对技术变革的问题特别相关。例如，研讨会的第二部分讨论了治理框架在多大程度上可以通过区块链和智能合约技术实现 "自动化" 的问题。这个过程已经在去中心化的自治组织(DAO)中启用，对于我们这个行业的成员来说似乎是一个令人震惊的发展 -- 这是否意味着我们很快就会被淘汰？

研讨会第二部分的发言人和专题讨论小组成员强调，虽然技术变革将继续改变经济的各领域，甚至我们的生活方式，但治理问题不会在这个过程中神奇地消失。归根结底，建立和运行技术系统的是人。在DAO中建立一个自动化框架仍然需要考虑任何组织都会面临的关键治理问题。例如，如何建立一个有效的治理框架来监督风险管理？如何确保合规和透明度？如何建立有效的内部控制来处理利益冲突？

此外，在解决这些治理问题时，组织需要做出的一些决定是道德方面的决定，而实现良好的道德并不能依靠简单的 "技术修复"。香港个人资料隐私专员钟丽玲小姐 FCG HKFCG和研讨会第二部

分的专题讨论那么，从这些有益的讨论中得到的关键启示是，我们作为治理专业人员所拥有的专业知识对未来的组织和今天的组织同样重要。

我们当然需要更多的技术知识，我们的角色也需要适应技术带来的变化，但从根本上说，拥有良好治理艺术的人不可或缺。



李俊豪先生 FCG HKFCG(PE)

# Adapting to new technology

Continuing the CGj review of the Institute's 13th Biennial Corporate Governance Conference, this article highlights the key takeaways from session two of the conference, offering insights into the risks and rewards of technological innovation.





The remit for the Institute's corporate governance conferences (CGCs) is to be forward-looking and this year's forum, delivering on that promise, addressed a number of frontier technology issues relevant to the governance profession. In particular, what are the potential risks that companies need to be aware of when adopting new technology? And how successfully have decentralised autonomous organisations (DAOs) been able to automate their governance frameworks using technologies like blockchain and smart contracts?

### Technology upgrades

The rate of the adoption of new technology has accelerated globally since the beginning of the Covid-19 pandemic and Hong Kong has been no exception to this trend. The first speaker in session two, Adam Stuckert, Group Chief Digital Officer, Tricor Group, shared some of the ways that companies can help to ensure that technology upgrades deliver their expected benefits.

Ensuring close engagement between IT staff and the staff who will actually be using the new technology, he pointed out, is key. 'This gives you insights from the bottom up on how technologies are actually used, and whether their implementation is delivering the expected benefits in all parts of the organisation,' he said.

He also emphasised that upgrading technology is as much about achieving human change as it is about the technology itself. 'It's people and human systems that are tougher to change. I've implemented a lot of big systems, but the number one thing that influences

whether the company is successful with the new technology is to what extent it accommodates human change,' he said.

In this context, staff training is critical. 'I would say at least 30% to 50% of the effort in a big technological change, whether you're talking about digitising the boardroom or helping with workflows for corporate governance, is really about the human side. So you should allocate a lot of the time and budget of a project to that type of change,' he said.

Finally, getting a new system in place is only the start. Regular monitoring of the system and its implementation needs to be put in place to ensure proper checks and balances. Overconfidence and overreliance on an IT system among directors and managers can expose an organisation to a huge amount of security risk.

### The uses of ethical hacking

The further organisations progress in their digitalisation journey, the more 'attack surface' they have for cyber criminals. The second speaker in session two, Kok Tin Gan, Partner, PwC Hong Kong, shared some insights into how to build effective cybersecurity defences.

## Highlights

- upgrading technology is as much about achieving human change as it is about the technology itself
- cyber criminals have been developing increasingly sophisticated tactics and techniques to target organisations, and legal and regulatory regimes around the world have failed to keep up
- there is still one area where technology cannot replace human judgement – the need to make ethical decisions

“  
getting hackers to  
break into your system  
shows you what you  
need to fix  
”

Kok Tin Gan, Partner, PwC Hong Kong

He started with a sobering assessment of the current cyber threat landscape. Put simply, cyber criminals have been developing increasingly sophisticated tactics and techniques to target organisations, and legal and regulatory regimes around the world have failed to keep up. Even where laws are in place to potentially deter and punish criminal activity, they tend to only have application in specific jurisdictions, which makes them next to useless in borderless cyberspace.

'We all know that I don't have to be in Hong Kong to hack a Hong Kong company. I can be overseas and, since there's no borderless law, there's no consequence. So the attitude of hackers is – catch me if you can,' he said.

## “ of the three core elements of the information security industry – people, process and technology – companies should put people first because it is people who run the system ”

Ada Chung Lai-ling FCG HKFCG, Privacy Commissioner for Personal Data, Hong Kong

Add to this the devastating impact of cybersecurity breaches and you start to get a sense of why cybersecurity has rocketed up the agenda of directors, managers and governance professionals in recent years. ‘No one wants to wake up in the morning to find that all of the data on your office computer has been encrypted and will be deleted if you don’t pay the ransom,’ Mr Kok said.

On a more positive note, however, companies are not powerless to mitigate these risks and Mr Kok was the ideal guide on how to implement effective defences. He stressed that ‘ethical hacking’ – the simulation of real-life hacking scenarios to probe for weaknesses in company cyber defences – is the most useful technique to ensure your cyber defences are sound.

‘Hacking sounds negative to most people but, if you think about it, it creates visibility. Getting hackers to break into your system shows you what you need to fix. After a few iterations what do you get? You get a secure system,’ he said.

Another piece of good news is that, where commercial crime is concerned, cyber criminals tend to go for ‘low

hanging fruit’, so companies often only have to ensure a basic level of cybersecurity defences to persuade the criminals to go after someone else. When it comes to other types of cyber crime, however, such as espionage, sabotage or hacktivists, defences need to be more sophisticated and Mr Kok emphasised that it is crucial to ensure that your organisation has the necessary cybersecurity expertise. He also stressed the need to ensure that your cybersecurity system is subject to regular monitoring. ‘Often companies are prepared to pay for cyber defences, but it is just as important to spend on detection,’ he said.

### Privacy risk

The Q&A at the end of session two further explored cybersecurity from the perspective of data privacy compliance. Ada Chung Lai-ling FCG HKFCG, Privacy Commissioner for Personal Data, Hong Kong, shared statistics relating to the prevalence of cyber attacks in Hong Kong in 2022. Statistics from the Office of the Privacy Commissioner for Personal Data shows that such attacks comprised about 29% of the data breach incidents handled by the Office last year and over 600,000 Hong Kong citizens were affected by these incidents.

Ms Chung stressed that minimising the risk of cyber attacks and enhancing the competitiveness of a company in the longer term can only be achieved if a proper system is in place to protect the data in the company’s possession. To this end, she recommended the adoption of a personal data privacy management programme and the appointment of a data protection officer.

She also picked up on the point made earlier by Mr Stuckert that changing people’s mindsets is as important as getting the right technology. ‘Of the three core elements of the information security industry – people, process and technology – companies should put people first because it is people who run the system. Very often, I find examples of either overconfidence or overreliance on IT systems. Directors and managers sometimes think that they only need to implement the system without installing any proper checks and balances. Regular monitoring and proper risk assessment are fundamental, otherwise you will expose your organisation to a huge amount of security risk,’ she said.

### Coding for governance?

There was also an extended discussion in the Q&A about the implications of technological innovation for the roles of directors and governance professionals. In particular, how far can governance frameworks be written into computer code? Dr Jag Kundi, Adjunct Professor, EMBA Program, City University of Hong Kong, highlighted the way blockchain technology provides a potential solution to the ‘agent/principal’

“  
ethics is at the heart of  
governance and ethics  
is also at the heart of  
being a governance  
professional  
”

**Dr Jag Kundi, Adjunct Professor,  
EMBA Program, City University  
of Hong Kong**

problem at the core of corporate governance theory. Directors, as ‘agents’, are supposed to act in the interests of shareholders (and now stakeholders) as ‘principals’. When conflicts of interest arise, however, can these ‘agents’ be relied upon not to put their own interests first?

‘Trying to establish trust between directors and stakeholders continues to be at the core of governance and this is why blockchain is so relevant because blockchain creates digital trust,’ Dr Kundi said. He added that blockchain and smart contracts have enabled the founders of DAOs to write pre-agreed governance frameworks into the DAO code.

In the Q&A, Panel Chair, Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive, asked for the panellists’ views on this issue – will the DAO model put directors and governance professionals out of a job?

‘As the former Registrar of Companies, and having been involved in the rewrite of the Companies Ordinance,’

Ada Chung said, ‘I’m quite against this concept as it runs against the fundamental principles contained in our company law. Under our company law, a company must be managed by a board of directors and assisted by professionals like governance professionals. Corporate governance starts with the board. Shareholders tend to look for shorter-term profits rather than the long-term interests of the company, so I cannot envisage leaving important responsibilities such as good corporate governance and good data governance in the hands of shareholders,’ she said.

She added that she recommends being prepared to embrace technological change, but the DAO model suggests a greater, not a lesser, need for governance professionals. ‘We need somebody to put the house in order,’ she said.

‘I think DAOs are a golden opportunity for all of us,’ Mr Kok said. He picked up on Dr Kundi’s comments about the way blockchain is creating digital trust. ‘Digital companies sell trust. When the top Fortune 500 technology companies release new products, the first thing they talk about is trust,’ he said. He added that a far greater number of trust features are being built into these companies’ products than 10 years ago and that has given them a competitive edge since that is what customers are looking for.

‘So for me, governance is not about compliance or about the cost of doing business, it is actually a key driver in making money. DAOs could be the greatest career opportunity for everyone here, especially if you’re

in charge of corporate governance,’ he said.

#### **Ethical algorithms?**

Remaining ethically sound will be an important part of building trust with stakeholders for DAOs, or indeed any company incorporating emerging technologies into their governance and decision-making frameworks. Dr Kundi pointed out that, while blockchain technology has the potential to introduce greater fairness and more equality into agency/principal relationships, and while this may impact the number of governance professionals needed in the future, there is still one area where technology cannot replace human judgement – the need to make ethical decisions.

This is also relevant to the discussion of how artificial intelligence (AI) systems are implemented and developed. ‘Technology makes our lives very efficient. Where due diligence paperwork might take months to get a job done, AI technology can get it done in minutes or even seconds. But not everything can be digitised and we still need to build ethics into these systems. AI is a great tool that transcends nations, geographies and nationalities, but it is based on algorithms that don’t take into account fairness, equality and morality,’ he said.

Digitalisation is the way forward for all businesses, he added, but governance expertise will still be needed – particularly in determining how ethics interplays with new technology. ‘Ethics is at the heart of governance and ethics is also at the heart of being a governance professional,’ he said. [CGJ](#)

# Governance leadership

## A critical factor in Hong Kong's competitiveness?

The fourth session of the Institute's CGC 2022 addressed Hong Kong's development strategies and the importance of maintaining high governance standards to reinforce Hong Kong's position as a premier international financial centre.



Against the backdrop of the geopolitical tensions and economic challenges the world is facing, there has been much debate in Hong Kong about how to boost its competitiveness as an international financial centre (IFC) in the years ahead. The fourth session of the Institute's 13th Biennial Corporate Governance Conference (CGC) was dedicated to this question.

### Development strategies for Hong Kong

The first speaker in this session, Joseph HL Chan JP, Under Secretary for Financial Services and the Treasury, the HKSAR Government, updated the forum on some of the initiatives the government has been launching to boost Hong Kong's competitiveness. These have focused on strengthening Hong Kong's status as a premier international asset management and risk management centre.

New measures have just been announced, for example, to promote private equity investments in Hong Kong. Mr Chan noted that private equity has become an increasingly important avenue for raising capital. The government has therefore focused on refining and improving Hong Kong's regulatory framework to attract more private equity funds to locate here. Over 500 funds have been registered under the Limited Partnership Fund regime launched in August 2020. The government also passed a bill recently to provide tax concessions for eligible private equity fund businesses.

The government has also been seeking to promote fintech development in Hong Kong. Its initiatives in this space have focused on building an infrastructure conducive to fintech

development, such as the Faster Payment System (FPS), and the eTradeConnect blockchain-based trade finance platform. The government is also providing funding for start-ups and some proof-of-concept projects.

### Upgrading governance standards

A key theme of the second speaker in this session, Amar Gill, Managing Director, Head of APAC Investment Stewardship, BlackRock, was that high governance standards will be a critical factor in maintaining Hong Kong's competitiveness. His presentation suggested a number of ways in which Hong Kong can improve its track record in governance – starting with measures to boost board independence.

This year, insufficient independence of the board was the biggest issue resulting in negative votes by BlackRock in the Asia Pacific region. In the last 12 months to June of this year, BlackRock voted against 1,100 companies in Asia Pacific – one quarter of its total company exposure in the region – for not having a sufficiently independent board.

Mr Gill emphasised that improving nomination committee practices will be a key part of upgrading standards. The

rules making a nomination committee mandatory and requiring listed companies to have an independent nomination committee chair are a step in the right direction, but he pointed out that the nomination committee chair has to be unquestionably independent and not a long-tenured independent director who is there to make sure that all nominee directors have the approval of the controlling shareholder.

In addition, he questioned whether directors who have been on a board for 15 or 20 years can still be classified as independent. 'Many times they do have the skills that are required, but we think that they should be reclassified as non-independent, because they've already developed a relationship with the controlling shareholder and with management,' Mr Gill said.

Another factor relevant to how far directors can be said to be independent is the degree to which they interact with investors. 'There needs to be more interaction of independent directors with investors. That is the hallmark of governance moving beyond compliance to something more holistic,' he said. To this end, he recommended companies appoint a lead independent director

## Highlights

- the government has launched a number of initiatives to strengthen Hong Kong's status as a premier international asset management and risk management centre, and to build the right talent pool for Hong Kong
- high governance standards will be a critical factor in maintaining Hong Kong's competitiveness
- there has been a tectonic shift in investor capital away from companies with a poor track record on sustainability issues

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**There needs to be more interaction of independent directors with investors. That is the hallmark of governance moving beyond compliance to something more holistic.**  
 ”

**Amar Gill, Managing Director, Head of APAC Investment Stewardship, BlackRock**

whose remit includes interacting with investors and stewardship teams.

**Governance as the language of business**

The importance of governance leadership for Hong Kong’s continued competitiveness was further explored in the Q&A at the end of session four. Panellist Laurence Li SC JP, Chairman, Financial Services Development Council, said that high governance standards will play a critical role in maintaining Hong Kong’s competitiveness as an IFC because governance is the language everyone needs to learn to be able to successfully run a company.

‘One way to think of it is this – governance is a language. The common law, and governance checks and balances, are part of the modern language of business and finance. If you want to take someone else’s money and grow a business, these are the concepts

and these are the rules that you need to abide by,’ he said.

He added that Hong Kong as an IFC leads Asia in having mastered that language. ‘I should probably, at the same time, admit that we have a long way to go, but at least we speak the language and we will in time master the whole system and be able contribute as an IFC,’ he said.

**Attracting and retaining human capital**

Another key factor for Hong Kong’s success will be its ability to attract and retain human capital, and this was another topic explored in the Q&A. Panel Chair Professor Frederick Ma Si-Hang GBS JP, Chairman, FWD Group Holdings Ltd, asked panel members for their views on whether Hong Kong’s Covid restrictions have led to it falling behind its competitors in terms of being able to attract and retain human capital.

Dr David Wong Yau Kar GBS JP, Chairman, Council of the Education University of Hong Kong, pointed out that Hong Kong has known for some time that a labour shortage was coming. ‘Even 10 years ago, I think that the projection was that our labour force would peak in 2018 and then decline for about eight to 10 years before picking up again,’ he said.

That situation, he added, has been compounded by the Covid restrictions and will continue to be a major problem that Hong Kong needs to address for the long term. Moreover, relying on a single government department to address this problem will not work, he pointed out. ‘For an effective strategy to be developed, it will take a concerted effort involving different government

bureaus and departments, including the education, labour, welfare and immigration departments,’ he said.

Joseph Chan emphasised that the government recognises the challenges created by its Covid-19 restrictions. ‘The government appreciates the importance of connecting Hong Kong with the rest of the world and is working hard to rebuild that connectivity,’ he said. He cited the way the government has progressively reduced quarantine requirements for travellers to Hong Kong. The conference took place on the day that the government announced the current ‘zero plus three’ policy – requiring three days of testing but zero days in mandatory quarantine for inbound travellers.

He also cited a number of government programmes to build the right talent pool for Hong Kong. In June 2006, the government launched the Quality Migrant Admission Scheme (QMAS), a points-based entrant scheme seeking to attract skilled people to settle in Hong Kong. In 2018, the Talent List was introduced, giving priority in immigrant facilitation under QMAS to individuals with a background in 13 sectors (including asset management, compliance, ESG and fintech) deemed to be most useful to Hong Kong’s economic development.

**ESG leadership**

As part of the governance leadership discussed above, session four of the conference also looked at how important high ESG standards will be for Hong Kong’s competitiveness. Amar Gill pointed out that every company will be impacted by the global transition to a net-zero carbon economy. As this trend

accelerates, companies will need to have a well-articulated long-term strategy to address the net-zero transition to continue to enjoy the trust of investors. The consequences for companies without such a strategy are clear to see in the tectonic shift in investor capital away from companies with a poor track record on sustainability issues.

‘Climate risk is investment risk – this is how asset managers are looking at it. The net-zero journey has started – it

will be uncertain, it will be uneven, but it presents extraordinary opportunities and risks to every company,’ he said.

BlackRock, in its engagement with investee companies on ESG and sustainability issues, has been looking for better transparency – particularly where they are contributing significantly to greenhouse gas (GHG) emissions. Moreover, ‘better transparency’ has become a much more quantifiable concept, Mr Gill pointed

## ESG recommendations

The Institute’s CGC 2022 was unequivocal about the need for companies in Hong Kong to start preparing for tougher requirements relating to ESG and climate change. Amar Gill shared with the forum some practical recommendations on how this might be achieved. To be useful to investors, sustainability disclosures need to be about what companies are planning to do now and in the medium term, he said.

Moreover, BlackRock is translating these issues into votes. ‘In the last 12 months to June of this year, we voted against 234 companies for not giving climate disclosures aligned with the TCFD. That included withholding support for the re-election of 176 directors because we felt they were responsible and should be accountable for the failure to provide long-term investors like our clients the disclosures they need to better plan their financial futures,’ Mr Gill said.

Much of the focus on ESG standards has related to the listed company sector, but he added that Hong Kong should also develop a roadmap for unlisted companies. Listed companies are going to find it hard to deliver Scope 3 GHG emission disclosures if they can’t get such emissions data from unlisted companies and SMEs. A basic minimum, he suggested, would be to encourage SMEs to disclose their electricity consumption. This, as a starting point, would enable listed companies to have better access to information and data relating to their Scope 3 emissions.

Finally, irrespective of the regulatory requirements, Mr Gill emphasised the value of making sustainability issues a part of corporate strategy. One sign that this is not always the case is the frequency with which sustainability disclosures are confined to the sustainability report, or buried deep inside the annual report, rather than being up front in the CEO and Chairman statements.

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the modern language of  
business and finance  
”

Laurence Li SC JP, Chairman, Financial Services Development Council

out. BlackRock believes long-term investors benefit when disclosures are aligned with the Task Force on Climate-related Financial Disclosures (TCFD) framework, which is structured around four thematic areas: governance, strategy, risk management, and metrics and targets.

‘Metrics and targets’ have been receiving a lot of attention as the International Sustainability Standards Board (ISSB) is poised to release its sustainability-related disclosure standards to harmonise the metrics used by companies globally. Mr Gill welcomed this development and the determination of regulators in Hong Kong to align local standards with those of the ISSB.

‘The ISSB standards will require detailed metrics by sector and this data will make it easier for asset managers to compare how a company is doing against another company in the same sector in another market. This comparability is very important and I think that’s very promising in terms of getting companies to take sustainability much more seriously,’ he said. [CG](#)

## Director training – a focus on INEDs

### WHY?

Hearing from HKEX regulators, prominent directors including INEDs, as well as market practitioners, governance professionals to understand:

- Λ Director/INED's duties, functions and authority
- Λ How to respond to current governance issues, e.g. risk management, investor communications, conflicts of interest, ESG
- Λ Complex transactions that INEDs need to seek more information from management and/or professional advice
- Λ Enforcement

### FORMAT – Hybrid

A series of three director training sessions in **HKEX Connect Hall**, with limited physical attendance and live streaming for online participation.

<b>Session One</b> [Physical] / [Online]	<b>Understanding Director/INED's Duties</b>	<b>22 November 2022</b> (2.00pm to 4.00pm)
<b>Session Two</b> [Physical] / [Online]	<b>Tackling Current Governance and Regulatory Issues</b>	<b>17 February 2023</b> (4.00pm to 6.00pm)
<b>Session Three</b> [Physical] / [Online]	<b>Enforcement - Current Issues and Disciplinary Processes</b>	<b>17 March 2023</b> (4.00pm to 6.00pm)

### CPD ACCREDITATION

**HKCGI:** 2 ECPD points per session, **The Law Society of Hong Kong:** 2 CPD points

### ENQUIRIES

Please contact the Institute's Professional Development Section: 2881 6177, or email: [cpd@hkcg.org.hk](mailto:cpd@hkcg.org.hk).  
For details, please visit the Institute's website: [www.hkcg.org.hk](http://www.hkcg.org.hk).

#### Session One

##### You will learn:

- Λ What is corporate governance about?
- Λ Boardroom dynamics
- Λ Directors' duties, functions and authority
- Λ INED specific duties, roles and authority
- Λ INED's role in risk management, including ESG and climate-related risks and opportunities
- Λ Shareholder communications/ investor expectations

##### Speakers:

- Λ **Ms Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE)**  
*Past International President, The Chartered Governance Institute and Past President, HKCGI; Executive Director and Company Secretary, CK Hutchison Holdings Ltd*
- Λ **Ms Ellie Pang FCG HKFCG(PE)**  
*Chief Executive, HKCGI*
- Λ **Mr Ernest Lee FCG HKFCG(PE)**  
*President, HKCGI; Technical Partner, Deloitte China*
- Λ **Ms Gillian Meller FCG HKFCG(PE)**  
*Immediate Past President, HKCGI; Legal and Governance Director, MTR Corporation Ltd*
- Λ **Ms Katherine Ng**  
*Managing Director and Head of Policy and Secretariat Services, Listing Division, HKEX*
- Λ **Ms Teresa Ko JP BBS FCG HKFCG**  
*Senior Partner, Hong Kong and China Chairman, Freshfields Bruckhaus Deringer; Co-Vice Chair, IFRS Foundation*

(In alphabetical order)





## Session Two

### You will learn:

- ^ INED's oversight role in:
  - Internal control system
  - Connected transactions and major transactions
- ^ Conflicts of interest
- ^ When to seek information from management
- ^ When to seek professional advice

### Speakers:

- ^ **Ms Christine Kan**  
*Managing Director, Head of Listed Issuer Regulation, Listing Division, HKEX*
  - ^ **Mr David Simmonds FCG HKFCG**  
*Vice President and Chairman, Membership Committee, HKCGI; Chief Strategy, Sustainability & Governance Officer, CLP Holdings Ltd*
  - ^ **Mr Frank Yuen FCG HKFCG**  
*Group General Counsel and Head of Compliance, CK Hutchison Holdings Ltd*
  - ^ **Mr Joe Fan**  
*Vice President, Listed Issuer Regulation, Listing Division, HKEX*
  - ^ **Mr John MM Williamson FHKSI**  
*Independent Non-Executive Director, London Metal Exchange and Pacific Basin Shipping Limited; Chairman, UK Tote Group*
  - ^ **Ms Melissa Fung**  
*Risk Advisory Southern Region Lead Partner, Deloitte China*
- (In alphabetical order)*

## Session Three

### You will learn:

- ^ Disciplinary cases against INEDs
- ^ HKEX's disciplinary process
- ^ Latest case studies relating to INEDs
- ^ How to respond to disciplinary actions?
- ^ How to defend disciplinary actions?

### Speakers:

- ^ **Ms Candy Au**  
*Assistant Vice President, Enforcement, Listing Division, HKEX*
  - ^ **Mr Ernest Lee FCG HKFCG(PE)**  
*President, HKCGI; Technical Partner, Deloitte China*
  - ^ **Mr Jon Witts**  
*Senior Vice President, Head of Enforcement, Listing Division, HKEX*
  - ^ **Ms Julia Charlton**  
*Principal Partner, Charltons*
  - ^ **Dr Kelvin Wong SBS JP**  
*Chairman, Accounting and Financial Reporting Council*
  - ^ **Mr Mohan Datwani FCG HKFCG(PE)**  
*Deputy Chief Executive, HKCGI*
- (In alphabetical order)*

*Physical seats are limited while attendance is subject to the social distancing rules in place at the time of the session. The Institute reserves the right to change the above session, listed presenter(s) and time, if necessary.*

# Independent regulation



Dr Kelvin Wong SBS JP, Chairman of the Accounting and Financial Reporting Council (AFRC), talks to CGj about the goals of the AFRC as the independent regulator of the accounting profession in Hong Kong.

***Q: What was the primary purpose of launching Hong Kong's new regulatory regime for the accounting profession on 1 October 2022, and what has changed?***

'The initial perception may be that not much has changed. If you compare the new legislation with the previous Professional Accountant's Ordinance (PAO), there is no difference – the law, as of 1 October, will be the same as it used to be. It is as if the law has been carved out from the PAO and transferred into the Financial Reporting Council (Amendment) Ordinance.

This, however, does not reflect the intention and spirit of the reform, which is to ensure that the AFRC, as an independent regulator, will be the sole regulator of the whole accounting profession, not only of public interest entity (PIE) auditors. This includes all certified public accountants (CPAs) in Hong Kong. CPAs who wish to practise accounting by offering their services to the public, directly or through firms or companies, need to register with, and obtain their licences to practise from, the AFRC. The spirit of the reform was to earn public trust regarding the independence of the regulatory process.

The process of obtaining and renewing licences is vital. The AFRC may impose conditions in certain circumstances. Most applicants perform well, and for them only general conditions may be imposed during the licensing process. However, where we see gaps in competencies, or irregularities or misconduct, we may impose specific conditions on the licence applicant.

For example, we may impose additional CPD requirements on an individual or additional training programmes to address wider competency issues for a practice. We may impose a requirement for an independent monitoring report and/or a practising restriction if there are repeated irregularities or concerns about the adequacy of a firm's resources. If there is repeated serious misconduct, we will not shy away from imposing the ultimate sanction, through our disciplinary function, which is exclusion from practising.

The power to regulate licences to practice allows us to consolidate the experience of our statutory functions at different levels.

The outputs from our inspection, investigation and discipline functions are inputs to our licensing work. They enable us to consider whether licensed practitioners have the competence, ethics and resources to practice to the high standards expected of them and, if not, to impose specific conditions. They need to be fit and proper.

Ongoing training is also important for accountants to maintain the skills they need to practice in an increasingly complex and changing operating environment. We will work closely with the Hong Kong Institute of Certified Public Accountants (HKICPA) to ensure that its CPD programme is adequate/enough to maintain the competitiveness of practising accountants in the current environment.'

***Q: How do the reforms redefine the ambits of responsibility between the AFRC and the HKICPA?***

'Rewinding the clock back to 2019, the AFRC was purely an investigator – we had no inspection or disciplinary powers. We received complaints from the public and other regulators. We would investigate, prepare and deliver our reports to the HKICPA, which would follow up with its disciplinary process. Our international peers all had independent disciplinary powers. The perception of independence in the regulation of the accounting profession is critical to the confidence that users of financial reports have in the profession. The move

## Highlights

- there is an inherent contradiction in expecting auditors who a company employs to be independent of their paymaster in exercising their function
- public support of the work of the AFRC is essential, particularly the support of whistleblowers who may have access to vital evidence of misconduct
- company secretaries, INEDs, and internal and external auditors have been important to internal control and effective governance in Hong Kong

to give us independent inspection and disciplinary powers over listed entity auditors in 2019 was a significant first step towards independent regulation of the accounting profession. One of the key reasons for the changes introduced by the government from 1 October this year was to further align Hong Kong with the independent regulatory regimes of other international financial centres. These changes ensure that, going forward, the whole accounting profession falls within our independent regulatory remit.

All complaints now come to the AFRC. We assess each complaint received and investigate each pursuable complaint. If appropriate, our investigators refer their report to the Department of Discipline, which assesses whether there is enough evidence for disciplinary action. Their recommendation is then put forward to the AFRC board, where we decide on imposing disciplinary sanctions.

We also inspect auditors' internal quality controls and their audit working papers to assess the quality of their audits, whether the communications between the auditor and the audited entity's management and board were robust enough, and whether all key management assumptions and judgements in preparing the financial statements were adequately tested and objectively evaluated by the auditor. We issued our second inspection report (2021 Annual Inspection Report) in June this year and big, medium, and small firms have all demonstrated improvement. So there is good evidence that firms are learning. Firms that consistently demonstrate appropriate professional scepticism and adherence to the standards will generally get the top rating of "1" for their engagement inspections. A rating of "2" is average, and "3" means there is a need for improvement. The inspection department will refer firms that get a rating of "4" for investigation.'

**Q: What has been the impact of your whistleblowing policy launched in December 2021, and should companies tighten up their processes?**

'Public support of our work is essential, particularly the support of whistleblowers, who may have access to vital evidence of misconduct. We have already seen a more than doubling in whistleblower reports since we launched our policy in December 2021. Whistleblowers rely on the confidentiality of our whistleblowing system and it is important to ensure that members of the public in a position

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to blow the whistle understand that we will protect their identity. It is our duty to assess all complaints received, but the complaint must be legitimate if we are to pursue it. We make our decision to pursue based on the evidence provided to us. Therefore, a complaint based on personal motives that does not identify a legitimate irregularity, or does not provide objective grounds to investigate, would not be pursued.

We have been revamping our complaints platform on our website to ensure that complainants will find the process of filing a complaint straightforward. We have also recently released our complaint guidelines. The guidelines aim to share with the public general principles of an effective complaint – one that provides us with the information we need to pursue legitimate allegations of misconduct. For example, we will clarify that complainants need to be specific regarding their allegations and provide precise evidence that justifies further investigation. Without this, we may be unable to proceed further.'

**Q: What questions should board members without accounting or auditing experience be asking to ensure they get all the relevant information on the financials and risks of the business?**

'It is a requirement for boards of listed entities to have at least one audit committee member with accounting qualifications or equivalent. The crucial question is whether that professional accountancy knowledge is sufficient to discharge their role as an audit committee member or chair. It is also important that audit committee members have adequate business knowledge and experience to understand the complexity of the business in the current economic environment.

Take, for example, accounting for expected credit losses. It relies on making credit risk assessments of the counterparties of your receivables. Customers are not homogenous; some are highly creditworthy, some less so. Directors will not be involved in the detailed assessments. To understand and appropriately challenge management's conclusions and the work of their auditors, they will need to understand the key principles of the accounting requirements and how salient factors in the current environment, such as changes in interest rates, may be impacting the creditworthiness of their customers in different industries. This is complicated, but independent non-executive directors (INEDs) should be able to understand the relevant issues and identify relevant points on which to challenge management and their auditors.

The role of The Hong Kong Institute of Directors (HKIoD) is to ensure that company directors, including INEDs, are technically competent and updated. A minimum would be directors' training, but this is only the beginning. The test is

whether they can identify the issues, understand managers' proposals and raise relevant issues.

In Hong Kong, the Companies Ordinance establishes directors' duties on two levels. All directors must have a general understanding of accounting principles to perform their general duties. If they are an accountant by training, there are higher expectations of their duty and, if there is a problem with the accounts, they would be subject to harsher disciplinary action.'

**Q: Do you have any advice for governance professionals?**

'I believe that members of HKCGI are pivotal as they are partners in the quality financial reporting process. Over the past two decades, stakeholders including company secretaries, INEDs, and internal and external auditors have been important to internal control and effective governance in Hong Kong. Still, they are not as well respected as they should be. They are all in charge of oversight and assume significant public interest responsibility, but listed companies

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generally have not instilled the necessary culture that is conducive to promoting the effectiveness of their functions.

For example, I have had mixed experience with internal auditors when chairing audit committee meetings. The internal auditor would sit next to the CEO and, when I ask for the audit plan for the next three years ranked by risk level, he or she will peep at the CEO as if seeking affirmation of whether to answer my question or not.

And who is the external auditor serving? There is an inherent contradiction in expecting auditors employed by a company to be independent of their paymaster in exercising their function. They are faced with an inherent dilemma between upholding the public interest while bearing in mind that both they and the company they are auditing are seeking to make profit. Only on rare occasions might they believe that the client is a culprit. They may know it is right to challenge the company's management or board, or to become a whistleblower, but if they succumb to self-interest, they may choose to be submissive and absorb more risk.

As for INEDs, we have both lazy directors and busy directors, of which I think the former is the worse. If you are too busy, you may sometimes not draw good conclusions, but if you are lazy, you may bring no value in any circumstances. It is important for listed companies to have competent and responsible INEDs to perform the oversight function effectively.

Listed companies should foster a good culture of giving enough respect to company secretaries, INEDs and internal and external auditors. How can we nurture such a culture? Even after decades of observation, I am still in search of the most effective way to do so.'

***Q: As Chairman of the AFRC, you have been an integral part of the new regulatory regime for the accounting profession. What led you to this crucial government appointment?***

'My full-time work has been with COSCO, a shipping group listed in Hong Kong since 1994. Along with my business career, I developed a desire to serve the community. My experience has been in business, finance, capital markets and corporate governance. In 1996, I became a member of the HKIoD, which promotes good corporate governance among

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**I believe that members of HKCGI are pivotal as they are partners in the quality financial reporting process**

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listed entities, and I served as the HKIoD Chairman between 2007 and 2013. Gradually I developed a keen interest in how corporate governance is practised in different contexts and platforms. I have tried to walk the talk by ensuring that my company has a reliable internal control system of corporate governance that inspires trust and confidence.

I spent a lot of time engaging with the HKIoD, including training. Our pet project was the Directors of the Year Award, where we select practising directors who have demonstrated a track record of promoting corporate governance.

I have also served on the Listing Committee of The Stock Exchange of Hong Kong for six years, during which time I assessed IPO applications and proposed new policies and listing rules, which may further strengthen the corporate governance regime of listed entities and help promote Hong Kong as an international financial centre.

These were part-time public services. I then moved to the Securities and Futures Commission, serving as an INED for another six years. We implemented measures to ensure licensees and brokers are held responsible for performing and discharging their duties. The launch of the Manager in Charge regime, for example, meant that we could go after the licensee if there was anything wrong with the licensee. They would need to surrender the names, the hierarchy and the reporting accountability. This was a new approach to regulating brokerage industries and the investment community.

With the AFRC, I served initially as Council member and was appointed Chairman in December 2018.'

**Sharan Gill**

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



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# Changes to BVI company law

Leon Mao, Head of Advisory, Vistra North Asia, outlines 10 things that corporate governance professionals need to know about key changes to British Virgin Islands (BVI) company law and regulations.

Recently, the BVI government enacted key changes to the jurisdiction's company laws and regulations. The BVI Business Companies (Amendment) Act 2022 and the BVI Business Companies (Amendment) Regulations 2022 will take effect on 1 January 2023. In this update we apply a corporate administrator's perspective to review the key changes, and assess required actions that should be considered towards ensuring that BVI entities are fully compliant with the new regime.

## How will the striking-off system change in the BVI?

Current laws provide that a BVI company that is struck off the Register of Companies (Register), usually as a result of failing to pay annual fees, should remain struck off for a continuous period of seven years before it is formally dissolved. During this period, the company will retain its legal status, and can incur liabilities, unless it is brought back into good standing through payment of outstanding fees and any penalties.

Administrators should note that under the new regime the seven-year period before dissolution will be

abolished for struck-off companies. From 1 January 2023, all newly struck-off companies will be dissolved immediately upon publication of the notice of striking off by the Registrar of Corporate Affairs (Registrar), which is expected to occur six months after the licence fee deadline.

Keynotes are that this creates a new and urgent time frame for the management of BVI companies. In the future, careful attention will need to be applied to payment of annual licence fees, to the effect that delayed payments should be avoided where possible. Further, regarding any companies that are currently struck off, urgent actions will be required to bring them back into good standing.

## What happens to assets in struck-off companies?

In view of the above scenario, where striking off and fast-track dissolution will be happening on an accelerated basis (that is, six months rather than seven years), it will be very easy for a BVI company to be liquidated.

Administrators should be aware of the positional change. Fast-track dissolution will potentially affect assets held



under a BVI company, whether they be shares, real estate or general assets. Their status will become uncertain in a dissolution. Any assets that were not distributed before dissolution will be regarded as undistributed assets that will ultimately be vested in the 'Crown'. The BVI is a Crown Dependency of the UK, and this means that the dissolved company's assets will be held on a *bona vacantia* basis by the BVI Government, as the Crown. This may be a distressing outcome, even if for a short-term period, to many owners of dissolved BVI companies.

## How will dissolved companies be restored?

With the new striking-off regime, a simple fast-track restoration will be introduced to facilitate restoration of companies that have been struck off and dissolved. This new process will be additional to the existing court procedure.

Under the new restoration process, companies will be restored by a simple





application to the Registrar without the need for a court application, as long as such application is made within five years from the dissolution date.

Regarding the indicia which must be met for the restoration process, these would include the following:

- at the date of dissolution, the BVI company must have been carrying on business, or in operation
- a 'licensed person' needs to agree to act as registered agent for the company, and confirm that the corporate records have been updated in compliance with anti-money laundering regulations. The registered agent for the restored company must be in a position to declare that all information they hold is updated and compliant with BVI law
- the company is required to pay a restoration fee, as well as any outstanding fees or penalties, and

- the Registrar needs to be satisfied that it would be 'fair and reasonable' for the company to be restored.

The Crown should also be notified if any property of the BVI company has vested *bona vacantia* in the Crown.

#### What are the changes to the requirements for liquidators in solvent liquidations?

At present, the qualification and residency requirements for liquidators of a solvent entity are very simple. A person is eligible

for appointment as a voluntary liquidator if they are not disqualified from acting on the grounds of being in personal bankruptcy, a minor, a disqualified director or a person who is or was a director or in a senior management position of responsibility within the previous two years. Currently, there is no BVI residence or nexus requirement.

Administrators should note that the new regime demands experience requirements and the hiring of BVI resident liquidators. Liquidators of BVI companies will require

### Highlights

- fast-track dissolution for newly struck-off companies will potentially affect assets held under a BVI company
- the new regime introduces additional accounting and record-keeping obligations, and removes the bearer share concept as a feature of BVI law
- the new laws and regulations outline a framework whereby the BVI may in future introduce a public register of persons with significant control

both professional qualifications and liquidation experience to be appointed. Further, prior to appointment they should have physically lived in the BVI for at least 180 days (either continuously or in aggregate). Where a local nexus with Hong Kong or the Mainland is required, it would be logical for language, ease of records review and assets collation to appoint joint liquidators, one of whom can meet BVI resident liquidator requirements and the other onshore.

There will be a transitional arrangement such that voluntary liquidators appointed before 1 January 2023 who do not meet the residence requirements will be permitted to continue to act until the relevant liquidation ends.

#### What will happen to bearer shares?

As administrators would be aware, bearer shares are shares represented by a certificate which states that the bearer of the certificate is the owner of the share. Well used as a method to protect ultimate beneficial ownership details before 2000, bearer shares have been progressively phased out as a method of company ownership.

This phase out began in the early 2000s with higher transparency achieved through:

- abolishing the issuance of new bearer shares
- placing restrictions on the mobility of bearer shares
- requiring specific obligations as to record-keeping

However, bearer shares continued to be a feature of the BVI (and other offshore) corporate frameworks. Administrators are advised to plan for the abolition and removal of the bearer share concept as a feature of BVI law. This end-game process will occur as of 1 July 2023 when all existing bearer shares will be deemed converted to registered shares. Necessary arrangements might include restatement of the register of members, issuance of share certificates and the termination of current custodian arrangements for the holding of the bearer shares.

#### How will the obligations for financial records and accounts change?

Administrators will need to prepare their BVI companies for greater transparency with new requirements for financial records and accounts – as well as an annual return requirement (see below).

Previously, the BVI approach avoided strict reporting requirements that might involve the need to prepare accounting records and financial statements. The BVI preferred a simplified treatment emphasising the maintenance of records that showed a true and accurate status of a company's affairs. Financial records and the supporting documents (including bank statements, invoices and agreements), which verify the entity's transactions for a five-year period from the date of the transaction, should be maintained.

#### What are the new requirements for an annual return for BVI entities?

Aside from emphasising accounting record-keeping obligations, the new regime introduces additional

obligations providing that, except for specific and limited situations, BVI companies will be required to file with the Registered Agent an annual return containing the necessary financial information. Key points to note are set out below.

- The annual return will need to be prepared for each financial year and filed with the Registered Agent within nine months following the end of the financial year to which it relates.
- Details of the format of the annual return have not been issued, but are expected to comprise a simple balance sheet and a profit and loss statement. There are no audit requirements.
- A Registered Agent will be obliged to inform the Registrar if he/she has not received an annual return within 30 days of the due date.
- Annual return details held by the Registered Agent will not be made public and in general there will not be an obligation to file with any BVI regulator.

As exemptions to the rule, companies that already file tax returns in the BVI, certain BVI regulated entities and listed companies whose financial records would already be transparent will not be required to file an annual return.

#### Will directors' names become publicly available?

Administrators should be aware that under the new BVI regime,

“  
**the changes to BVI company law and regulations are significant and structural, and come from the perspective that the jurisdiction is intent on adopting best practice and addressing international standards**  
 ”

and towards meeting international compliance standards, the names of company directors will be made publicly available through application to the Registrar using the VIRRGIN online filing platform of the BVI Financial Services Commission. We recommend as a practical measure going forward that the Register of Directors filings should always be correct and up to date.

The trend towards transparency has been ongoing since 2016 when all companies became obliged to file an updated Register of Directors with the Registrar, which was held on a private basis. The new changes go further, with the names of directors becoming publicly available – here, it should be clarified that searches will only be applied against a company name, rather than against a director’s name. Information from the Register of Directors, including date of birth, addresses or former directors’ names, will remain private.

It is further noted that only registered users of VIRRGIN will be eligible to make such applications.

In all of this, administrators should be taking special care regarding any entities that have not kept their register up to date, or that are

otherwise not in compliance with existing obligations. In such cases, the position should be rectified as soon as possible.

**What should we know about the ‘register of persons with significant control’?**

The new laws and regulations outline a framework whereby the BVI may in future introduce a public register of persons with significant control. This aligns with previous commitments by the BVI Government to introduce such a beneficial ownership register by 2023, subject to certain qualifications including that such registers become the international norm.

This area remains a wait-and-see, and it is important to note that no changes are expected to come into force on 1 January 2023. In the present form, the laws provide that the BVI Government may, through subsequent regulations, specify the requirements for the format of such registers. There is also provision that the regulations may contain exemptions or restrict access to an individual’s personal data under certain circumstances.

**What actions should administrators be taking now?**

BVI companies have long been a part of the Hong Kong corporate landscape

and are an integral part of every administrator’s portfolio. The changes to BVI company law and regulations are significant and structural, and come from the perspective that the jurisdiction is intent on adopting best practice and addressing international standards. There will also be fine tuning of process changes, including registered agent resignation (resignation notice period reduced to 60 days) and redomiciliation (transparency in the event of redomicile, including advertisement and creditors/members notice requirements).

Given that the changes are imminent, we would recommend that administrators familiarise themselves with the changes and undertake forward preparations at this stage so that BVI companies in their portfolio are ready to comply with the new laws.

**Leon Mao, Head of Advisory**  
*Vistra North Asia*

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# Company law guidance notes

## Share buy-backs and convening a meeting when shareholders are in dispute

CGj overviews two guidance notes issued by the Institute's Company Law Interest Group – on share repurchases and calling a general meeting when there are disputing shareholders – which, while covering very different topics, are of equal relevance to the governance professional.



As an integral part of the Institute's thought leadership and professional development initiatives, its seven Interest Groups issue a wide range of guidance notes to help the governance professional stay fully apprised of all the latest developments in various aspects of corporate governance.

In its sixth guidance note, published in March 2022, the Institute's Company Law Interest Group seeks to unravel the complexities of the Companies Ordinance (Cap 622) in relation to share repurchases by a Hong Kong company, while its seventh guidance note, issued in June 2022, provides clear advice on convening a general meeting when shareholders are in dispute.

### Share repurchase by a Hong Kong company

The topic of the sixth guidance note – summarising the requirements for carrying out a share repurchase (also known as a 'share buy-back') under Cap 622 and the regulatory aspects of implementing a share repurchase – is a valuable reference for governance professionals, directors and senior managers when considering whether or not to take this step.

#### Reasons for share repurchase

The guidance note lists six distinct reasons why a share repurchase might be considered:

- to return surplus cash to shareholders, which is one of the principal reasons for a listed company to purchase its shares
- to increase earnings per share or net assets per share
- to facilitate an exit route of a shareholder from a company via a restricted share transfer
- to purchase shares issued to an employee under an employee incentive scheme when that employee ceases to be employed by the company
- to adjust the level of debt to equity, and thus increase the company's gearing, and
- to give shareholders an exit route in the event of an intended delisting.

#### Principles of share buy-backs

Under Cap 622, share buy-backs are subject to restrictions in the company's articles of association, and must not result in there being no shareholder of the company holding shares other than redeemable shares. In addition, any shares bought back must be fully paid shares, must be paid for on buy-back and must be cancelled at that time.

### Highlights

- under Cap 622, all companies, whether listed or not, can now fund buy-backs out of capital, regardless of whether there are sufficient distributable profits or proceeds of a fresh issue, except in the case of a listed company opting to repurchase its own shares on a recognised stock market or approved stock exchange
- when convening a general meeting, the governance professional will need to comply with specific provisions in the Companies Ordinance, as well as refer to the company's own articles of association and other relevant documents
- the governance professional needs to be familiar with the statutory rules governing the notice required of a general meeting, including the period of notice, how it is served and who should receive such notice

#### Requirements for listed companies

The Companies Ordinance delineates the requirements for share repurchases by a Hong Kong listed company, which is also subject to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Ltd (Listing Rules), the Takeovers Code and the Share Buy-Back Code. The requirements under the Companies Ordinance are as follows:

1. **By way of a general offer.** As the guidance note explains, repurchase of shares by way of a general offer is the most complex and regulated method. It needs to be pre-approved by a shareholders' ordinary resolution. If 90% of the shareholders accept the offer, resulting in the compulsory disposal of shares of the remaining shareholders, then such an offer must be authorised by special resolution (at which no non-tendering shareholder may vote) and an independent investment adviser

must be appointed to advise the shareholders affected by the compulsory disposal on the merits of the offer, backed up by specific documentation.

**2. On a recognised stock market or approved stock exchange.**

This is the most common and straightforward form of share repurchase. However, a listed company opting for this route is prohibited from making a payment out of capital.

**3. Under contract authorised in advance.**

This off-market repurchase is a private contract between the company and one or more shareholders, and is not conducted on a stock market. The guidance note explains the precise terms and conditions of such a share buy-back scenario.

**Requirements for unlisted companies**

An unlisted company can buy back its own shares only under a contract that is authorised in advance by special resolution. Detailed provisions regulating the disclosures of a proposed contract, and what documentation is required if a special resolution is proposed at a general meeting, are prescribed under the Companies Ordinance. The resolution will be invalidated if the votes of an interested shareholder result in the passing of the resolution.

**Share repurchase payment methods**

Under the current Companies Ordinance, the traditional position originally established under the old Cap 32 that share buy-backs must generally be financed out of

distributable profits or the proceeds of the new issue of shares has been retained. However, a key change in Cap 622 is that now all companies, whether listed or not, can fund buy-backs out of capital, subject to a solvency test, regardless of whether there are sufficient distributable profits or proceeds of a fresh issue. The only exception to this, as mentioned above, is for a listed company opting to repurchase its own shares on a recognised stock market or approved stock exchange.

Companies wishing to make a payment out of capital to fund a share buy-back must adhere to the following procedures.

- **Solvency statement:** all directors must sign a solvency statement in a specified form.
- **Special resolution:** payment out of capital must be approved via a shareholders' special resolution, which must be passed within 15 days after the date of the solvency statement.
- **Notice of payment out of capital and inspection of documents:** the company must publish a notice about the payment out of capital in the HKSAR Government Gazette (published every Friday) within a defined time frame, plus a notice in both Chinese and English newspapers or give written notice to all creditors of the company, also within a defined time frame. The special resolution and the solvency statement must be available for inspection by shareholders and creditors for five weeks.

- **Application to the court by shareholders or creditors:** within five weeks of the date on which the special resolution is passed, any creditor or non-approving shareholder may apply to the court for cancellation of the resolution. For any such application, the company must inform the Companies Registry within seven days from the date of application. The court has the right to confirm or cancel the special resolution for payment out of capital as it thinks fit.
- **Registration of court order:** the company must deliver an office copy of any court order to the Companies Registry within 15 days after the court has made its order.
- **Timing for payment out of capital:** if there is no impediment to doing so, payment out of capital and the share buy-back must be made between five and seven weeks after the date of the special resolution.

**Share buy-back out of capital by a private company**

Private companies wishing to repurchase shares out of capital must fulfil certain requirements. The guidance note sets out these requirements and presents a handy step-by-step guide for proper implementation.

**Convening general meetings with disputing shareholders**

The seventh guidance note issued by the Institute's Company Law Interest Group is designed to assist

governance professionals who find themselves in the unfortunate position of having to deal with disputing shareholders, notably with regard to the convening of general meetings by Hong Kong incorporated companies. The guidance note also provides useful references to the applicable statutory rules and procedures under the Companies Ordinance, which must be fully complied with. Furthermore, to enhance the knowledge and understanding of those dealing with such a situation, several real-life case studies relating to a disputing member's requisition to propose a resolution to remove a director are discussed.

### Convening a general meeting

As this guidance note explains, when convening a general meeting, the governance professional will need 'to get back to basics', particularly when shareholders are in dispute. Part 12, Division 1, Subdivision 4 (notably sections 565 to 570) of the Companies Ordinance contains everything necessary for understanding the statutory rules and procedures for convening a general meeting, which could be called by 'different camps of a dispute, seeking to oust the other's directors'. The governance professional will not only need to refer to these specific provisions for compliance purposes, but will also need to refer to the company's own articles of association and other relevant documents, such as the shareholders' agreement and service contract where removal of a director is involved.

The guidance notes further advises that alternative solutions – such as negotiation, mediation or buyout

– should be put forward for consideration, in the event that a dispute cannot be resolved at a general meeting, as being simpler and less costly than bringing an action to court.

A general meeting can be called by the directors, in which case the governance professional must have proper authorisation from the board before sending out a notice to call a general meeting, or by members representing at least 5% of the total voting rights by way of a request to the company.

**Directors' duty on members' request to call a general meeting.** The guidance note reminds governance professionals that, if the directors receive a request from a member to call a general meeting, they need to advise the directors that they must convene a general meeting – except in very particular circumstances – within 21 days after the request is received, and that the meeting must be held on a date not more than 28 days after the date of the notice convening the meeting.

**Members' rights to convene a general meeting consequent on directors' failure.** Further, the guidance note reminds the governance professional of the need to advise the directors that, should they fail to convene a general meeting:

- the members who requested the general meeting, or any of them representing more than 50% of their total voting rights (that is, at least 2.5% of the total voting rights of all members) may themselves call a meeting, and

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any shares bought back must be fully paid shares, must be paid for on buy-back and must be cancelled at that time  
”

- the general meeting must be called for a date not more than three months after the date on which the directors become subject to the requirement to call a meeting.

The necessary quorum, as well as the timeline for holding a general meeting requested by members, is detailed in the guidance note, which states that 'if the directors fail to convene a general meeting upon members' requisition, and the members forthwith proceed to convene a general meeting, the proposed resolution may be validly passed at a general meeting held at least 38 days from the date of the member's request, up to a maximum of three months'.

**Power of the court to order a general meeting.** In situations where it is impractical to call a general meeting in the usual way, or to conduct the meeting in the manner prescribed by the company's articles or the Companies Ordinance, the court may, either of its own motion or on application by a director or member of a company, order a general meeting to be held. However, as the guidance note reminds us, 'the governance professional should note that the court is generally reluctant to interfere in a

company's decision-making process unless, in the circumstances, it is impracticable to call a meeting'.

### Notice of a general meeting

The rules governing the notice required of a general meeting are defined in Part 12, Division 1, Subdivision 5 of the Companies Ordinance. The governance professional needs to be familiar with these rules, notably sections 571 to 575 and section 578, as these are particularly relevant in a dispute situation.

**Period of notice.** Under the Companies Ordinance, in the case of a limited company, a general meeting, other than an adjourned meeting, a period of 21 days' notice must be given for an annual general meeting and 14 days for all other meetings, while for an unlimited company, seven days' notice is required. However, if a company's articles require a longer notice period, then that takes precedence. The required number of days' notice must be clear calendar days, exclusive of the day of service and the day of the meeting. For a listed company, members must be given reasonable written notice, which is generally assumed to be 21 days for an annual general meeting and 14 days for other general meetings.

**Service of notice.** Notice of a general meeting must be provided in hard copy or electronic form, or by uploading the notice to a website, or a combination of both. If a company chooses the website option, then members have to be informed of the availability of the notice, which must be available throughout the period from the date of notification to the conclusion of the

meeting. A listed company must, in addition, adhere to the Listing Rules when publishing a notice of a general meeting, simultaneously dispatching a circular to its shareholders and providing them with any relevant information not less than 10 business days (on which a recognised stock market is open) before the date of the meeting. Where there is a dispute situation between shareholders, it would be prudent for a governance professional to send the notice of the meeting to members by both email and post to their registered address.

**Who is entitled to receive notice.** Under the Companies Ordinance, notice of a general meeting must be provided to every director and to every member of the company who is entitled to attend and vote, except in the case of a listed company where such notice must also be given to every member not entitled to vote at the meeting. If notice of a general meeting, or any other document relating to the meeting, is required to be given to a member, the company must simultaneously give a copy to its auditor/s.

### Special notice

The guidance note also outlines when special notice is required to be given of a resolution, and explains that notice of the intention to move the resolution must be given to the company at least 28 days before the meeting at which the resolution is moved, without which the resolution is not effective. In this, as in all other issues related to convening a general meeting, governance professionals are strongly advised to familiarise themselves with all statutory rules and procedures laid down under the Companies

Ordinance, as well as any provisions under the company's articles and other relevant documents. [CC](#)

*The guidance notes reviewed in this article are available under the Thought Leadership section of the Institute's website: [www.hkcg.org.hk](http://www.hkcg.org.hk).*

## Credits

The Institute would like to thank the members of its Company Law Interest Group: Benita Yu FCG HKFCG (Chairman), Angela Mak FCG HKFCG, Cathy Yu FCG HKFCG, Loretta Chan FCG HKFCG, Caron Lee FCG HKFCG and Wendy Yung FCG HKFCG. Gratitude is expressed to Benita Yu FCG HKFCG, Partner, Slaughter and May, as author of the sixth guidance note, with the contribution of April Chan FCG HKFCG, Past President and Chairman, Institute Technical Consultation Panel, and Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive; and to Cathy Yu FCG HKFCG, Head of Company Secretarial Department, King & Wood Mallesons, as author of the seventh guidance note in this series.

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



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# Carried interest tax concessions for fund managers

Introduction to tax relief on Hong Kong's limited partnership funds and open-ended fund companies



Henry Kwong, Tax Partner, Cheng & Cheng Taxation Services Ltd, analyses the latest guidance from Hong Kong's Inland Revenue Department (IRD) on the unified funds tax exemption regime and carried interest tax concessions.

With the aim of upholding Hong Kong's position as 'a premier international asset and wealth management centre' in the face of fiercer competition, the HKSAR Government introduced a limited partnership fund (LPF) regime and relaxed the requirements for open-ended fund companies (OFCs). To support the development of the fund industry, the government has also introduced a tax exemption regime for funds, as well as tax concessions on carried interest (performance fee). Together with the proposed tax concession for family offices, these tax incentives will provide tremendous support to Hong Kong fund managers and will attract global asset managers to relocate their Asian centres to Hong Kong.

The Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Ordinance 2019, which came into effect on 1 April 2019, seeks to exempt most type of funds from Hong Kong profits tax. The unified funds exemption (UFE) regime provides a unified tax treatment for all funds operating in Hong Kong. In addition, investment managers of private equity funds can enjoy a 0% tax rate on qualified carried interest for both Hong Kong profits tax and salaries tax, when the fund is certified by the Hong Kong Monetary Authority (HKMA).

In this article we will mainly walk you through the basic features of an LPF and an OFC, and outline how the

fund manager and the fund can take advantage of the above tax relief.

### Common fund structures in Hong Kong

Below, we look at the different features an LPF and an OFC. For a snapshot of the major differences between the two types of fund, see Table 1.

#### LPF

In the hopes of attracting private investment funds to set up and register in Hong Kong, and ultimately facilitating the channelling of capital into corporates in the Greater Bay Area, the LPF regime was established in August 2020. This is a fund structured in the form of a limited partnership, which will be used for the purpose of managing investments for the benefit of its investors. A fund qualifying for registration under the LPF regime must be constituted by one general partner who has unlimited liability in respect

of the debts and liabilities of the fund, and at least one limited partner with limited liability.

#### OFC

An OFC is an open-ended collective investment scheme that was commonly adopted in July 2018. Structured in corporate form with limited liability and variable share capital, an OFC mainly serves as an investment fund vehicle and manages investments for the benefit of its shareholders. OFCs are therefore not designed to engage in activities such as the commercial trade and business undertaken by conventional companies that are incorporated under the Companies Ordinance (Cap 622).

#### Attractive government subsidy for OFCs

The features of an OFC are similar to those of the segregated portfolio

## Highlights

- to support the development of the fund industry in Hong Kong, and to preserve its status as a global asset and wealth management centre, the government has introduced a tax exemption regime for funds, as well as concessions on carried interest tax
- fund managers of limited partnership funds and open-ended fund companies (OFC) can take advantage of tax relief concessions and, in the case of an OFC, an attractive government subsidy
- as of May 2021, eligible carried interest arising from in-scope transactions received by qualifying recipients for the provision of investment management services to qualifying payers is now exempt from tax in Hong Kong

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**these tax incentives will provide tremendous support to Hong Kong fund managers and will attract global asset managers to relocate their Asian centres to Hong Kong**  
 ”

company as used in the Cayman Islands. In order to enhance the competitiveness of the OFC, an attractive subsidy is now offered to fund managers for the set-up of OFCs or for the re-domiciling of offshore funds to Hong Kong. The subsidy offers a rebate of 70% on all professional expenses that are paid to Hong Kong-based service providers (for example, legal fees for the preparation of incorporation, including any fees incurred in drafting legal documents or offering documents). The tax rebate is subject to a cap of HK\$1 million per OFC. Each investment manager can claim a subsidy on a maximum of three OFCs.

It is worthwhile noting that the tax advice in relation to the set-up of an OFC or the re-domiciling of foreign funds are also eligible for the 70% rebate. Investment managers are encouraged to study carefully the Hong Kong tax implications (including but not limited to the availability of the UFE and carried income tax concessions, as well as the traditional capital gains claim). A review of the fund's private placement memorandum is also often important, as it is a public document providing a significant amount of information on the investment strategy of the fund.

Table 1: Major differences between LPF and OFC

	LPF	OFC
Investment vehicle	<b>Closed-ended</b> More suitable for a private equity fund	<b>Open-ended</b> More suitable for a hedge fund or a listed securities fund
Fund set-up costs	<b>Lower</b>	<b>Higher, but a government subsidy is available</b>
Establishment of subfunds	<b>Not allowed</b>	<b>Allowed</b> Liability is separated between independent subfunds
Separate legal liability	<b>No</b> General partners have unlimited liability while limited partners have limited liability	<b>Yes</b>
Requirement for an investment manager licensed or registered with the Securities and Futures Commission (SFC) for carrying on Type 9 (asset management) regulated activity	<b>No</b>	<b>Yes</b>
Custodian	<b>Not mandatory</b>	<b>Legally required</b>
Time required for processing an application	<b>Shorter</b> (approximately 2–3 weeks)	<b>Longer</b> (approximately 1.5–2 months)
Appointment of external auditor	<b>Yes</b>	<b>Yes</b>
Qualified for UFE	<b>Yes</b>	<b>Yes</b>

**Table 2: Key requirements for unified fund exemption qualification**

Previous requirements	Amendments made in the 2019 Ordinance (unified fund exemption)
The fund has to be non-resident in Hong Kong	Abolished
Only specified transactions are exempted	Amended
Specified persons or qualified investment fund	No change
The fund does not carry out any other trade, profession or business in Hong Kong	No change

### UFE regime

The IRD's Departmental Interpretation and Practice Note (DIPN) 61 published in June 2020 provided clarification on its view on the UFE regime for both Hong Kong and non-Hong Kong domiciled funds. For more details, please refer to our article – Offshore fund exemption regime for Hong Kong-domiciled funds – published in the August 2020 edition of this journal.

A summary of the key requirements for qualification under the UFE regime is provided in Table 2.

It is worth noting that Hong Kong-domiciled funds are now also eligible to enjoy the UFE, as the non-resident requirement has been abolished. Also, there is no requirement for the directors of the fund to carry out business activities outside Hong Kong.

### Specified transactions

Specified transactions include, amongst others, transactions in public securities, private company shares, futures contracts and foreign currencies. Further clarification is required on whether transactions in

cryptocurrencies and other virtual assets are specified transactions.

For transactions in private companies, it is common practice for a fund to set up one or more special purpose entities (SPEs) to hold the investments in the investee private company.

**SPEs.** An SPE must be established for the sole purpose of holding and administering a private company and is not allowed to carry out any other trade or activity after incorporation.

**Private companies.** While a fund exemption has been extended to private equity funds, additional requirements are imposed on the portfolio company. First and foremost is the 10% threshold imposed on investment in Hong Kong immovable property, whereby the aggregate market value of the holding of immovable properties in Hong Kong cannot account for more than 10% of the total asset value of the respective company.

In addition to the immovable property test, one of the following additional requirements has to be satisfied:

- the holding period test: the fund has to hold the private company for at least two years
- the control test: the fund does not have a controlling shareholding of the private company, or
- the short-term asset test: no more than 50% of the market value of the assets of the private companies are short-term assets (that is, the holding period of the relevant assets is less than three years).

### Anti-round tripping provisions

Even when a fund qualifies under the UFE, a deemed taxable income will be imposed on Hong Kong investors of the fund on the exempted assessable profits under the following situations:

- if the Hong Kong investors jointly hold 30% or more of the beneficial interest in the fund, or
- if Hong Kong investors who are associated with the fund hold any beneficial interest in the fund.

### Carried interest tax concessions

Under the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Ordinance 2021, which took effect in May 2021, eligible carried interest arising from in-scope transactions received by qualifying recipients for the provision of investment management services to qualifying payers is exempt from tax in Hong Kong. Tax concessions are available for eligible carried interest received or accrued on or after 1 April 2020.

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**Hong Kong–domiciled funds are now also eligible to enjoy the [united funds exemption], as the non-resident requirement has been abolished**  
 ”



To distinguish from annual asset management fees, a tax concession is only available to profit-related service fees (that is, carried interest). Generally speaking, only profits above the hurdle rate (benchmark) are expected to generate carried interest for the investment managers. Carried interest distributed by the fund management entity to the individual fund manager is also exempt from Hong Kong salaries tax.

Another essential prerequisite is that ‘in-scope transactions’ refers to those of private equity funds that have already been exempt from profits tax under the UFE. More importantly, the private equity fund has to be certified by the HKMA. An external auditor report is required to be included in the application of certification to the HKMA.

On 31 August 2022, the HKMA released its guidelines on the auditor’s report for application for certification of funds. To apply for certification, a fund has to engage a certified public accountant (practising) to prepare an agreed-upon procedures report in accordance with HKSRS 4400 (Revised). A detailed review of the structure and investment activities of the fund is expected in the agreed-upon procedures report.

Last but not least, the fund manager is also required to fulfil the adequacy test in every relevant year of assessment, as set out below:

- average number of full-time qualified employees in Hong Kong:  $\geq 2$ , and
- annual operating expenditure incurred in Hong Kong:  $\geq$  HK\$2 million (US\$260,000).

**Last piece of advice**

While the Hong Kong government is dedicated to promoting both the asset management industry in Hong Kong and Hong Kong–domiciled funds, the IRD has expressed concerns about the potential abuse of fund exemptions, especially on short-term trading of Hong Kong immovable properties.

It is therefore important for the fund administrator to pay close attention to all the above requirements, as failure to comply with any one of the requirements, even for a short period of time during the year, may render the fund ineligible to enjoy the exemption benefits. In order to enjoy the 70% rebate on professional fees for an OFC, you are encouraged to turn to your tax advisor at the initial set-up stage of the fund.

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## Professional Development

### Seminars: October 2022

5 October

#### Competition law enforcement: key cases, recent trends and director disqualification orders

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

*Speakers:* Natalie Yeung, Partner, and Alexander Lee, Counsel, Slaughter and May

10 October

#### CSP foundation training series: significant controllers register

*Speaker:* YT Soon FCG HKFCG(PE)

12 October

#### Compliance updates for tax-exempted charitable organisations

*Chair:* Susan Lo FCG HKFCG

*Speakers:* Wilson Cheng, Managing Partner, Tax Leader, Hong Kong & Macau, and Natalie Li, Manager, Tax Controversy Services practice, EY, Hong Kong

19 October

#### Latest development of limited partnership funds and open-ended fund companies



*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 & Fund Services, Vistra Corporate Services (HK) Ltd

*Speakers:* Jingjing Jiang, Partner and Head of Hong Kong Funds Practice, King & Wood Mallesons; and Vanessa Chan, Vice President, Hong Kong LPF Association

20 October

#### Cross-border insolvency in Hong Kong – recent legal developments

*Chair:* Terry Kan ACG HKACG, Partner, ShineWing Specialist Advisory Services Ltd

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

28 October

#### Company secretarial practical training series: non-Hong Kong company and dormant company



*Chair:* Carmen Lam FCG HKFCG, Senior Lecturer in Corporate Governance and Compliance, Hong Kong Metropolitan University

*Speaker:* Ricky Lai FCG HKFCG(PE), Company Secretary, China Renewable Energy Investment 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.hkcgj.org.hk](http://www.hkcgj.org.hk).

For enquiries, please contact the Institute's Professional Development Section: 2830 6011, or email: [cpd@hkcgj.org.hk](mailto:cpd@hkcgj.org.hk).



## ECPD forthcoming webinars

Date	Time	Topic	ECPD points
4 January 2023	4.00pm–5.30pm	Decoding startup investment and common governance issues of early stage companies	1.5
13 January 2023	4.00pm–5.30pm	Structured finance: using an orphan SPV	1.5
16 January 2023	6.45pm–8.15pm	Annual general meeting of Hong Kong private companies	1.5
17 January 2023	2.00pm–3.30pm	The transformative power of diversity: regulatory discussions and practical sharing	1.5

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

## Membership

### New Fellows

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

#### Kong Chi How, Johnson FCG HKFCG

Mr Kong is the Managing Director, Non-Assurance, of BDO Hong Kong Ltd and a Past President of the Hong Kong Institute of Certified Public Accountants. He has over 35 years of professional accounting experience. He specialises in financial investigation, forensic and litigation support, restructuring, and receivership and insolvency-related services.

Mr Kong leads the operation of all the BDO Non-Assurance services, including tax, risk advisory, corporate finance, restructuring and insolvency, litigation support, investigation and forensic accounting, business consulting, business services and outsourcing, and IT consulting services. In addition, as an International Liaison Partner, Mr Kong is in constant communication with many

BDO offices round the globe looking after the service needs of inbound and outbound BDO clients.

In view of his expertise and experience in accounting and non-assurance services, he regularly serves as director or member in many professional and public services, including as a non-executive director of the Securities and Futures Commission, Accounting Advisor to The Ministry of Finance of the People's Republic of China, a member of the Election Committee of the HKSAR Government and a member of the Operations Review Committee of the Independent Commission Against Corruption.

#### Wong Miu Sum, Catharine FCG HKFCG

Ms Wong is a Managing Director and Head of Share Registry & Issuer

Services of Tricor Services Ltd. Prior to joining Tricor, she was the Head of Depository and Nominee Services at HKEX, responsible for overseeing the daily operations and business development of all the depository, IPO and corporate action processes of HKEX. Highlights include implementation of the China Stock Connect, re-engineering key processes in the Central Clearing and Settlement System and leading the discussion on the Uncertificated Securities Market (USM) operation model.

Ms Wong has over 25 years of experience and has held various operations, client relations and business management positions in major international banks. She holds a bachelor's degree in commerce from The University of New South Wales,

## Membership (continued)

and a master's degree in applied finance from Macquarie University. She also holds professional qualifications as a member of CPA Australia.

Ms Wong is currently the Chairman of the Federation of Share Registrars Ltd (FSR) and a member of the USM Working Group led by the Joint Working Group, including the Securities and Futures Commission, HKEX and FSR.

### Wan Kok Leong FCG HKFCG

Partner, Head of Capital Market, Grandall Zimmern Law Firm

### New graduates

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

Chan Ching Man	Lam Tsui Yee	Po Ngai, Natalie
Chan Hoi Tung	Lam Yuen Wai	Tang Hoi Ki
Chan On Ying	Lee Sze Man, Ellen	Tang Wing Shan
Chan Wing Sum	Lee Wai Man	Tsang Chi Hong
Chang Jiaojiao	Leung Ka Wai	Tsui Ming Hay, Paul
Cheung Po Yi	Leung Kiu Bute, Gilbert	Wai Yuen Sze
Cheung Tze Ling	Leung Nga Laam	Wei Xin
Chiu Sik Fai	Ling Tsz Kei	Wong Chi Yi, Cynthia
Chu Ho Ling	Lo Yuen Ting	Wong Chun Kat
Du Ning	Long Yipeng	Wong Ka Wing
Fang Shaodong	Lu Jinyuan	Wong Po Tin
Ho Ka Yan	Ming Ka Chun	Wong Suet Ying
Ho Tin Wing	Mui Cheuk Yau, Cheryl	Xiao Yini
Ho Wai Wan, Vivien	Ngai Ka Po, Kimmy	Yu Ka Ki
Hong Wing Yan	Or Wa Shan	Yu Sze In, Selina
Hu Jui-shan	Pan Simei	Yu Zhoujie
Kwok Fong Yuen	Pang Ka Wing	Yuen Ho Sun

## Membership activities: October 2022

22 October  
Bowling fun day



## Forthcoming membership activities

Date	Time	Event
7 January 2023	1.00pm–2.30pm	Chinese New Year 3D greeting card workshop (session A)
7 January 2023	3.00pm–4.30pm	Chinese New Year 3D greeting card workshop (session B)

For details of forthcoming membership activities, please visit the Events section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).

## Advocacy

### Hybrid meeting with The Honourable Alice Mak Mei-kuen SBS JP, Secretary for Home and Youth Affairs



On 6 October 2022, Institute Fellows Matthew Young FCG HKFCG(PE), Institute Education Committee member and Assessment Review Panel member, and Anna Kong FCG HKFCG represented the Institute to meet The Honourable Alice Mak Mei-kuen SBS JP, Secretary for Home and Youth Affairs, at a hybrid meeting organised by the Hong Kong Coalition of Professional Services (HKCPS). At the meeting, young professionals from each of HKCPS' member organisations shared views on youth development and discussed the opportunities for professional services in the Greater Bay Area.

### Professional seminar at The Hong Kong Polytechnic University

On 1 November 2022, Matthew Young FCG HKFCG(PE), Institute Education Committee member and Assessment Review Panel member, conducted a professional seminar on the roles of company secretaries and governance professionals in Hong Kong for 60 accounting undergraduates from The Hong Kong Polytechnic University. Information was also shared about the Institute's dual qualification of Chartered Secretary and Chartered Governance Professional.



### Guest lecture at City University of Hong Kong

On 1 November 2022, Mike Chan FCG HKFCG, Institute Professional Development Committee member, conducted an interactive guest lecture on enterprise risk management for 40 postgraduates in the Master of Science in Professional Accounting and Corporate Governance (CG Stream) from City University of Hong Kong.



## Advocacy (continued)

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### Academic luncheon

The Institute held an academic luncheon on 24 November 2022. The luncheon was well attended, with 43 representatives from local universities and academic institutions, as well as Institute members and partners who have supported the Education Committee throughout the year. Stella Lo FCG HKFCG(PE), Institute Council member and Education Committee Chairman, thanked the academics, Institute members and partners for their staunch support in promoting the Chartered Secretary and Chartered Governance Professional qualification, as well as the development of the Institute's qualifying programme, the Chartered Governance Qualifying Programme.

Recent developments and promotion of the Institute's professional qualification to the younger generation, and other educational matters, were shared and discussed during the luncheon.



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### Hong Kong IPO Roundtable Meeting in Chengdu

On 13 October 2022, a Hong Kong IPO Roundtable Meeting was successfully held in Chengdu, attracting around 70 participants from over 50 local companies – mainly high-tech and biopharmaceutical companies planning to list in Hong Kong. This event was jointly hosted by the Hong Kong Trade Development Council, Deloitte China and Tianqi Lithium Corp.

The Institute participated in this event as one of the associate organisers. Meng Xiangyun FCG HKFCG, Institute Mainland China Technical Consultation Panel member, attended the meeting on behalf of the Institute and shared her views and insights on corporate governance preparation for companies seeking to list in Hong Kong.

## Director training sessions – a focus on INEDs

The Institute has organised a three-part series of training sessions for directors, focusing on various aspects relevant to independent non-executive directors (INEDs), in hybrid mode. Session One – Understanding Director/INED's Duties – was held on 22 November 2022.

The following speakers (in order of appearance) shared their views and insights on topics such as the roles and duties of INEDs, risk management, shareholder communications and ESG:

- Ernest Lee FCG HKFCG(PE), Institute President and Technical Partner, Deloitte China
- Katherine Ng, Managing Director and Head of Policy and Secretariat Services, Listing Division, HKEX
- Ellie Pang FCG HKFCG(PE), Institute Chief Executive
- Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), Past International President and Institute Past President, and Executive Director and Company Secretary, CK Hutchison Holdings Ltd
- Teresa Ko JP BBS FCG HKFCG, Senior Partner, Hong Kong and China Chairman, Freshfields Bruckhaus Deringer, and Co-Vice Chair, IFRS Foundation, and
- Gillian Meller FCG HKFCG(PE), Institute Immediate Past President, and Legal and Governance Director, MTR Corporation Ltd.



## Advocacy (continued)

### 3rd AML/CFT conference – AML/CFT regulations, topical issues and practical sharing

The Institute’s 3rd AML/CFT conference was held on 25 November 2022 in webinar mode. The Institute was delighted to welcome Joseph HL Chan JP, Under Secretary for Financial Services and the Treasury, the HKSAR Government, as Guest of Honour at this conference. Institute President, Ernest Lee FCG HKFCG(PE), and Technical Partner, Deloitte China, gave the welcoming address. The webinar was supported by the Companies Registry and the Institute’s accredited AML/CFT Organisations.

The Institute’s work in promoting anti-money laundering and counter-financing of terrorism (AML/CFT) best practices – supported by its six accredited AML/CFT Organisations – is recognised by the HKSAR Government under its 2018

and 2022 editions of Hong Kong’s Money Laundering and Terrorist Financing Risk Assessment Reports submitted to the Financial Action Task Force (FATF), the international standard-setter. AML/CFT concerns are now understood to be of vital importance.

The reports also recognise the professionalism of the Institute’s members in the senior management of trust and company service providers (TCSPs). As part of the Institute’s thought leadership on AML/CFT best practices, including for the TCSP sector, the Institute was pleased to host this conference, which, amongst other issues, considered:

- local and international AML/CFT regulatory developments
- offshore and trust-related AML/CFT issues, and

- AML/CFT case and practice sharing, including for the TCSP sector.

*The Institute would like to thank the Guest of Honour, all panel speakers, the six AML/CFT Organisations and the supporting organisation – Companies Registry.*

*For details of the Institute’s accredited AML/CFT Organisations, please visit the AML/CFT page under the Thought Leadership section of the Institute’s website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).*



## The 66th Governance Professionals ECPD seminars

The Institute held its 66th Governance Professionals ECPD seminars from 9 to 11 November 2022 in Beihai, Guangxi Province, under the theme of Annual Financial Audit and Annual Report. The seminars attracted over 80 attendees, mainly comprising board secretaries and equivalent personnel, CFOs, directors, supervisors and other senior management from companies listed or to-be-listed in Hong Kong and/or the Mainland.

Institute Vice President Dr Gao Wei FCG HKFCG(PE) and other senior professionals, as well as senior board secretaries, shared their insights and experiences on the following topics:

- financial audit and annual report
  - latest revisions to accounting standards in both Hong Kong and the Mainland
  - annual report preparation practices and special concerns
- share incentives
  - Hong Kong regulatory updates and HKEX guidelines on the implementation of share incentive schemes
  - trends in executive compensation, long-term incentives and corporate governance of listed companies in the Mainland
- interpretation of the Institute's Guidelines on Connected Transaction Practices of Companies Listed in Hong Kong and the Mainland

- ESG report
  - interpretation of the latest developments in ESG and practical solutions for Mainland companies
  - carbon asset measurement and carbon tax arrangements related to carbon neutrality
- the role and practice of directors' liability insurance in the light of claims
- overview of the practical tips for AGMs of A+H share companies, and
- group discussion: annual report preparation and disclosure.

*The Institute would like to express its sincere appreciation to all speakers and sponsors, as well as participants, for their generous support and participation.*



## Chartered Governance Qualifying Programme (CGQP)

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### November 2022 examination diet

#### Examination postponement application: REMINDER

Candidates who were unable to attend the scheduled CGQP November 2022 examinations may apply for an examination postponement by submitting a completed application form with a fee of HK\$850 per module, along with a relevant medical certificate and/or supporting document(s). All applications must be submitted to the Institute on or before Friday 16 December 2022.

#### Key dates

Date	Description
16 December 2022	Closing date for examination postponement applications
Mid-February 2023	Release of examination results
Mid-February 2023	Release of examination papers, mark schemes and examiners' reports
Late February 2023	Closing date for examination results review applications

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

For details, please visit the Examinations page under the Chartered Governance Qualifying Programme subpage of the Studentship section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).

For enquiries, please contact the Education and Examinations Section: 2830 6010, or email: [exam@hkcgj.org.hk](mailto:exam@hkcgj.org.hk).

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### Forthcoming studentship activities

Date	Time	Event
8 December 2022	1.00pm–2.00pm	Governance Professionals Information Session (Cantonese session)
9 January 2023	2.30pm–3.30pm	Student Ambassadors Programme 2022/2023: Xiqu Centre guided tours
18 January 2023	1.00pm–2.00pm	Student Gathering (1st session): getting started with the CGQP examinations – from planning to success



## Notice

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### New fee structure for studentship and related fees

The increment in studentship and related fees for registration, reregistration, examinations and exemptions will take effect from 1 January 2023.

*For details, please visit the Fee Schedule page of the Studentship section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).*

### 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.hkcgj.org.hk](http://www.hkcgj.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:

- Boardroom Dynamics
- Corporate Governance
- Corporate Secretaryship and Compliance
- 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.hkcgj.org.hk](http://www.hkcgj.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.hkcgj.org.hk](http://www.hkcgj.org.hk).*

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## Featured job openings

Company name	Position
Fortress Garment Manufacturing Co. Ltd	Company Secretary

*For details of job openings, please visit the Jobs in Governance section of the Institute's website: [www.hkcgj.org.hk](http://www.hkcgj.org.hk).*

## HKEX update

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### Revised guidance on cooperation

In October 2022, The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), published a new Guidance Note on Cooperation and a revised Sanctions Statement.

The Guidance Note on Cooperation clarifies expectations regarding cooperation, including the importance of timely engagement with the Exchange. It also sets out examples of what may constitute good cooperation between the Exchange and relevant stakeholders, and the possible benefits. The guidance also describes what may be construed as uncooperative conduct, such as late production of submissions or evidence, and the possible consequences.

The updated Sanctions Statement provides additional detailed guidance on the Exchange's expectations in respect of a listed issuer's internal controls, and the extent to which an individual may rely on others in the discharge of duties. The primary sanctions available following the

revisions of the Exchange's disciplinary powers and sanctions in July 2021 have been incorporated in the updated Sanctions Statement to provide more transparency.

The Exchange's Enforcement Policy Statement has also been updated to include links to these documents.

### Proposed revised requirements for specialist technology companies

In October 2022, the Exchange published a consultation paper seeking public feedback on proposals to revise Hong Kong's listing regime for specialist technology companies. The Exchange defines a specialist technology company as a company primarily engaged in the research and development of, and the commercialisation and/or sales of, products and/or services that apply science and/or technology within an acceptable sector of a specialist technology industry.

Such companies currently face difficulties listing in Hong Kong because they often cannot meet the profit,

revenue or cash flow requirements of the Main Board eligibility tests. Many of them are still engaged in R&D to bring their products and/or services to commercialisation and those that have commercialised are not able to meet the tests because of the nature of their businesses. This is despite the fact that some of these companies' market capitalisation may be well over the minimum threshold for a Hong Kong listing.

The new regime would therefore lower the entry level to listing for specialist technology companies. The minimum operating revenue requirement for such companies would be HK\$250 million, down from HK\$500 million currently, but with a much larger expected market capitalisation at listing, HK\$8 billion for commercial companies and HK\$15 billion for pre-commercial companies.

*The consultation period ends on 18 December 2022. More information is available on the HKEX website: [www.hkex.com.hk](http://www.hkex.com.hk).*

## Companies (Amendment) Bill 2022

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In November 2022, the HKSAR Government gazetted the Companies (Amendment) Bill 2022. The Bill aims to enable companies to hold general meetings virtually or in hybrid mode, rather than holding meetings only at physical locations. The move is welcomed by the Institute, which has called for Hong Kong-incorporated companies to be allowed the option, subject to the provisions of their articles, to hold hybrid and virtual meetings.

The Bill is expected to take effect in January 2023. There is expected to be further guidance from the Companies Registry on issues not addressed in the Bill, for example concerning how any technology failures might effect the validity of meetings.

# LABUAN IBFC ASIA'S PREMIER INTERNATIONAL FINANCIAL HUB

Labuan International Business and Financial Centre (Labuan IBFC), located off the North West coast of Borneo, offers global investors and businesses the benefits of being in a well-regulated jurisdiction that provides fiscal, legal and currency neutrality, in addition to being an ideal location for cost-efficient substance creation.



Labuan IBFC is a wholesale financial, risk and wealth management intermediation centre that also boasts a wide range of business structures including solutions for fintech or digital businesses. It is also home to the world's first sukuk and is acknowledged as an Islamic financial hub.

Well-supported by a robust, internationally recognised yet business-friendly legal framework, Labuan IBFC operates within comprehensive legal provisions and guidelines, enforced by a single regulator, Labuan Financial Services Authority – a statutory body under the Ministry of Finance, Malaysia.

Labuan, also known as the 'Pearl of Borneo', offers a myriad of business and leisure opportunities. It is also a hub for financial tourism as its excellent location and compact structure offer easy connectivity between the financial district, and nature offerings.

**Labuan IBFC Inc. Sdn. Bhd. (817593-D)**

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# 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

Programme Title	QF level	QR Registration No.	QR Registration Validity Period
Boardroom Dynamics  	4	21/001317/L4	01 Dec 2021 - on-going
Corporate Governance  	4	21/001318/L4	01 Dec 2021 - on-going
Corporate Secretaryship and Compliance  	4	21/001319/L4	01 Dec 2021 - on-going
Hong Kong Company Law  	4	21/001320/L4	01 Dec 2021 - on-going
Hong Kong Taxation  	4	21/001321/L4	01 Dec 2021 - on-going
Interpreting Financial and Accounting Information  	4	21/001322/L4	01 Dec 2021 - on-going
Risk Management  	4	21/001323/L4	01 Dec 2021 - on-going
Strategic Management  	4	21/001324/L4	01 Dec 2021 - on-going

## TARGET STUDENTS

1. Be 21 years old or above. (Students should be either a Hong Kong permanent resident or have valid permit to study in Hong Kong)
2. Students aiming to prepare for the HKCGI CGQP examinations.

## Award:


Certificate for Module


## Fee per subject:

**HK\$4,500** (36-hour lectures)

**HK\$5,900** (45-hour lectures)


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


 This course has been included in the list of reimbursable courses under the Continuing Education Fund.

 This course is recognised under the Qualifications Framework (QF Level 4).

HKU SPACE is a non-profit making University company limited by guarantee.

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