

CGj

February 2022

Better Governance.

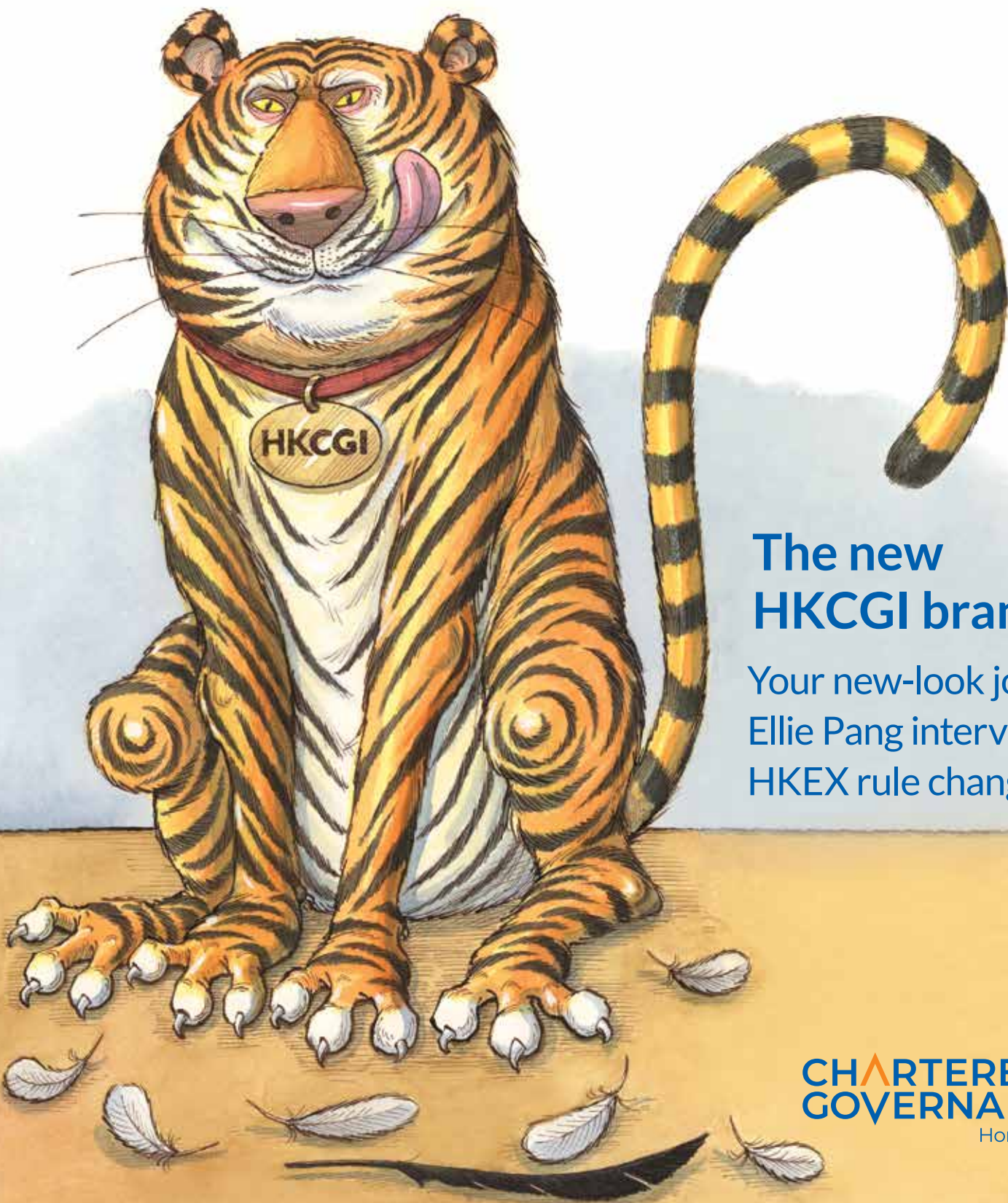
Better Future.

卓越治理 更佳未來

The journal of the Hong Kong

Chartered Governance Institute

香港公司治理公會會刊



The new HKCGI brand

Your new-look journal
Ellie Pang interview
HKEX rule changes

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GOVERNANCE**
Hong Kong

The Hong Kong Chartered Governance Institute presents:

Annual Dinner 2022

Guest of Honour

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Wednesday 13 April 2022

6.45pm Registration | 7.30pm Dinner
Ballroom, JW Marriott Hotel Hong Kong

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About The Hong Kong Chartered Governance Institute

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

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

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

The Institute has over 6,600 members, and more than 300 graduates and 3,000 students.

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As of 31 December 2021, the statistics were as follows:

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New brand, new beginning

Welcome to the first edition of your redesigned and renamed journal. Following the launch of our Institute's new logo, tagline and brand identity last month, this first edition of CGj, appropriately, introduces the new brand and looks at the road ahead now that this last essential component of our repositioning plan is in place.

Before turning to the future ahead of us, I think a brief glance over our shoulders at the journey that has taken us to this 'new beginning' is in order. That journey has been the work of many members of our profession, including current and former presidents, Council members, chief executives and Secretariat staff. They have succeeded in giving us a new designation, a new qualifying programme and a newly named professional Institute that will be much better placed to promote the profession's purpose and values.

I would like to thank in particular Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), The Chartered Governance Institute Past International President, and Institute Past President, for leading the name change initiative. Thanks are also due to Immediate Past Institute President, Gillian Meller FCG HKFCG(PE), and the members of our Rebranding Working Group, chaired by Institute Vice-President, Paul Stafford FCG HKFCG, as well

as our Institute Chief Executive Ellie Pang FCG HKFCG, Institute Deputy Chief Executive Mohan Datwani FCG HKFCG(PE) and our Secretariat staff who put in a lot of hard work to ensure that our rebranding initiative reached its successful conclusion last month.

That roll call of gratitude is not, of course, comprehensive. One of the key ingredients of our Institute's success has been its ability to rely upon the expertise, guidance and good judgement of senior members of the profession and other partners in our work. This has been particularly true of the transition our profession has made over the last decade and thanks are due to everyone, credited and uncredited, who contributed to this endeavour.

Turning to the theme of this month's journal, our cover story asks how we can take forward our work now that the basic foundations of our new brand identity are in place. This month's In Profile interview, with our Chief Executive Ellie Pang, also addresses this question. Ellie's experience before she took up the helm of our Secretariat, as a lawyer and working for Hong Kong Exchanges and Clearing Ltd, gives her a valuable perspective on how Institute members can step up their game, particularly in terms of educating and guiding directors in compliance and governance matters.

Finally, I look forward to working with you all in this next chapter of our evolution. As the Immediate Past Chair of the Financial Reporting Standards Committee of the Hong Kong Institute of Certified Public Accountants, and Technical Partner of Deloitte, I know the importance of setting standards for benchmarking. I am confident that the Institute's work and thought leadership, which we take pride in, will be regarded as the benchmark for good governance in the years ahead.

The foundations of our new identity are now in place. We are part of an international movement in promoting excellence in governance. Our Institute is the China Division of The Chartered Governance Institute, with nine divisions across the globe, and we also have the backing of our affiliate organisations, local and global. Our new brand identity better reflects the value we can bring to the organisations we work for and gives us a mission statement for what we stand for. It only remains for us to rise to the challenges ahead and fulfil the great promise of our profession.

Ernest Lee FCG HKFCG(PE)

新品牌，新起点

本刊本月迎来了经过重新设计和更名后的首次发刊。继上月推出公会的新标识、标语和品牌形象后，现在我们完成了品牌重塑计划的最后重要一步，即，由本期 CGJ 首刊介绍我们的新品牌，同时展望公会的未来发展之路。

在展望未来之前，我认为有必要简要回顾一下引领我们踏上这一新起点的历程。一路走来，离不开我们专业诸多成员的贡献，其中包括现任和前任会长、理事会成员、行政总裁及秘书处工作人员。他们成功赋予了我们新称号，推出了新的专业资格课程，这将有助于公会更好地推行公会的宗旨和价值理念。

在此，我要特别感谢特许公司治理公会前国际会长、公会前会长施熙德律师 FCG(CS, CGP) HKFCG(CS, CGP)(PE) 领导了这次更名计划。我们还要感谢前会长马琳女士 FCG HKFCG(PE)，感谢由邵德勋先生 FCG HKFCG 领导的品牌重塑工作组；同时感谢公会行政总裁彭京玲女士 FCG HKFCG、公会副行政总裁高朗先生 FCG HKFCG(PE) 以及我们的秘书处工作人员，他们付出了诸多努力，确保品牌重塑计划在上个月圆满完成。

当然，还有更多人员的默默付出。公会取得成功的关键因素之一是公会可以依靠具有资深专业经验的会员们及其他合作伙伴的专业知识、指导及良好的判断力来开展工作。这尤其体现在公会过去十年里所经历的重要转变上。我们要感谢每一位为公会专业付出努力的人员，无论是否被提及，在此我们都要表示诚挚的感谢。

关于本期月刊的主题，我们的封面故事提出，品牌重塑任务已基本完成，我们当如何推进下一步工作？在本月的“人物专访”栏目中，行政总裁彭京玲女士也谈到了这一点。彭京玲女士在担任秘书处负责人之前，曾是一名律师并且有证券交易所的工作经历，因而她可为提升公会会员的专业能力方面提供宝贵意见，特别是在指导董事合规和治理事宜方面。

最后，我期待与大家共同踏上新征程，谱写新篇章。作为香港会计师公会财务报告准则委员会的前任主席、德勤中国技术合伙人，我深知制定基准标准的重要性。公会取得的成绩斐然，拥有卓越的思想领导力，将成为未来几年良好治理的标杆，对此我充满信心。

公会的品牌重塑工作已圆满完成。目前公会正在为推进国际卓越治理贡献力量。作为特许公司治理公会全球九个属会之一的中国属会，我们也拥有本地及全球各相关组织的大力支持。新品牌标识更好地反映了我们能为所服务的组织带来的价值，同时彰显了我们的使命宣言。公会将直面未来挑战，以成就我们专业的辉煌前景。



李俊豪 FCG HKFCG(PE)

Taking governance to the next level

An introduction to the Institute's new brand



The new brand of The Hong Kong Chartered Governance Institute (the Institute) went live last month. Your journal, redesigned and relaunched as CGj, introduces the new brand and looks at what it will mean for the Institute and its members in the years ahead.

The Institute's latest rebranding project, which culminated in the launch of its new logo, tagline and brand identity on 20 January 2022, was anything but routine. The roles of governance professionals, together with the operating environment within which they work, have gone through significant changes since the Institute's previous branding exercise in 2006. Moreover, the profession itself has gone through a major transition that has changed both the designation of practitioners and the name of the professional body to which they belong.

While these developments are well understood by members and stakeholders of the profession, they have been less visible to wider society. 'We should consider how the public in general perceives the Institute and the governance professional,' said the Institute's new President Ernest Lee FCG HKFCG(PE), interviewed in this journal's In Profile column last month. 'I hope to help broaden the awareness of the community, not just our stakeholders in the business world, of the roles that our members play and the positive impact we have,' Mr Lee said.

The launch of the Institute's new brand last month will make that task a lot easier. The Institute's Immediate Past President, Gillian Meller FCG HKFCG(PE) believes that, with the new brand in place, the Institute is well placed to give the governance role of its members wider recognition. 'I hope

that the new brand will enable us to communicate to the wider Hong Kong community the role that governance professionals can play in terms of the road to a better corporate world and future,' she says.

Key elements of the new brand

1. Governance specialists

The new brand highlights the role of the Institute's members as governance specialists. In today's operating environment, the complexity of boardroom decision-making has increased significantly and this has led to an ever-greater demand for highly qualified governance experts to advise the board on matters relevant to compliance and governance. This aspect of their roles has been promoted by regulators in Hong Kong, who have highlighted the role played by company secretaries in guiding and facilitating the training of directors. Company secretaries are now regarded as senior management in Hong Kong's Listing Rules and can

“
we help make sure
organisations do things
right, but we also help
make sure organisations
do the right thing

”

be held accountable for corporate governance failures.

Moreover, the role of company secretaries in promoting governance best practice is hardwired into Hong Kong's legislative and regulatory regime. The Listing Rules and the Corporate Governance Code stipulate that the company secretary is a key governance adviser to the board and is responsible for updating the board on the latest laws and regulations relevant to the company in areas such as stakeholder engagement, environmental, social and governance

Highlights

- the Institute's new tagline – 'Better Governance. Better Future' – highlights the value that good governance brings, not only to organisations themselves, but also to wider society
- the new brand is not only about improving the Institute's external brand recognition, it will also have benefits internally in terms of giving governance professionals greater confidence to carry out their roles
- while the Institute's formal repositioning exercise may be complete, the profession will continue to evolve as governance evolves

“
there has never been a better time to be a governance professional and I hope that our members can take advantage of the rebranding exercise to better communicate the value that they can add to their organisations
 ”

(ESG) matters, and organisational purpose and culture.

Good governance, however, requires the expertise of a wide variety of players. In addition to company secretaries, other professional practitioners (mainly lawyers and accountants) and a range of other players, including directors, risk managers, compliance officers, legal counsels and CFOs, are joining the Institute. ‘Our members increasingly come from more diverse backgrounds, but they all work under the governance banner,’ says Institute Chief Executive Ellie Pang FCG HKFCG.

2. Trusted advisers

The Institute’s new brand also highlights the role of the governance professional as the moral compass of the organisation he or she works for. This theme is illustrated by the Institute’s new ‘compass’ logo. The orange upward pointing ‘A’ of ‘Chartered’ in the ‘Chartered Governance Hong Kong’ logo represents an upward-pointing compass needle.

This aspect of the role has become a lot more complex since the Institute’s previous branding exercise in 2006, as the shift to stakeholder capitalism and

the greater focus on organisations’ ESG practices and policies has accelerated. Moreover, as new technologies increasingly enable the administrative side of the role to be automated, this strategic side of the role has grown in importance. Governance professionals contribute a much wider strategic input into the board decision-making process, advising not only on internal controls and regulatory compliance frameworks, but on diverse issues including managing climate risk, setting ESG targets and adapting to the changing expectations of the organisations’ key stakeholders.

This broader concept of good governance brings value, not only to organisations themselves, but also to wider society – hence the Institute’s new tagline – ‘Better Governance. Better Future’. Ms Meller points out that this new tagline provides the Institute with a highly concise mission statement going forward.

‘As the gatekeepers of the rules, practices and processes by which organisations are governed, we help make sure organisations do things right, but we also help make sure organisations do the right thing. As highly qualified governance experts, we help them navigate an increasingly

complex corporate world. Our bigger purpose is to protect the interests of all an organisation’s stakeholders and to shape a better future,’ she says.

Rising to the challenge

The launch of the Institute’s new brand comes at the end of a long process of transition as a result of the repositioning exercise that the Institute, together with the Chartered Governance Institute (the Institute’s international body), has been implementing. Readers of this journal will be familiar with the key milestones in this journey, including the adoption of the new Chartered Secretary and Chartered Governance Professional designation by the Institute’s members in 2018, the launch of the Institute’s updated Chartered Governance Qualifying Programme in early 2020 and the renaming of the Institute in 2021.

So is that transition now complete? Ms Meller points out that, while the Institute’s formal transition may be complete, the profession will continue to evolve as governance evolves.

‘There has never been a better time to be a governance professional and I hope that our members can take advantage of the rebranding exercise to better communicate the value that they can add to their organisations and, through this, to continue to develop their roles and advance their careers,’ she says.

In this sense, the new brand is not only about improving the Institute’s external brand recognition, it will also have benefits internally in terms of giving governance professionals greater confidence to carry out their

Growing into our new name

Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), The Chartered Governance Institute Past International President, and Institute Past President; Executive Director and Company Secretary, CK Hutchison Holdings Ltd, has pioneered and mentored the Institute's transition to its new name and identity. Interviewed by CGj about the launch of the Institute's new brand, she highlights below the work ahead for the Institute and its members.

What for you is the significance of the launch of the new brand of The Hong Kong Chartered Governance Institute (the Institute)?

'The launch of the new brand is the first step into a new era of governance for the Institute. It underpins our professional transformation into Chartered Governance Professionals and highlights the enlarged remit of our profession – better governance leads to a better future, starting with the corporate arena but having wider impacts on society and the world at large.'

In the past, the profession has had relatively low brand awareness among the wider public – do you think the new brand can turn that around?

'With the right name for the profession and the Institute, the understanding and awareness among the wider public should improve. The Institute of course has to do its part in promoting the new name and brand, and now is the best time – as we launch our new brand.'

What for you are the key messages of the Institute's new tagline and logo?

'The Institute's new tagline (Better Governance. Better Future.) exemplifies its paramount impetus promoting and practising governance. The Institute strives to make an impact on different aspects of our society – be it corporate, non-profit, charitable, academic, government, religious, recreational, etc – helping to instil proper governance in our society at large. The Institute's new compass logo underscores our role in pointing to the right direction, the proper behaviour, the appropriate conduct – to better governance.'

“
our focus should be on our new journey to ensure that we are what we call ourselves
”

The new brand comes at the end of a long transition process that has seen the Institute acquire a new name and its members acquire a new designation – do you think the profession's 'transition to governance' is now complete?


'The hardware of transitioning the profession to governance is in place, with the revamp of the examination scheme leading to the new qualification, as well as the proper naming of the Institute and the necessary constitutional and regulatory/legal amendments. But our focus should be on our new journey to ensure that we are what we call ourselves. Many of our members are already governance professionals due to the nature of the work they do, but not all of our members have become governance professionals overnight after the name change or the launch of the new brand. Some of those members who have more company secretary-orientated roles will grow deeper into the governance role as their work remit expands. The Institute needs to provide continuing education with the appropriate focus and content for its members.'

Going forward, what is your advice to members in terms of how to grow into their status as governance professionals and to the Institute in terms of how it can build its leadership position in governance?

'The Chartered Governance Institute (global), from which The Hong Kong Chartered Governance Institute (divisional) derives its status, is the only chartered governance institute in the world. So we possess leadership status that no other institute is able to attain. However, it predicates upon the Institute to continuously ensure that our mission, our thought leadership and our qualification scheme are well founded, and that all of our activities (be they professional or promotional) are built, on governance.'

roles. The new tagline, for example, is aspirational in terms of highlighting the broader role that good governance can play in contributing to a better future for all an organisation's stakeholders, but it also recognises that governance is something which is constantly evolving in response to changing internal and external environments.

The new brand will also help by improving the brand recognition of the Institute itself. 'The Institute promotes a global gold standard in corporate governance,' Ms Pang says. 'Having the backing of a respected, global professional body will make a lot of difference to the confidence of Institute's members in carrying out their roles.'

She adds that the launch of the new brand should not be looked at as the end of a process, but as the beginning of a new chapter. There is a lot of work ahead for the Institute, for example, to stay agile to the evolving needs of its members and students, ensuring that they have the education, training and other services they need to succeed as the governance professionals of the future. 

Introducing your new-look journal and website

The Institute's journal and website, as critical parts of the Institute's communications, have been redesigned to follow the ethos of the new brand and visual identity.

CGj

This month's edition of the Institute's journal, redesigned and relaunched as *CGj*, showcases the Institute's new brand. The journal's new name stands for 'Chartered Governance journal', in keeping with the profession's transition to the governance banner. The journal's redesign follows the visual identity guidelines of the new brand, developed by the Institute and Eight Partnership Ltd, incorporating a new colour palette and font. The new colour palette matches that of the Chartered Governance Institute (the Institute's international body) with its distinctive shades of blue and orange, and the new font (the roman typeface Lato) shifts the visual identity closer to the online, rather than the print, context. This is in keeping with the plain speaking, people-centric character of the new brand. Regarding the editorial tone of the journal, the new brand guidelines reinforce the need to communicate via plain, easy-to-understand language.

The website

The redesign of the Institute's website, launched on 20 January 2022, has brought in significant changes to the site's structure and visual appeal. Some changes will be immediately apparent to frequent visitors. In addition to the brand guidelines' new colour palette and font, discussed above, the redesign has made much more use of innovative typography and images, helping to bring more clarity and focus to the pages.

Perhaps most significant, however, are the structural changes that have been made. The site not only functions as a resource and platform for students and members of the Institute, it is also a calling card for the Institute and the profession as a whole.

'An organisation's website needs to work as a standalone communication tool. It needs to state in as clear and understandable way as possible what the organisation is about,' says Edward Williams, General Manager at Moni Media Ltd, the firm that worked with the Institute's Secretariat on the redesign project. 'The focus has been on adopting a structure which raises content to the surface, and creates new and intuitive pathways leading users from the top-level of the site progressively into the detail of the various sections. We also wanted to remove dead ends within the website, and so within each page you will see routes/links into other relevant or related content, allowing users to also "move sideways" through the site.'

This pyramid structure of the content, together with the clear labels and categorisation, aims to ensure that all visitors, with or without prior knowledge of the Institute, can browse and navigate their way easily to more detail the further they explore. In addition, the homepage and landing pages for each section also act as springboards into content, allowing users to immediately understand the various options available to them within the site or section, and access that content quickly.



Technology Series

Modern technology presents both opportunities and challenges for the governance professional, whose responsibilities have grown to be much more diverse and multi-faceted as governance work continues to evolve. Technology-assisted compliance can be cost-effective and the introduction of artificial intelligence may enhance and simplify the more mundane day-to-day procedural work. However, mere access to the latest technology and automated tools will not suffice as the proper and effective implementation of these technology remains to be critical. HKCGI is delighted to present a series of six technology-themed webinars from February to May 2022, led by industry leaders and experts from within the technological and compliance sector. The speakers will introduce the latest compliance technology and related developments, with a focus on practical applications and emerging governance trends. Interested parties are invited to join any or all of the following six sessions:

Date/Time	Topic	Key Speaker	Language
11 February 2022 3.00 pm – 4.30 pm	Hybrid General Meetings - What Governance Professional Need to Prepare	Ms Catharine Wong Managing Director - Head of Share Registry & Issuer Services, Tricor Services Limited	English
23 February 2022 3.00 pm – 4.30 pm	AML/CFT Regulatory Update, TCSP Licensing Renewal and Best Practice By Leveraging Technology	Mr Bible Kwan Head of Sales (Northeast Asia) – Channel & Partnership, Ingenique Solutions	Cantonese
9 March 2022 3.00 pm – 4.30 pm	Utilising Data to Reveal Governance Trend and Prepare for Your Shareholder Meetings	Mr Herman Choi Senior Lead ESG Advisor APAC – ISS Corporate Solutions	Cantonese
30 March 2022 3.00 pm – 4.30 pm	Integrated Risk Management - Is Your Company Ready For It?	Mr Tiong-wee POH Associate Partner, Risk Transformation Ernst & Young Advisory Services Limited	Cantonese
28 April 2022 3.00 pm – 4.30 pm	Better Governance and Best Practice Leadership Collaboration	Mr Paul Li Head of Sales of the Asia Pacific, Convene	Cantonese
12 May 2022 3.00 pm – 4.30 pm	The Role and Benefits of Regtech Within the Digital Transformation Agenda	Mr Pradip Madhanagopal Partner, Risk Assurance PricewaterhouseCoopers	English

Venue: Webinar session. No physical attendance is required.

Accreditations: HKCGI - 1.5 ECPD points per session / The Law Society of Hong Kong (TBC)

Fees: HK\$320 per session per HKCGI member / HK\$230 per session per HKCGI student /
HK\$420 per session per Non-member

Register Now!



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

For details and registration, please visit the Professional Development Section of Institute's website:
www.hkcgi.org.hk.

A woman with short black hair, wearing a red long-sleeved dress and a white smartwatch, is sitting on a stone ledge. She is smiling and looking towards the camera. The background is dark and textured, possibly a stone wall or a large sculpture.

**The future of
the governance
professional**

CGj talks to Ellie Pang FCG HKFCG, Institute Chief Executive, about her own journey, and that of the Institute and profession, to the new home of governance.

Could we start by discussing your personal and professional background?

'I was born in Beijing and came to Hong Kong when I was 10 years old. I did my secondary schooling in Hong Kong and then went to England to study for A levels and university. When I came back to Hong Kong, I worked for 11 years as a litigation lawyer and then joined Hong Kong Exchanges and Clearing Ltd (HKEX) as an enforcement lawyer.

After a year in enforcement, I found that I preferred to do policy work so I transferred to HKEX's policy team. I was involved in some major Listing Rule and Corporate Governance Code (the Code) changes in the 14 years that I was with HKEX, so I've seen many changes in the way that corporate governance and the Code are viewed by listed companies in Hong Kong. When I started, many listed companies regarded the Code as being just about writing a corporate governance report at the end of the year. As corporate failures have become a lot more prominent, and with greater awareness and demands from investors, especially institutional investors, the importance of good governance has been much better understood and a lot more attention is now paid to this area.

Investor and stakeholder concerns, in particular environmental, social and governance (ESG) issues such as climate change and board diversity, have also received more attention. I was involved in the drafting of HKEX's ESG Reporting Guide and its subsequent upgrades. In fact my last project at HKEX was drafting the consultation and conclusions of the latest upgrade of the ESG Reporting Guide.'

What attracted you to policy work at HKEX?

'One of the most enjoyable things for me was the research involved – looking at best practice internationally and then drafting updates to Hong Kong's Listing Rules and the Code to see how far we could push the envelope. I found it specially gratifying to be able to make an impact and shape the market by bringing international best practice to Hong Kong. On board diversity, for example, my research and the resulting public policy papers have been widely cited by proponents of board diversity. I'm pleased to see that the consultation

conclusions, published by HKEX last month, will most likely eliminate single gender boards by 31 December 2024. Listed companies with a single gender board will have three years to appoint at least one director of the missing gender and failure to do so will be a breach of the Listing Rules.

Over the last decade, we have seen the number of boards of Hong Kong listed companies without a single female director go from about half to a third (just over 800) of the total of around 2,500 companies. That is still not good of course, but, as a result of years of work by HKEX, the Institute, many NGOs, investors and business leaders, board diversity is now an issue that boards know they need to address.

Another aspect of my policy work at HKEX that I enjoyed was explaining to people the benefits of better governance and ESG standards. Ultimately, of course, you cannot attract capital into Hong Kong without good standards of governance and ESG, and you need liquidity for the market to be successful. I enjoyed giving seminars and talking to listed companies about the rationale behind policy changes at HKEX. I also did a lot of work with the Institute, talking to its members both in Hong Kong and the Mainland about corporate governance, ESG and regulatory policy. That was

Highlights

- regulators expect governance professionals to step up their game in terms of educating and guiding directors in compliance and governance matters
- attending CPD events should not just be a matter of accumulating the required CPD points – it is a crucial way for governance professionals to keep up to date with developments relevant to their company and to be able to advise the board knowledgeably
- taking a principles-based approach to compliance and governance matters requires a lot more thought and board involvement, but the benefits are huge

“
 the work of a governance
 professional is not a back office
 job, it's more about what goes
 on in the board room
 ”



how I became close to the Institute before I took on my present role.’

Do you think it's important for governance professionals to understand the policy issues behind Hong Kong's regulatory framework?

‘Yes. The work of a governance professional is not a back office job, it's more about what goes on in the board room. The need for the board to address governance and ESG issues is much better recognised now and our members are the key advisers to the board on these issues. Of course, there is a wide spectrum of roles within governance and some of our members are more involved in company secretarial administrative work, but increasing numbers have risen to become senior managers. I hope that, with our Institute's new name and our members' new professional designation as Chartered Secretaries and Chartered Governance Professionals, we can persuade more company secretaries to come out of their comfort zone and get more involved in higher-level governance matters. This continues to be a focus of our education and CPD services.’

How should Institute members prepare themselves for their roles as governance professionals?

‘The Listing Rules and the Code make it clear that company secretaries are key governance advisers to the board and are responsible for updating the board on the latest laws and regulations relevant to the company. Not only that, since July this year, company secretaries are categorised as senior

management and can be held accountable for corporate governance failures. So the role can no longer really be seen as purely an administrative one – regulators expect our members to step up their game because they need the help of governance professionals to guide and facilitate the training of directors. Governance professionals need to be governance experts in order to effectively guide the board.

Our qualifying programme equips our members to become competent governance professionals, but, as you know, corporate governance is an evolving landscape so CPD is also hugely important. We run about 100 CPD seminars per year and they are very well attended. Moreover, some of our members also go to CPD events organised by the accounting and legal professions. Attending CPD events should not just be a matter of accumulating the required CPD points, though; it is a crucial way for our members to keep up to date with developments relevant to their company and to be able to advise the board knowledgeably.

This goes beyond advising on the latest developments in law and regulation. Governance professionals also need to be familiar with areas such as stakeholder engagement, ESG, and organisational purpose and culture. In its thought leadership work, our Institute has been promoting best practice in these areas. We are fortunate to have many brilliant practitioners who are thought leaders in these areas within our Institute's membership and we fully utilise this – they help shape the thought leadership papers we produce and share their

expertise at our CPD events. But I would urge members to let us know if there are any areas of training that we're not currently providing that would be useful to them. We're here to provide the services our members need and the success of our CPD programme means that we can bring in the best speakers in the market in Hong Kong and internationally – people are very willing to speak for us.'

You expressed the view that Hong Kong should reduce its reliance on the current rules-based approach to corporate governance regulation. What's your view of the argument that the rules-based approach has the advantage of greater clarity?

'That is true but, right now, I think we've gone too far towards the rules-based approach. Globally the trend is towards the principles-based approach and Hong Kong is unusual in having a corporate governance code with so many comply or explain provisions. This is totally against the original intention of having a corporate governance code, and with every review we add 10 or 15 more provisions. If we are not careful, the Code will start to lose its meaning.'

For listed companies, and the governance professionals advising them, it is easier to take a box-ticking approach to Code compliance. Taking a principles-based approach requires a lot more thought and board involvement. But while that may be harder, the benefits are huge. Explaining how you've complied with the principles of the Code in your corporate governance report gives you a lot more scope to shine. Analysts and investors, especially institutional investors, do rely on companies' corporate governance reports, so your report is your brand – a demonstration of how good your governance standards are. Investors and stakeholders are unlikely to look at your corporate governance report and decide that you have good corporate governance on the basis that you have ticked all the required boxes in the Code.'

The Institute has positioned itself as the natural home for all governance professionals, whatever their training and background. How will this affect the Institute's work in the years ahead?


'I think our Institute's new name, together with our members' new designation and post-nominals, will help us expand our membership, attracting people in different roles and fields. Anyone interested in becoming more conversant

with governance and ESG matters is welcome to join our membership. We are attracting high-calibre people with very high professional standing in Hong Kong. They are at the top of their game and, in addition to helping us shape our thought leadership work as I mentioned earlier, they also provide valuable role models for anyone who aspires to join our Institute.'

The roles of our members have naturally evolved. Directors need advice on regulatory changes, as well as governance and ESG matters, and the most knowledgeable person in the room is the governance professional – whether that individual is a company secretary, a lawyer or an accountant by training. So the role has already evolved to become the governance adviser to the board, all we have done is to change the name to match that change in role.'

For our Institute, the name change highlights the fact that we promote a global "gold standard" in corporate governance. That standard is maintained by the Professional Standards Committee (PSC) at the global Institute – The Chartered Governance Institute (CGI). The routes to qualification provided by the divisions of the CGI have to have the PSC's approval and that gives an assurance that we have a common standard across all nine divisions. This provides transferability of the qualification for members across all nine divisions and it ensures that regulators are happy with our members being the professional governance advisers to the board. It also gives assurance to companies and their directors – the employers who hire us – that the Institute provides a rigorous route to qualification and an equally rigorous CPD training programme that we require members to attend.'

What advice would you give to fresh recruits to the profession?

'Step up your game. That means getting the usual CPD training of course, but not just to accumulate the required CPD points – what you learn is going to help you shine in whatever role you are in. I would also recommend that they join our mentorship programme. We have a very good mentorship programme where experienced senior members of the profession help junior recruits. Finally, I would also urge them to give us suggestions on how the Institute can better serve them and get involved in the Institute's work. Join our panels and committees and make your voices heard.' 

Fundraising governance for charities



Michelle Chow, Consultant, Withers, offers some key recommendations on fundraising best practice for charities.

Do you know the cost of running a charity? Depending on what the charity does, the monthly costs will vary. For instance, at Hong Kong Dog Rescue (HKDR), the cost of food and veterinary care for over 600 dogs and employing skeleton staff requires significant funding. Even though they have the help of many dedicated volunteers, they still have to constantly raise funds in order to maintain operations.

Many charities have suffered financially as they have been unable to hold any major fundraising events for over two years. Instead, they have had to rely on smaller-scale events and regular donors. Balancing their need for financial support while maintaining the best possible service quality for the general public is a daily challenge faced by many charities. With so many responsibilities, implementing good fundraising practice and governance can easily be neglected.

Fundraising best practice

There are some basic practices that charities must follow. After consultation with the Social Welfare Department, Hong Kong Council of Social Service and a number of large charities and public bodies in Hong Kong, the Independent Commission Against Corruption (ICAC) published a best practice checklist – Management of Charities and Fundraising Activities. The checklist provides insightful and practical guidelines on good governance and internal controls for charities in their fundraising activities. The key recommendations of the checklist are set out below.

Governance

A charity can be set up under a number of different legal structures, including as a trust, a society or a company. In this article, I will use the term 'board' for the governing body of the charity, and the term 'directors' to apply to the people who govern the charity, although, depending on the legal structure adopted, they may be called governors, executive committee members or trustees.

The charity's board, or the board's fundraising committee, should oversee all fundraising activities. It should approve the objective and proposal of each fundraising activity, set a ceiling for the activity's administrative costs, account for the funds raised and monitor the usage of the donations to ensure accountability and fulfilment of the stated objectives. Finally, the board should assess the effectiveness and performance of the activities held.

Charities should establish a Code of Conduct (the Code) setting out the standard of behaviour required of the board and staff. The Code should include the following:

- guidelines on declaring and handling conflicts of interest
- a policy on accepting advantages (with relevant provisions of the Prevention of Bribery Ordinance), and
- notes on the use and protection of personal data and information (including details of donors and beneficiaries).

Responsibilities of the charity's board

Directors are responsible for overseeing the overall operation of the charity. The standards that are expected from them include risk assessments and ensuring the charities are using donations for the purposes intended, in line with their governing documents, which may be the memorandum and articles of the charity, or the trust deed of a charitable trust.

Managing potential conflicts of interest

The board must also be aware of any possible conflicts in different situations. For instance, where fundraisers are engaged, they should be compensated

Highlights

- many charities have suffered financially as they have been unable to hold any major fundraising events for over two years
- some leading overseas non-profit professional fundraising organisations prohibit their members from accepting percentage-based commissions
- donors' wishes must be respected and any restricted or designated donations should only be used for the purposes for which they are given

with a salary or a fee. Commission or other payments based on the amount of funds raised is generally viewed as unethical by fundraising professionals. There is an inherent conflict of interest in percentage-based compensation as fundraisers may try to negotiate donations that will also benefit them personally.

Some leading overseas non-profit professional fundraising organisations prohibit their members from accepting percentage-based commissions. Other possible conflicts regarding fundraising include offering personal benefits to directors, or their close relatives, in return for a large donation to the charity in which they serve. All potential conflicts must be handled properly in accordance with the charity's Code of Conduct or internal policies.

Risk assessment

Risk assessment in connection with fundraising includes ensuring that obligations to protect the health and safety of employees and volunteers at fundraising activities are met. The directors also have a duty to ensure donations are not gained through any illegal or criminal behaviour. In exceptional circumstances, with careful consideration and valid reasons, the charity may refuse or return donations. It is important for larger charities to have a donation acceptance policy. For example, the board must carry out appropriate due diligence relative to the size and nature of the donation before accepting it.

Transparency and accountability

Charities should make their fundraising objectives and mission clear, and must only support charitable objects for



which they are set up. Donors' wishes must be respected and any restricted or designated donations should only be used for the purposes for which they are given. An accounting system that tracks designated donations should be established. Charities should prepare annual financial reports with applicable accounting standards issued by the Hong Kong Institute of Certified Public Accountants (HKICPA) from time to time. The cost-effectiveness of a charity's fundraising activities should also be reviewed regularly by its board.

What happens if the donation is not cash?

Charities can accept donations other than cash. That can be food, services or items of value. Charities must ensure the donors are the legal owners of the items donated and only accept them when appropriate. For example, HKDR has recently secured new premises. The design and building works will all require funding.

Receiving donations 'in kind' instead of cash is an important part of charities' income. HKDR recently received a donation of a vast amount of old Chinese paintings. After careful

“balancing their need for financial support while maintaining the best possible service quality for the general public is a daily challenge faced by many charities”

consideration, they decided to sell them to make much needed funds and started selling the paintings at a reasonable price, until a pup's adopter raised the possibility that the paintings may be worth millions of dollars. HKDR acted quickly and immediately put a stop to the sale and got a professional assessment of the paintings by an expert on a pro bono basis. As it turns out, the old paintings are original and valuable (though not by famous artists, which could have made them millions and enough to buy a new Homing Centre). Through HKDR's quick reaction and adherence to its governance guideline, the organisation generated sufficient income as a result. This case signifies the importance for fundraisers to stay vigilant at all times.

In the meantime, HKDR is still working hard to fund the new centre. They are now in a dire situation trying to meet the demand with many people leaving Hong Kong and wanting to rehome their dogs. With good governance, hopefully they will achieve their fundraising goals soon!

Michelle Chow, Consultant
Withers



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.

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HK\$5,600 (45-hour lectures)


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Hong Kong issues guidance on the use of AI

Glenn Haley, Partner, and Sharon Chan, Associate, Bryan Cave Leighton Paisner, summarise key highlights from the recent guidance issued by the Office of the Privacy Commissioner for Personal Data (PCPD) on the use of artificial intelligence (AI).

Hong Kong now has its own set of recommended best practices for the development and use of AI, published in a guidance note issued by the PCPD. Businesses that intend to or have begun to use AI in their operations are advised to consider the risk levels of their respective AI systems and to implement the suggested measures for better protection of individual consumers.

Background

An AI system is a machine-based system that makes predictions, recommendations or decisions influencing real or virtual environments, based on a given set of human-defined objectives. The potential social and economic benefits of AI are significant. Healthy use of AI can drive innovation and improve efficiency in a wide range of fields.

However, given the nature of what an AI system does, it also comes with

potential risks that no business should ignore. AI systems often involve the profiling of individuals and the making of automated decisions that have real impact on human beings, posing risks to data privacy and other human rights.

Against this background, calls for accountable and ethical use of AI have been on the rise in recent years.

In October 2018, the Global Privacy Assembly (GPA) – a leading international forum for over 130 data protection regulators from around the globe to discuss and exchange views on privacy issues and the latest international developments – adopted a Declaration on Ethics and Data Protection in Artificial Intelligence, endorsing six guiding principles to preserve human rights in the development of AI. Two years later, the GPA adopted a resolution sponsored by the PCPD of Hong Kong

to encourage greater accountability in the development and use of AI. Various countries and international organisations have published their respective guidance notes to encourage organisations to embrace good data ethics in their operation and use of AI.

The PCPD published its Guidance on the Ethical Development and Use of Artificial Intelligence (the Guidance) in August 2021. This article summarises the key highlights from the Guidance.

From high-level values to ground-level practices

The Guidance sets out three broad Data Stewardship Values, which transform into various ethical principles and specific practical guidance.

The three Data Stewardship Values were first put forward by the PCPD in October 2018 in the Ethical



“
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”

Accountability Framework for Hong Kong. Businesses should recognise and embrace these core ethical values. These values should define how businesses carry out their activities and achieve their missions or visions.

The three Data Stewardship Values entail the following:

1. Be respectful of the dignity, autonomy, rights, interests and reasonable expectations of individuals.
2. Be beneficial to stakeholders and to the wider community with the use of AI.
3. Be fair in both processes and the results:
 - i. make sure that decisions are made reasonably, without unjust bias or unlawful discrimination

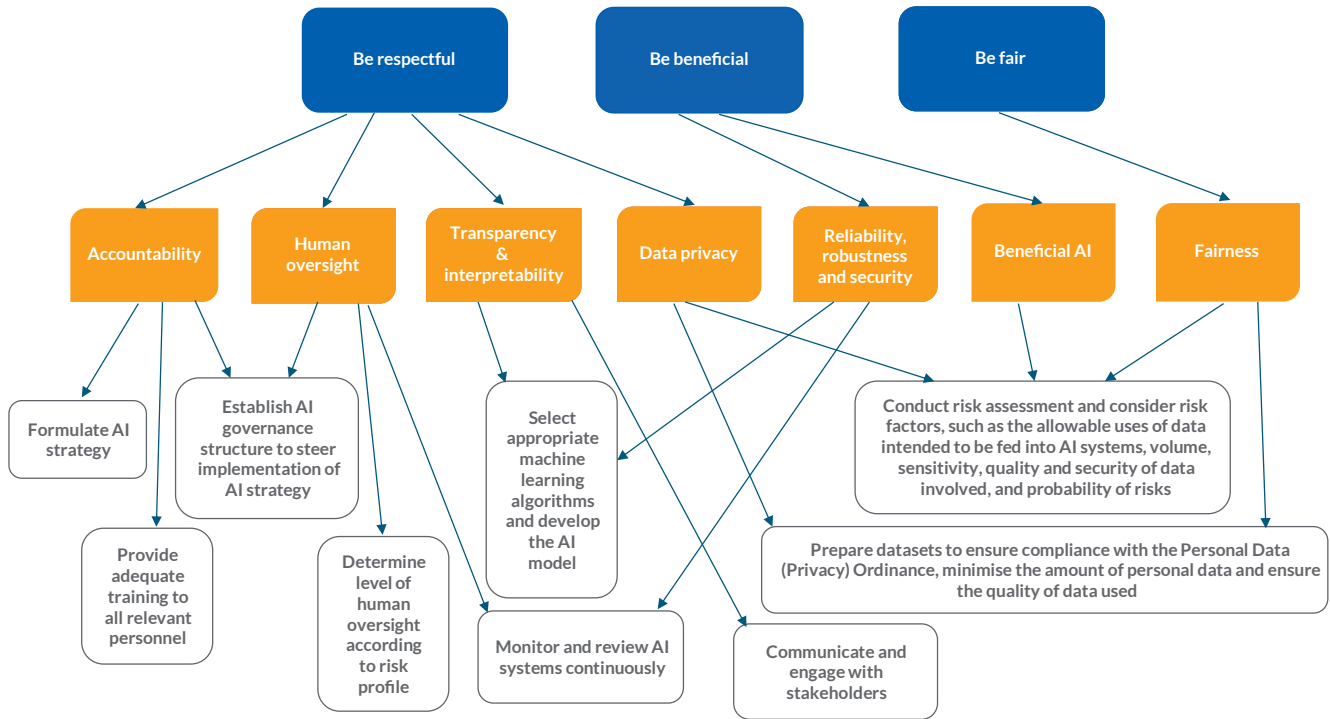
- ii. accessible and effective avenues need to be established for individuals to seek redress for unfair treatments, and
- iii. like people should be treated alike. Differential treatments need to be justifiable with sound reasons.

These three core values are linked to some commonly accepted principles such as accountability, transparency, fairness, data privacy and human oversight also found in guidance notes published in other countries or by international organisations. These principles then have been fleshed out and developed into recommended ground-level practices by the PCPD (see Figure 1).

Highlights

- recommended best practices for the development and use of AI were issued by the PCPD in August 2021, setting out ethical values along with a framework for risk assessment and accountability
- the potential social and economic benefits of AI are significant, but AI also comes with potential data privacy and human rights risks that no business should ignore
- businesses using, or intending to use, AI in their operations are advised to consider the risk levels of their respective AI systems and to implement the recommended best practice for better protection of individual consumers

Figure 1: How core values translate into recommended best practices



AI strategy and governance

The Guidance recommends that organisations which use or intend to use AI technologies should formulate an AI strategy. Internal policies and procedures specific to the ethical design, development and use of AI should be set up.

First and foremost, in order to steer the development and use of AI, organisations should establish an internal governance structure that comprises both an organisational-level AI strategy and an AI governance committee (or a similar body). The AI governance should oversee the entire life cycle of the AI system, from development and use to termination. It should comprise a chief-level executive to oversee the AI operation, as well as

members from different disciplines and departments to collaborate in the development and use of AI.

Internal governance policies should spell out the clear roles and responsibilities for personnel involved in the use and development of AI. Adequate financial and human resources should also be set aside for the development and implementation of AI systems. Since human involvement is key, the Guidance also recommends providing relevant training to and arranging regular awareness-raising exercises for all personnel involved in the development and use of AI.

Risk assessment and human oversight

The Guidance stresses the element of human oversight and the fact that

human actors should ultimately be held accountable for the use of and the decisions made by AI. An appropriate level of human oversight and supervision, which corresponds with the level of risk, should be put in place. An AI system that is likely to cause a significant impact on stakeholders is considered to be of high risk. An AI system with higher risk profile requires a higher level of human oversight.

In order to determine risk level, risk assessments that take into account personal data privacy risks and other ethical impacts of the prospective AI system should be conducted before the development and use of AI. Risk assessment results should be reviewed and endorsed by the organisation’s AI governance

committee or body, which then should determine and put in place an appropriate level of human oversight and other mitigation measures for the AI system.

Development of AI models and management of AI systems

To better protect data privacy, the Guidance recommends that organisations should take steps to prepare datasets that are to be fed to the AI systems. Where possible, organisations should consider using anonymised or synthetic data that carries no personal data risk. The Guidance further recommends that organisations should minimise the amount of personal data used by collecting only the data that is relevant to the particular purposes of the AI in question, and strip away individual traits or characteristics that are irrelevant to the purposes concerned.

The quality of data used should be monitored and managed. ‘Quality data’ should be reliable, accurate, complete, relevant, consistent, properly sourced and without unjust bias or unlawful discrimination. Organisations should take appropriate measures to ensure the quality of data and compliance with Person Data (Privacy) Ordinance requirements.

Once datasets are prepared, organisations will have to evaluate, select and apply (or design) appropriate machine learning algorithms to analyse the training data. Mitigation measures that reduce the risk of malicious input and rigorous testing of the AI models are recommended so as to improve the AI system. It also is important to have mechanisms that allow for human

intervention and fallback solutions to kick in when necessary.

AI systems run by machines always have a chance (however slight) of malfunctioning or failing. It is therefore important for them to be subject to continuous review and monitoring by human beings. The approach to such human monitoring and review should vary depending upon the risk level. Measures proposed in the Guidance include keeping proper documentation, implementing security measures throughout the AI system life cycle, reassessing risks and retraining AI models from time to time, and establishing feedback channels for users of the AI system.

Taking one step back from the AI systems, organisations are also encouraged to conduct regular internal audit and evaluation of the wider technological landscape to identify gaps or deficiencies in the existing technological ecosystem.

Communication and engagement with stakeholders

Organisations that serve individual consumers using AI should ensure that the use of AI is communicated to the consumers in a clear and prominent manner, and in layman’s terms. Many of the recommendations set out in the Guidance mirror the data protection principles in place for the collection and use of personal data. For example, consumers should be informed of the purposes, benefits and effects of using the particular AI system. Consumers should also be allowed to correct any inaccuracies, provide feedback, seek explanation, request human intervention and opt out of the use of

AI where possible. Where appropriate, results of risk assessments and reassessments also should be disclosed to consumers.

Concluding remarks

The Guidance encompasses detailed and practical guidelines that have been developed after careful consideration of relevant international agreements and practices. It provides useful guidance to businesses that intend to jump on the bandwagon of the AI trend, or which are seeking to ensure their current AI systems are compliant with best practices endorsed by the Hong Kong government.

Although compliance with the Guidance is not mandatory, prudent businesses and organisations should implement the recommended measures set out in the Guidance to the extent possible, especially if their use or intended use of AI comes with high data or security risks.

The topic of AI has attracted more and more attention in the international arena in the past few years. General artificial intelligence bills or resolutions were introduced and enacted in a number of states in the US in 2021. In April 2021, the European Commission proposed to regulate AI by legislative means. In addition to implementing the recommended measures, multinational companies should keep a close watch on the development of the law in this area in their relevant jurisdictions.

Glenn Haley, Partner, and Sharon Chan, Associate

Bryan Cave Leighton Paisner LLP

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HKEX announces rule changes to attract overseas issuers – especially Greater China Issuers



Billy KM Au, Bonnie KY Yung and Jason X Wang, Partners in the Corporate & Securities practice of Mayer Brown, Hong Kong, explain some key changes to Hong Kong's listing requirements designed to attract more Greater China Issuers.

The Hong Kong Stock Exchange (HKEX) has announced rule amendments to enhance the attractiveness of the Hong Kong market, in particular to Greater China Issuers, taking effect from 1 January 2022.

These amendments are detailed in the Consultation Conclusions on Listing Regime for Overseas Issuers (Conclusions) and this article explains some of the key changes.

Most significantly, the changes adjust both dual primary listing and secondary listing requirements to facilitate listings on HKEX of a wider spectrum of issuers that are already listed on NYSE, NASDAQ or the Main Market of the LSE (Qualifying Exchanges), in particular those with a centre of gravity in Greater China (Greater China Issuers). In addition, the amendments set forth the adoption of one common set of core shareholder protection standards (Core Standards) applicable to all issuers.

Dual primary listings

Until now, Grandfathered Greater China Issuers and Non Greater China Issuers with non-compliant weighted voting rights (WVR) structures and/or variable interest entity (VIE) structures could only apply for secondary listing in Hong Kong.

As of 1 January 2022, such issuers may in addition apply directly for dual primary listing in Hong Kong.

- Grandfathered Greater China Issuers refers to Greater China Issuers listed on a Qualifying Exchange on or before 15 December 2017; or controlled by corporate WVR beneficiaries as of 30 October 2020, and listed on a Qualifying Exchange after 15 December 2017, but before 30 October 2020.
- Non Greater China Issuers are issuers listed on a Qualifying Exchange whose centre of gravity is not in Greater China.
- 'Non-compliant' structures are those not fully complying with the requirements set out in the Listing Rules or with the related HKEX Guidance Letter(s).

The non-compliant WVR structures and/or VIE structures may be retained as long as the Grandfathered Greater

China Issuers or Non Greater China Issuers meet eligibility and suitability requirements for secondary listing with a WVR structure under Chapter 19C of the Listing Rules – including, for instance, two full years' track record of good regulatory compliance on a Qualifying Exchange, plus market capitalisation of HK\$40 billion (or HK\$10 billion with a revenue of HK\$1 billion for the most recent year) – and which comply with relevant disclosure requirements.

In the event that a Grandfathered Greater China Issuer or Non Greater China Issuer is subsequently delisted from the Qualifying Exchange on which it is listed, it may continue to retain such non-compliant WVR structure and/or VIE structure in effect at the time of dual primary listing. The same reasoning to retain non-compliant structures applies when a Grandfathered Greater China Issuer or

Highlights

- amendments to the dual primary and secondary listing requirements, effective from 1 January 2022, have facilitated listings on HKEX of a wider spectrum of issuers, particularly for Greater China Issuers
- Grandfathered Greater China Issuers and Non Greater China Issuers with non-compliant weighted voting rights and/or variable interest entity structures can now apply directly for dual primary listing, while requirements for secondary listing have been consolidated and simplified
- one streamlined set of Core Standards are now applicable to all issuers, with certain modifications allowed for Greater China Issuers

“ more secondary listings of Greater China Issuers without WVR structures are expected after the revised rules of 1 January 2022 ”

Non Greater China Issuer secondary listed in Hong Kong becomes primary listed in Hong Kong as a result of overseas delisting, migration or primary conversion (see below).

Secondary listings

There are currently two routes to secondary listing on HKEX. To provide clearer guidance and reduce complexity, HKEX has now decided to consolidate both routes in one dedicated chapter for secondary listing of overseas issuers – the revised Chapter 19C. In addition to codifying existing practices, other major changes in relation to secondary listing include, amongst others:

1. Removal of ‘innovative company’ requirement for issuers without a WVR structure

The ‘innovative company’ requirement, as HKEX explains, was originally designed with Greater China Issuers in mind, to prevent WVR structures from becoming commonplace in the Hong Kong market by ring-fencing them to new economy issuers. Until now, all secondary listing applicants seeking to list through the concessionary route (which was the only available route for Greater China Issuers) needed to

demonstrate that they are innovative companies as part of the suitability requirements, regardless of whether or not they have WVR structures.

But to attract secondary listings of issuers, in particular Greater China Issuers from traditional sectors, this innovative company requirement, as of 1 January 2022, has been removed for all overseas issuers without a WVR structure in order.

Grandfathered Greater China Issuers and Non Greater China Issuers having non-compliant VIE structures (see above) will also benefit by the removal of this innovative company requirement for seeking a secondary or dual primary listing, provided they do not have a WVR structure.

2. Lowering market capitalisation requirement for issuers without a WVR structure

Under the revised rules, all overseas issuers without WVR structures (including those with a centre of gravity in Greater China) will be allowed to seek a secondary listing under the revised Chapter 19C by meeting either of the following:

- market capitalisation of HK\$3 billion, plus five full years’ track record of good regulatory compliance on a Qualifying Exchange (or other recognised exchange, but for Non Greater China overseas issuers only), or
- market capitalisation of HK\$10 billion, plus two full years’ track record of good regulatory compliance on a Qualifying Exchange.

Greater China Issuers without WVR structures will greatly benefit from this adjustment, as the previous market capitalisation requirement for them was HK\$40 billion (or HK\$10 billion with a revenue of HK\$1 billion for the most recent year). Coupled with the removal of the innovative company requirement, more secondary listings of Greater China Issuers without WVR structures are expected after the revised rules of 1 January 2022.

Change of listing status

A new guidance letter on ‘change of listing status’ from secondary listing to dual primary or primary listing on the Main Board will also take effect at the same time as the revised rules.

Under this provision, a secondary listed issuer will be regarded as a primary listed issuer in the event of delisting from the exchange on which it is primary listed (overseas delisting); or regarded as a dual primary listed issuer in the event of migrating trading of the majority of the issuer’s shares to HKEX (migration), or voluntary conversion by the issuer from secondary listing to dual primary listing (primary conversion).

Upon change of listing status, all exceptions, waivers and exemptions available to the issuer on the basis of, or conditional upon, its secondary listing status will cease to apply, save as provided under the guidance letter.

Core Standards

The Core Standards, which supersede the existing Appendix 3 to the Listing Rules – Articles of Association – aim to provide the same level of protection to all investors and will be applicable to all issuers.



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existing listed issuers
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the Core Standards
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Accordingly, existing listed issuers should take steps to ascertain they are in full compliance with the Core Standards; otherwise, they would have until their second annual general meeting following 1 January 2022 to make the necessary changes to their constitutional documents to conform with the Core Standards. Below are highlights of the major differences.

1. Preamble

An issuer must demonstrate how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, meet the Core Standards.

2. General meetings

An issuer must give members reasonable written notice of its general meetings (which normally means at least 21 days for an annual general meeting (AGM) and at least 14 days for other general meetings), and, generally, the issuer must hold its AGM within six months of the end of its financial year.

3. Members' right to speak/vote

Members must have the right to speak and/or vote at general meetings, except where a member is required

by the Listing Rules to abstain from voting to approve the matter under consideration (for instance, where the member has a material interest in the matter).

However, if an issuer is subject to a foreign law or regulation that prevents the restriction of a member's right to speak/vote, the issuer may have to enter into an undertaking with HKEX to put in place measures that achieve the same outcome.

4. Members' right to convene a meeting

The minimum stake required for members to convene an extraordinary general meeting and introduce resolutions to a meeting agenda must not be higher than 10% of the voting rights, on a one vote per share basis, in the share capital of the issuer.

5. Supermajority vote

A 'supermajority vote' means at least three-quarters of the voting rights of the members and voting in person or by proxy at the general meeting – which is mandatory for approving changes to the issuer's constitutional documents or a voluntary winding up.

As regards variation of rights, a supermajority vote of the issuer's members of the class to which the rights are attached is required. In addition, the quorum for such a meeting shall be holders of at least one-third of the issued shares of the class.

6. Modifications/waivers

Greater China Issuers are required to comply with the Core Standards with modifications – notably, allowing a different minimum length of notice period for general meetings, and a two-thirds (as opposed to three-quarters) majority definition of a supermajority vote.

In any other circumstances, a variation of the Core Standards requirements will not normally be granted. But if it is granted, based on case-specific circumstances, such waivers or modifications should be disclosed in the listing documents and, potentially, the Company Information Sheets.

Billy KM Au, Bonnie KY Yung and Jason X Wang, Partners in the Corporate & Securities practice, HK office

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Powers of Hong Kong liquidators under the Recognition Pilot Program



Michael Chan, Managing Director, Mona Liu, Senior Manager, and Isaac Tang, Senior Manager, Restructuring, Kroll, explain the key features and benefits of the framework for mutual recognition of and assistance to insolvency proceedings between Hong Kong and the Mainland.

On 14 May 2021, the Supreme People's Court of the People's Republic of China (SPC) and the Department of Justice of Hong Kong SAR signed a Record of Meeting on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region, and formulated the Opinions on the Pilot Program Concerning the Recognition and Assistance in Bankruptcy Proceedings of the Hong Kong Special Administrative Region (Recognition Pilot Program), which establishes a cooperation arrangement for mutual recognition of and assistance to cross-border corporate insolvency and debt restructuring proceedings between the Mainland and Hong Kong (Cooperation Arrangement).

The Cooperation Arrangement enables Hong Kong liquidators to apply to Intermediate People's Courts for recognition of their powers in pilot areas of the Mainland designated by the SPC (Shanghai, Xiamen, Shenzhen) (Pilot Areas). Similarly, bankruptcy administrators from the Mainland can also apply to the High Court of Hong Kong for recognition of their powers in Hong Kong.

Key features

Key material features of the Recognition Pilot Program include:

- **Proceedings that can be recognised:** Hong Kong insolvency proceedings,

including compulsory winding-up, creditors' voluntary winding-up and scheme of arrangement promoted by a liquidator or provisional liquidator and sanctioned by a Hong Kong court.

- **Representatives that can be recognised:** liquidators and provisional liquidators in Hong Kong insolvency proceedings may apply to the Intermediate People's Court of the relevant Pilot Area for (i) recognition of their role and office, and (ii) assistance to discharge their duties.
- **Jurisdiction:** applicable to a debtor whose centre of main interests (COMI) has been in Hong Kong continuously for at least six months. Further, the debtor's principal assets in the Mainland

must be in a Pilot Area, or it has a place of business or representative office in a Pilot Area.

- **Grounds of refusal of recognition:** the People's Courts retain wide powers to refuse the granting of recognition or assistance on various grounds, including situations where 'it considers such recognition or assistance violates the basic principles of the law of the Mainland or offends public order or good morals'.
- **Distributions to creditors under a restructuring plan:** the property of the debtor in the Mainland shall first satisfy preferential claims under the laws of the Mainland. The remainder of the property is to be distributed in accordance with the Hong Kong insolvency

Highlights

- a cooperation mechanism, signed in May 2021, is the first such arrangement for mutual recognition of and assistance to cross-border corporate insolvency and debt restructuring proceedings between the Mainland and Hong Kong (Cooperation Arrangement)
- the Cooperation Arrangement enables Hong Kong liquidators to apply for recognition of their powers in certain pilot areas of the Mainland, while Mainland bankruptcy administrators can apply to the Hong Kong court for recognition of their powers in Hong Kong
- the arrangement is a significant step for both Mainland bankruptcy administrators and Hong Kong liquidators, and is especially important given the frequent economic exchanges between the two jurisdictions, as well as the increasing trend of cross-border insolvency

proceedings, provided that creditors in the same class are treated equally.

A welcome development for Hong Kong and Hong Kong liquidators

The Cooperation Arrangement is significant in that it is the first cooperation arrangement for mutual recognition of and assistance to corporate insolvency and debt restructuring proceedings entered into by either the Mainland or Hong Kong with any other jurisdiction. Neither Hong Kong nor the Mainland has adopted the UNCITRAL Model Law on Cross-Border Insolvency (Model Law), an international framework for determining cross-border insolvency matters that has so far been adopted by more than 50 jurisdictions around the globe.

This groundbreaking development also signifies that for the foreseeable future, Hong Kong is the world's only gateway for cross-border insolvency cooperation and enforcement in the Mainland.

Since May 2021, two reported cases have put the cooperation mechanism to the test.

In the case of Samson Paper Co Ltd (Samson), the liquidators needed recognition and assistance to deal with Samson's substantial assets in the Mainland, principally located in Shenzhen. The Hong Kong Court decided that Samson had its COMI in Hong Kong, and it would be appropriate and desirable for the liquidators to also be recognised in the Mainland. As such, the Hong Kong Court issued a request to the Shenzhen Intermediate People's

Court (Shenzhen Court) to recognise the Hong Kong liquidators' appointment in the Mainland. This was the first such recognition request.

In another case, China All Access (Holdings) Ltd (the Company), a Cayman-incorporated company whose assets were located in the Mainland (majority in Shenzhen) and Malaysia through its British Virgin Islands (BVI) subsidiaries, was wound up in Hong Kong. While counsel of the Company opposed such a decision and argued that there was no reasonable possibility that a Hong Kong winding-up order would benefit the petitioning creditor (the second of three requirements to wind up a foreign company), the judge remarked that things have 'moved on substantially' with the signing of the Cooperation Arrangement. The Company is 'reasonably likely' to have its COMI in Hong Kong, and hence, a recognition application can be made to recognise the Hong Kong liquidators' appointment in the Mainland. As such, the liquidators could then take steps to take control of the Mainland subsidiaries, and the petitioning creditor would be able to demonstrate a real possibility of the winding-up order benefiting it and therefore the second core requirement is satisfied.

Comparison of powers of liquidators and bankruptcy administrators in Hong Kong and the Mainland

While it remains to be seen how the Recognition Pilot Program is to be implemented, we compare the powers of liquidators in Hong Kong and the bankruptcy administrators in the Mainland under (1) the Recognition Pilot Program, (2) the Enterprise

“ Hong Kong is the world's only gateway for cross-border insolvency cooperation and enforcement in the Mainland ”

Bankruptcy Law of the People's Republic of China (PRC Bankruptcy Law), and (3) the Companies (Winding Up and Miscellaneous Provisions) Ordinance (CWUMPO) in Hong Kong (see Figure 1).

Assets in the Mainland

Both Mainland bankruptcy administrators and Hong Kong liquidators have the powers to secure control and deal with a debtor's property and assets, deal with its internal management and exercise shareholder rights to subsidiaries or investment companies. In our experience, there are practical hurdles for foreign liquidators to overcome before they may exercise these powers in the Mainland.

In *Sino-Environment Technology Group vs Thumb Environmental Technology Group* (Sino-Environment SPC Ruling), liquidators were appointed to Sino-Environment Technology Group (Sino-Env), a company listed on Singapore Exchange Ltd and principally engaged in the provision of environmental protection and waste recovery through its subsidiaries in the Mainland. Sino-Env had cash deposits with a bank in Shanghai. The bank did not recognise

Figure 1: Comparison of powers of liquidators and bankruptcy administrators in Hong Kong and the Mainland

Powers of liquidators and bankruptcy administrators	Recognition Pilot Program	PRC Bankruptcy Law	CWUMPO
Taking over the property, seals, account books, documents and other data of the debtor	√	√	√
Investigating the financial position of the debtor and preparing a report on such position (see Note 1)	√	√	√
Investigating and claiming against directors'/supervisors'/senior managers' wrongdoings	X	√	√
Managing and disposing of the debtor's assets	√	√	√
Deciding on the matters of the debtor's internal management	√	√	√
Deciding on day-to-day expenses and other necessary expenditures	√	√	√
Continuing or suspending the debtor's business (subject to court and creditors' approval)	√	√	√
Exercising shareholders' rights in relation to the subsidiaries (see Note 2)	√	√	√
Managing and disposing of the debtor's property	√	√	√
Participating in legal actions, arbitrations or any other legal proceedings on behalf of the debtor	√	√	√
Calling for and adjudicating claims from creditors (see Note 3)	√	√	√
Revoking voidable transactions to associated parties, sale at undervalue and unfair preference (see Note 4)	X	√	√
Appointing or employing agent, solicitor or staff when necessary	X	√	√
Examining persons concerned with a company's property and provision of information	X	X	√
Raising on the security of the assets of the company any money requisite (subject to approval from court or creditors)	X	√	√
<p><i>Note 1: Mainland administrators must engage an auditor to conduct a special audit on the company and engage an appraiser to issue a valuation report in respect of the assets of the company. In Hong Kong, in addition to the power to investigate the financial affairs of the company, liquidators have wide powers to investigate the company's affairs, including transactions, payments, dealings and directors' conduct prior to the winding up of the company.</i></p> <p><i>Note 2: Mainland administrators can exercise shareholders' rights in relation to subsidiaries. However, in practice, it is not common for the administrators to take control of the subsidiaries by,</i></p>	<p><i>say, appointing the legal representative or directors of the subsidiaries. In Hong Kong, liquidators can do all acts in the name and on behalf of the company, including making decisions relating to internal management, exercising shareholders' rights of subsidiaries and appointing directors of the subsidiaries.</i></p> <p><i>Note 3: Mainland administrators do not have the power to make a compromise or an arrangement with creditors. This can only occur through bankruptcy reorganisation procedures. In Hong Kong, subject to sanction of the court or the committee of inspection, liquidators may make a compromise or an arrangement with creditors.</i></p>	<p><i>Note 4: Voidable transactions under PRC Bankruptcy Law include:</i></p> <ul style="list-style-type: none"> • sale at undervalue and unfair preference • providing property guarantee to unsecured debts • paying off debts which are not due • abandoned claims • concealing or transferring of property to avoid repayment of debts, and • fabricating debts or acknowledging unreal debts. 	

“ the Recognition Pilot Program has confirmed Hong Kong liquidators’ powers to manage and deal with debtors’ property, assets and investments in the Mainland ”

the appointment of the liquidators by the Singapore High Court. The liquidators applied to the Mainland courts for recognition of their powers to deal with the assets of the company in the Mainland and eventually realised the cash in the bank account after more than two years of legal proceedings.

Hong Kong companies regularly make equity investments in Mainland companies (subsidiaries) that in turn hold operating assets in the Mainland. In order to protect the value of and secure control of the Mainland subsidiaries, it is also common for Hong Kong liquidators to exercise shareholder rights, pass the necessary resolutions and appoint themselves as legal representatives and directors of the Mainland subsidiaries.

Prior to the Sino-Environment SPC Ruling handed down by the SPC, and the implementation of the Recognition Pilot Program, Hong Kong liquidators encountered challenges from Mainland subsidiaries in respect of the liquidators’ powers and authority in the Mainland. Hong Kong liquidators were then forced to apply to the Mainland courts to confirm their rights and powers, as well as the shareholder resolutions passed by the Hong Kong liquidators in respect of Mainland subsidiaries.

The Recognition Pilot Program has confirmed Hong Kong liquidators’ powers to manage and deal with debtors’ property, assets and investments in the Mainland. The Recognition Pilot Program, together with the Sino-Environment SPC Ruling, will further eliminate uncertainties (and risks of challenge) in respect of Hong Kong liquidators’ powers in the Mainland.

Investigations and examinations

Hong Kong liquidators have relatively wide powers to investigate and examine persons who appear to have knowledge of the companies’ affairs. These powers have been especially useful in the investigation of fraud and give liquidators the option of pursuing legal remedies to enhance return to creditors.

The PRC Bankruptcy Law does not expressly provide bankruptcy administrators with such powers. In practice, when specific investigations are required, bankruptcy administrators will need to seek the assistance and support of Mainland courts, local authorities and the Public Security Bureau.

The Recognition Pilot Program does not grant Hong Kong liquidators such investigation or examination powers. However, the Program provides that Hong Kong liquidators can apply to the Mainland courts for certain powers when

necessary, and the Mainland courts will grant such powers, if it is deemed to be reasonable and that such powers shall not exceed the powers set out in the PRC Bankruptcy Law.

Way forward

The promulgation of the Recognition Pilot Program is a significant and helpful step for both Mainland bankruptcy administrators and Hong Kong liquidators. It enhances the connection between the two legal systems in the Mainland and Hong Kong, and provides a clear path for bankruptcy recognition and assistance between the two jurisdictions. This is especially important in light of the very frequent economic exchanges between the Mainland and Hong Kong, as well as the increasing trend of cross-border insolvency.

While the Recognition Pilot Program is being tested in the Pilot Areas, we look forward to ongoing communication and cooperation between the courts in the Mainland and Hong Kong on matters relating to mutual recognition and assistance in bankruptcy proceedings in the two jurisdictions. We anticipate popular support of the Recognition Pilot Program by Hong Kong liquidators. We also look forward to prompt development of the Recognition Pilot Program and associated guidelines, and the expansion of the scope of application of the Recognition Pilot Program that can be applied beyond the Pilot Areas.

**Michael Chan, Managing Director;
Mona Liu, Senior Manager; and Isaac
Tang, Senior Manager; Restructuring
Kroll**

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The Career Paths of a Governance Professional 2022

Date | Saturday 26 March 2022

▶ **Time | 10.00am - 1:00pm**

Mode | Online

The Career Paths of a Governance Professional 2022 (formerly Governance Professionals Career Day) intends to illuminate the career prospects for the future generation of governance professionals, where industry leaders and senior members of the Institute will share practical insights from their experiences. Premium employers and HR professionals will also address the latest trends in career developments in Hong Kong, the Mainland of China, as well as the international governance space.

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Implementing equity incentive plans in state-controlled companies

How can state-controlled listed companies make better use of equity incentive plans? Sui Li, Board Secretary, Guangzhou Automobile Group, shares her experience.



Equity incentive plans allow employees to obtain company equity and enjoy economic rights to a certain extent, but they also allow them to participate in the business in the role of company shareholders or partners, who share profits and risks, and contribute to the long-term development of the company.

As an important incentive mechanism for employees, equity incentives are one of the main ways for enterprises to attract, retain and develop talent. They are an effective way for enterprises to obtain high-quality human resources in competitive markets.

As of the end of 2020, a total of 1,819 A share companies have implemented equity incentive plans. Among them, 26.55% chose the stock option method, 64.10% chose the restricted stock method, and 9.35% chose a combination of the two.

In corporate management, we often talk about letting core employees hold stocks, turning the company into a career platform for employees and changing the way in which corporate value is distributed. In the actual process, the company's

implementation of equity incentives must continue to produce effects where employees see actual benefits. So how to make an effective equity incentive plan is a fundamental issue that the company needs to consider when formulating a plan.

Guangzhou Automobile Group was the first large-scale state-owned automobile group in the Mainland to complete dual listing in Hong Kong and the Mainland. We have been exploring ways to improve the company's medium and long-term incentive mechanisms and, in this article, I will share some practical steps on implementing equity incentives in state-controlled listed companies.

The four stages of equity incentive plans

According to our experience, the steps to achieving an effective equity incentive plan can be divided into four stages: plan decision, design, implementation and optimisation. The main points of each stage are set out below.

1. Plan decision

Decide on the necessity and feasibility of the equity incentive plan, taking

Highlights

- equity incentive plans are particularly useful if the company is in a competitive industry and the demand for highly qualified talent is rising
- independent directors and supervisors cannot be the target of equity incentive plans
- equity incentives must continue to produce actual benefits for employees, so companies need to thoroughly consider all aspects of the plan design when formulating a plan

into account the company's current situation, future business planning, performance development level, stock price trend, human resource status, market attention, etc. These factors will directly or indirectly affect the timing of the implementation of equity incentives, award pricing, the scale of the plan, exercise conditions and the probability for exercising the option. Generally speaking, if the company is in a competitive industry, the industry and the company's business are on the rise, market scrutiny is high, the demand for highly qualified talent is rising and the company's valuation is low, it is appropriate to implement an equity incentive plan.

2. Plan design

Consider the seven aspects of plan design, namely method, personnel, source, quantity, price, goal and mechanism. This is the most important part of the design and implementation of the entire plan.

- I. **Method.** At present, most companies use stock options and restricted stocks; some companies also use a combination of options and restricted stocks at the same time.
- II. **Personnel.** The equity incentives of listed companies must be directed at employees of the listed company and its holding subsidiaries, which generally include company executives, core technology and business personnel, employees who have a direct impact on the company's performance and qualified foreign employees. Independent directors and supervisors cannot be the

target of incentives. The person in charge of a local state-owned enterprise appointed and managed by a higher-level organisation cannot participate. In the case of a joint venture that is an important source of profit for the listed company, the company may apply to the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) to include this type of joint venture in the plan, according to whether there is a policy particularity in the industry.

- III. **Source.** The source of equity incentives includes issuing shares to incentive targets, repurchasing the company's shares, and other methods permitted by law and administrative regulations. Generally speaking, when the stock price is lower than the net assets per share, it is recommended to adopt the repurchase method. The source of funds for equity incentives must be legal and free funds, and listed companies should not provide any form of financial assistance.
- IV. **Quantity.** The total number of underlying stocks involved should not exceed 10% of the total equity and for STAR market companies the number should not exceed 20%. The company's stocks granted through all equity incentive plans within the validity period must not exceed 1% of the total share capital of the company.
- V. **Price.** The exercise price of stock options should not be lower than the par value of the stock and

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equity incentive plans
allow employees to
... participate in the
business in the role of
company shareholders
or partners
”

should not be lower than the higher of the following prices: the average trading price of the company's stocks on the trading day before the draft equity incentive plan is announced, or one of the average trading prices of the company's stocks 20, 60 or 120 trading days before the draft equity incentive plan is announced. The restricted stock grant price should not be lower than the par value of the shares and should not be lower than the higher of the following prices: 50% of the average trading price of the company's stocks on the trading day before the draft equity incentive plan is announced, or 50% of one of the average trading prices of the company's stocks 20, 60 or 120 trading days before the draft equity incentive plan is announced. If the fair market price of the state-owned listed company's stock is lower than the net assets per share, the restricted stock price should not be less than 60% of the fair market price.

- VI. **Goal.** The incentive plan should adopt a two-tier evaluation system: the company-level



performance evaluation and the individual-level performance evaluation. Among them, performance indicators can be roughly divided into comprehensive indicators, growth indicators and enterprise operation quality indicators, which are determined by the enterprise according to its own situation.

VII. Mechanism. Mainly includes exercise unlocking arrangements and personnel exit management mechanism. Current regulatory policy has clarified that the waiting period/restriction period for the implementation of equity incentives for state-controlled listed companies is two years in principle, and the options will be exercised/unlocked in batches of at least three years at an even pace, that is, the 2+3 model. But the company can apply to SASAC to make slight adjustments according to the actual situation, such as adopting the 3+4 model, or the 3+3 model.

3. Plan implementation

According to the current policy, whether for central enterprises or

local state-owned enterprises, the approval process of all companies' equity incentive plans is roughly the same, based on the principle of 'the one who invests to approve'. It includes 'making plans, pre-communication with SASAC, internal decision (locking price), formal report to SASAC, approval and reply from SASAC, general meeting of shareholders (final approval), board of directors (grant), registration and deposit exercise/review of exercise/unlocking conditions, exercise/unlock'.

Among these, A+H share listed companies need to pay special attention to three points set out below.

I. Before announcing the equity incentive plan, it should be submitted to the relevant stock exchange for preview. If the equity incentive plan adopts restricted stocks, and involves related transactions between directors, executives and the company, the company needs to hire an independent financial adviser for H shares to provide formal views which shall be issued together with the general meeting circular.

II. In principle, the implementation of equity incentives in A share companies should be subject to the regulatory rules of both Hong Kong and the Mainland at the same time. However, due to differences in the listing rules relevant to A share and H share companies, individual provisions of the equity incentive plan might not meet the rules of the two places at the same time. The company shall communicate in advance with the regulators in both Hong Kong and the Mainland.

III. Do a good job in shareholder communication and explanation before the general meeting of shareholders. Because H class shareholder's interests can differ greatly from those of A class shareholders, the equity incentive plan must be approved by the company's shareholders' meeting as well as the A/H class shareholders' meeting. It is suggested that listed companies should do a good job in shareholder identification and investor communication in advance, obtain the understanding and support of shareholders and investors, and hire relevant professional institutions to assist if necessary.

4. Plan optimisation

Do a good job in market and peer tracking, equity incentive exercise data analysis, effect evaluation, etc. Summarise problems and experience in preparation for the new equity incentive plan.

Sui Li, Board Secretary

Guangzhou Automobile Group

国有控股上市公司股权激励方案

国有控股上市公司如何更好地运用股权激励工具？

广汽集团董事会秘书睦立女士分享了经验。

股权激励是以公司股票为标的，使员工通过获得公司股权并享有一定的经济权利，一定程度上以公司股东或合伙人角色参与企业经营，分享利润，共担风险，勤勉尽责的为公司长期发展服务的激励方式。

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截止2020年底，A股上市公司已实施股权激励的累计达1819家，占44.33%；其中，26.55%的上市公司选择股票期权方式，64.10%的上市公司选择限制性股票方式，9.35%上市公司选择复合工具方式。

在企业管理中，我们经常讲让核心员工持股，把公司变成员工的事业平台，转变企业价值的分配方式。

摘要

- 如果公司处于竞争激烈的行业并且对高素质人才的需求不断上升，股权激励计划尤其有用
- 独立董事、监事不得成为股权激励计划的对象
- 股权激励必须持续为员工产生实际收益，因此企业在制定方案时需要对方案设计的方方面面考虑周全

实际过程中，公司实施股权激励要持续产生激励效果，归根结底还是要让员工看到实际的收益。那么，如何制定一个有效的股权激励计划，则是公司在制订计划时需要考虑的根本性问题。

广汽集团是国内首家A+H上市的大型国有汽车集团，上市至今，一直以来在公司中长期激励机制建设方面都在不断探索。现在结合我们的实践，我将谈一谈国有控股上市公司实施股权激励的实务要点。

股权激励计划的四个阶段

根据我们的实践经验，股权激励方案设计步骤可分为四个阶段：前置判断、方案设计、方案实施、管理优化，各阶段主要工作要点如下：

1. 前置判断

判断股权激励计划实施的必要性和可行性。对公司当前所处行业周期、未



来业务规划、业绩发展水平、股价走势、人力资源状况、市场关注度等方面进行综合判断，这些因素会直接或间接影响股权激励的实施时点、授予定价、授予规模、行权条件、可行权概率等。一般而言，如公司处于充分竞争行业，行业发展和公司业务处在上升期，市场关注度较高、高端核心人才需求缺口大、公司出现低估等情形时，是实施股权激励计划的合适时间窗口。

2. 方案设计

解决7方面的问题，包括方式、人员、来源、数量、价格、目标、机制，这是整个方案设计实施的最为重要环节。

- I. **方式**：目前应用的主要有股票期权、限制性股票，也有公司同时采用期权和限制性股票的复合型工具。
- II. **人员**：上市公司股权激励对象必须为上市公司及其控股子公司的员工，一般包括公司高管人员、核心技术和核心业务人员、对公司业绩有直接影响的员工以及符合条件的外籍员工，但是独立董事、监事不能成为激励对象。地方国企中由上级组织任命管理的企业负责人不能参与。如果是上市公司重要利润来



“
股权激励……使员工
通过获得公司股权并
享有一定的经济权利
”

源的合营企业，各公司可根据所处行业是否存在政策特殊性向国资委申请将该类合营企业纳入。

- III. **来源：**股权激励的股份来源有向激励对象发行股份、回购本公司股份以及法律、行政法规允许的其他方式如股东转让。一般来说，当股价低于每股净资产时，建议采用公司回购方式。股权激励的资金来源一定是激励对象的合法自由资金，且上市公司不得提供任何形式财务资助。
- IV. **数量：**上市公司全部有效期内的股权激励计划，所涉及的标的股票总数累计不超过股本总额的10%，科创板上市公司累计不超过20%，任何一名激励对象通过全部在有效期内的股权激励计划获授的本公司股票，累计不得超过公司股本总额的1%。
- V. **价格：**股票期权行权价格不得低于股票票面金额，且不得低于下列价格较高者：股权激励计划草案公布前一个交易日的公司股票交易均价；股权激励计划草案公布前20个交易日、60个交易日或者120个交易日的公司股票交易

均价之一。限制性股票授予价格不得低于股票票面金额，且不得低于下列价格较高者：股权激励计划草案公布前一个交易日的公司股票交易均价的50%；股权激励计划草案公布前20个交易日、60个交易日或者120个交易日的公司股票交易均价之一的50%。国有控股上市公司股票公平市场价格低于每股净资产，则限制性股票授予价格应不低于公平市场价格的60%。

- VI. **目标：**激励计划可采用二层考核体系，分别为公司层面业绩考核及激励对象个人层面绩效考核。其中业绩指标大致可以分为综合性指标、成长性指标和企业运营质量指标，具体由企业根据自身情况确定。
- VII. **机制：**主要包括行权解锁安排和人员退出管理机制。当前政策已经明确国有控股上市公司实施股权激励的等待期/限售期原则上为2年，至少分3年分批匀速行权/解锁，即2+3模式，但公司可以向国资委申请根据实际情况稍作调整，比如采用3+4模式或3+3模式等。

3. 方案实施

根据当前政策无论是中央企业还是地方国企，按照“谁出资谁审批”的原则，各公司股权激励计划审批流程大致相同，包括制订计划、国资委预沟通、内部决策（锁价）、正式上报国资委、国资委审批及批复、股东大会最终审批、董事会授予、登记存管、行权/解锁条件审议、行权/解锁几个环节。其中，如果是A+H上市公司，需要特别注意三点。

- I. 发出股东大会通函之前将股权激励计划报有关交易所预审，如果股权激励计划采用限制性股票，还涉及到董事、高管与公司产生关联交易，公司还需要另外聘请H股的独立财务顾问对该事项发表正式意见，并随股东大会通函一并发出。
- II. 原则上在A股实施股权激励应同时适用两地的监管规则，但由于A股和H股两地上市规则的差异，可能会遇到股权激励方案的个别条款无法同时满足两地规则，公司应提前做好两地监管沟通。
- III. 充分做好股东大会前股东沟通解释工作。由于H股股东识别与A股存在很大差异，股权激励方案除了获公司股东大会审议通过，还要获得A\H类别股东会通过，建议上市公司应提前做好股东识别及投资者沟通工作，取得股东及投资者的理解和支持，必要时聘请相关专业机构协助。

4. 管理优化

做好市场和同行动态跟踪、股权激励行权数据分析、效果评估等，总结问题和经验，为新一期股权激励计划做好准备。

睦立女士

广汽集团董事会秘书

Professional Development

Seminars: December 2021

2 December

Board culture – the trend towards ever-greater board accountability (practical implications for governance professionals)

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

*Speakers: Tommy Tong FCG HKFCG, Partner, Corporate, and
Hannah Cassidy, Partner, Head of Financial Services
Regulatory, Asia; Herbert Smith Freehills, Hong Kong*



8 December

Emphasising the ‘S’ in ESG – how to prepare for reporting on social aspects

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

*Speakers: Alson Law FCG HKFCG, Company Secretary and
Head of Secretarial Department, and Carmen Lau,
Sustainability Manager; The Bank of East Asia, Ltd*



9 December

Businesses beware: Hong Kong’s new data privacy laws heighten the risk of collecting and using personal data

*Chair: Polly Wong FCG HKFCG(PE), Institute Qualification
Development Panel Vice-Chairman and Disciplinary
Tribunal member, and Company Secretary and Group
Financial Controller, Dynamic Holdings Ltd*

*Speakers: Kareena Teh, Partner, and Philip Kwok, Counsel,
LC Lawyers LLP; and Alan Lee, Associate Partner,
EY Financial Services Consulting*



13 December

Company secretary: increasing responsibilities and practical tips for discharging them

*Chair: Desmond Lau
ACG HKACG(PE),
Institute
Professional
Development
Director*

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



16 December

GRC implementation by MNC in China: challenges, pain points & solutions

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

*Speaker: Sharon ZM Chen, Director of Commercial, Corporate
Services, Vistra Group*

17 December

Company secretarial practical training series: change in directors, officers and other corporate positions – practice and application

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

Video-recorded ECPD seminars

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

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

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

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
23 February 2022	3.00pm–4.30pm	Technology series: AML/CFT regulatory update, TCSP licensing renewal and best practice by leveraging technology	1.5
28 February 2022	6.45pm–8.45pm	CSP foundation training series: initial set-up of Hong Kong private limited companies	2
2 March 2022	4.30pm–6.00pm	Dancing with knives – an exploration of shareholder disputes and takeovers of public companies	1.5
8 March 2022	4.00 pm–5.00pm	An overview of the lifecycle of a fund and the roles of governance professionals in the fund industry	1

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

Membership

New graduates

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

Chan Ka Lun	Hu Yanan	Leung Siu Han	Mak Sin Ki	Wong Lok Hang
Chan Nga Yee	Hung Chau Yeung	Leung Wing Shan, Vivien	Nip Suk Ching	Wu Zhengyi
Chen Chao	Kwong Wing Yin	Li Jingxian	Pang Pui Tak	Xie Yong Qing
Cheuk Sui Yee	Law Andrew Cheuk-kit	Li Lok Fai	To Wing Ying	Yip Ming Wai
Fok Chau Tung	Lee Wing Sze, Connie	Liu Yin Na	Wang Haikui	
He Rongfang	Leung Ling Ching	Luk Wing Han	Wong Cheuk Lam	

Membership (continued)

Maintaining professional standards

Member, graduate and student discipline

The Institute requires its members, graduates and students to comply with the requisite standards of professional ethics and conduct, as well as the Institute’s regulations. The Investigation Group, Disciplinary Tribunal and Appeal Tribunal are the Institute’s independent disciplinary bodies, as stipulated in the Byelaws of The Chartered Governance Institute and the Articles of Association of the Institute.

Notice of Disciplinary Tribunal decision

Disciplinary tribunal case 2021-03(M), Liu Yiu Keung, Stephen

Hearing Date: 17 Dec 2021
Decision Date: 7 Feb 2022

The member has been suspended from membership of the Institute. The Disciplinary Tribunal found breaches of the requisite professional standards expected of a member, as

set out under the Decision, relating to certain of the member’s actions as liquidator under an insolvency case, which had drawn adverse Court comments. The suspension is to remain in force until the resolution of a related litigation that the member is defending, which might determine the existence and extent of any relevant mitigating factors, whereupon the Disciplinary Tribunal will make its final

determination of the nature and extent of the breaches of professional standards.

The respondent will pay costs of HK\$50,000 and pay all membership dues during the period of suspension, amongst other matters under the Decision: [https://www.hkcgj.org.hk/static/1/about-us/discipline/DT%20Decision_Liu%20Yiu%20Keung%20Stephen%20\(online\).pdf](https://www.hkcgj.org.hk/static/1/about-us/discipline/DT%20Decision_Liu%20Yiu%20Keung%20Stephen%20(online).pdf)

For details of member, graduate and student discipline, please visit the Discipline page under the Governance & Constitution subpage in the About Us section of the Institute’s website: www.hkcgj.org.hk.

Advocacy



The rebranding initiative stemmed from the ongoing evolution and increasing complexity of the multifaceted responsibilities of a Chartered Secretary and Chartered Governance Professional. It is for this reason that the Institute adopted its new name, The Hong Kong Chartered Governance Institute, on 20 July 2021.

New Institute website – Better Governance. Better Future

The Institute is delighted to announce that its new website is now online, and will be celebrating its new brand identity at the Annual Dinner 2022 at the JW Marriott Hotel Hong Kong, postponed due to tighter Covid-19 social distancing measures until 13 April 2022.

The Institute is recognised locally, regionally and internationally. The new identity will better position it to broaden its presence and serve its members as the authority on purposeful governance in Hong Kong and the Mainland. The Institute will continue its commitment to promoting better governance for a better future.

Advocacy (continued)

Climate Change Conference 2022

Effective from 1 January 2022, all companies listed on Hong Kong Exchanges and Clearing Ltd (HKEX) must publish ESG reports at the same time as their annual reports. As the global focus on climate change-related issues intensifies, more stringent regulatory measures are in the pipeline. It is therefore imperative for governance professionals to stay ahead of the curve.

With this in mind, the Institute convened its Climate Change Conference 2022, held on 13 January in webinar format. The event was chaired by Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE) CGI Past International President, Institute Honorary Adviser and Past President, and Executive Director and Company Secretary, CK Hutchison Holdings Ltd.

The Honourable Wong Kam-sing GBS JP, Secretary for the Environment,

Hong Kong Special Administrative Region, and Katherine Ng, Chief Operating Officer and Head of Policy, HKEX, were the Guests of Honour for this special occasion.

Other industry experts who spoke at this conference include Teresa Ko BBS JP, Former Chairman, Listing Committee of the Hong Kong Stock Exchange, Partner and China Chairman Freshfields Bruckhaus Deringer; Amar Gill, Managing Director and Head of Investment Stewardship, APAC, BlackRock; Hendrik Rosenthal, Director, Group Sustainability, CLP Holdings Ltd; Irene Chu, Partner, ESG and Sustainability, Head of New Economy and Life Sciences, KPMG China; and Gillian Meller FCG HKFCG(PE), Institute Past President, and Legal and Governance Director, MTR Corporation Ltd.

Regulators and practitioners discussed pertinent issues relating to ESG and climate change, including:

- keynotes on Hong Kong's major climate change-related initiatives to address global concerns
- the IFRS Foundation's work on aligning sustainability reporting standards
- the demands of international investors for sustainable investments
- the Task Force on Climate-related Financial Disclosures' recommendations on climate change disclosures
- sharing on the CLP's transition to the new lower carbon economy, and
- sharing on the MTR's journey in measuring and setting targets for emission reductions.



Advocacy (continued)

15th Asian Financial Forum 2022

The 15th Asian Financial Forum (AFF), jointly organised by the HKSAR Government and the Hong Kong Trade Development Council, was held online from 10 to 11 January 2022.

Under the theme, Navigating the Next Normal towards a Sustainable Future, the AFF discussed key issues reshaping the global economic landscape, as well as how to sail into a more sustainable future amid the reopening of economies. At what is considered Asia's premier financial platform, a plethora of finance innovations and next-generation business idea for sustainable and inclusive development

were presented. Global leaders in government, finance and business gathered to exchange insights, and to explore a range of business and investment opportunities.

Ellie Pang FCG HKFCG, Institute Chief Executive; Ernest Lee FCG HKFCG(PE), Institute President, Audit Committee Chairman and Mainland China Focus Group member, and Technical Partner, Deloitte China; and David Fu FCG HKFCG(PE), Institute Past President and Company Secretaries Panel member, and Group Company Secretary, HKEX, also attended the forum as representatives of the Institute.

Webinar on CG Code changes

The CG Code changes, effective from 1 January 2022, are aimed at enhancing corporate governance standards, specifically in the areas of culture, board independence and refreshment, diversity, communication with shareholders and ESG.

During a webinar held on 26 January 2022, Institute Chief Executive Ellie Pang FCG HKFCG, a former HKEX policy lead on corporate governance, provided governance professionals with an updated and relevant overview of the CG Code changes. Institute Deputy Chief Executive, Mohan Datwani FCG HKFCG(PE), also contributed by reviewing the much-debated issue of board diversity, with a focus on gender diversity.



HKCGI Prize 2021

The Institute is delighted to announce that The Hong Kong Chartered Governance Institute Prize (HKCGI Prize) 2021 has been awarded to Mrs April Chan FCG(CS, CGP) HKFCG(CS, CGP), Institute Past President and Chairman of the Technical Consultation Panel, and CSIA Inaugural President, in recognition of her significant contributions to the governance profession and the development of the Institute over a substantial period of time. First presented in 2010, the HKCGI Prize is decided by a Judging Panel comprising past presidents, current Council members and Institute Fellows, and represents the highest honour of recognition by peers from the governance profession.

Mrs Chan's career is defined not only by her professional work, but also by the important contributions that she has made to the work of the Institute. She has been active in advocating for good governance, as well as in sharing her insights and experience through the practical workshops that she has led for young governance professionals. Over the years, she has served on Council, as well as various committees and panels. She previously chaired the Institute's Membership Committee, HR Committee, Company Secretaries Panel and Special Entry Scheme Interview Panel, and currently chairs the Technical Consultation Panel, Appeal Tribunal and Public Governance

Interest Group, as well as being a member of the Nomination Committee. As a key facilitator in the establishment of CSIA and its Inaugural President, Ms Chan spoke regularly at the Institute's signature conferences and seminars.

Neil McNamara FCG HKFCG, Institute Past President and Corporate Secretary, Livi Bank Ltd, comments: 'April Chan has made significant contributions to the governance profession and I am pleased to witness this celebration of

her achievement as her peer. As governance professionals, we strive for excellence, but good governance requires an understanding of the substance of an issue, rather than taking a technical, box-ticking approach. April's dedication to her profession is not merely demonstrated through a profound knowledge of corporate governance, but also a unique sensitivity that predicated upon notions of integrity and diligence, a strong moral compass and the ability to communicate and persuade.'

April Chan: awardee of the HKCGI Prize 2021



Mrs April Chan FCG(CS, CGP) HKFCG(CS, CGP) is the former Company Secretary of CLP Holdings Ltd. She has extensive experience and expertise in company secretarial practice, and was instrumental in developing and implementing the framework of corporate

governance in CLP. She was named Asian Company Secretary of the Year in 2013 by Corporate Governance Asia and is a frequent presenter on corporate governance in Hong Kong and overseas. Before joining CLP, she worked in professional firms and academic institutions in Hong Kong and Australia.

Mrs Chan is a Chartered Secretary and Chartered Governance Professional, a Fellow of The Chartered Governance Institute (formerly known as The Institute of Chartered Secretaries & Administrators (ICSA)) and a Fellow of The Hong Kong Chartered Governance Institute (HKCGI) (formerly known as The Hong Kong Institute

of Chartered Secretaries (HKICS)). She was educated in Hong Kong and completed the Senior Executives Course at Tsinghua University in Beijing in 1997, the Leadership in the Public Sector Programme run by the HKSAR Government in 2000, and the Program for Management Development at Harvard Business School in the US in 2001.

Mrs Chan was the inaugural President of Corporate Secretaries International Association (CSIA) and is a Past President of HKCGI, Past Chairman of HKCGI's Company Secretaries Panel, Past Member of the Citizens Advisory Committee on Community Relations of the Independent Commission Against Corruption in Hong Kong and Past Honorary Secretary of The Hong Kong Women Professionals and Entrepreneurs Association. Mrs Chan is currently Chairman of HKCGI's Technical Consultation Panel, Appeal Tribunal and Public Governance Interest Group, and a member of the Nomination Committee; a member of the Advisory Committee for the School of Business and Hospitality Management of Caritas Institute of Higher Education; and Honorary Secretary of The Hong Kong Breast Cancer Foundation.

Chartered Governance Qualifying Programme (CGQP)

November 2021 examination diet

The examination results of the November 2021 diet were released on 11 February 2022. Candidates can access their examination results from their accounts on the Institute's website. In addition, the examination papers, mark schemes and examiners' reports are available to download from the Login area of the Institute's website.

Candidates may apply for a review of their examination results by submitting a completed examination review application form, along with the review application fee of HK\$2,200 per module, to the Institute by Friday 25 February 2022.

For details, please visit the Examinations page under the Studentship section of the Institute's website: www.hkcgj.org.hk.

June 2022 examination diet timetable

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

Week one

Time	7 June Tuesday	8 June Wednesday	9 June Thursday	10 June Friday
9.15am–12.30pm*	Hong Kong Taxation	Hong Kong Company Law	Interpreting Financial and Accounting Information	Corporate Secretaryship and Compliance

Week two

Time	14 June Tuesday	15 June Wednesday	16 June Thursday	17 June Friday
9.15am–12.30pm*	Corporate Governance	Risk Management	Strategic Management	Boardroom Dynamics

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

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

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

Reminder – HKU SPACE CGQP Examination Preparatory Programme

The spring 2022 intake of the HKU SPACE CGQP Examination Preparatory Programme will commence on 1 March 2022.

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

Call for support: Student Ambassadors Programme summer internship 2022

The Institute's Student Ambassadors Programme 2021/2022 is designed to attract undergraduates to learn more about the Institute's dual qualification of Chartered Secretary and Chartered Governance Professional. The Institute is inviting companies and organisations to offer summer internship positions to over 200 student ambassadors this year. The internship period is usually from June to August 2022, and there is flexibility for an intern period of up to a maximum of eight weeks.

If members are interested in offering summer internship positions and would like more details, please visit the News & Events section of the Institute's website: www.hkcgj.org.hk.

For enquiries, please contact Shalom Li: 2830 6001, or email: shalom.li@hkcgj.org.hk.

Studentship activities: January 2022

11 January

Caritas Institute of Higher Education Master of Corporate Governance orientation

13 January

The Hong Kong Management Association career talk



26 January

Student Ambassadors Programme (SAP): experience sharing on summer internship programme 2021



Forthcoming studentship activities

Date	Time	Event
17 February 2022	6.30pm-7.15pm	Introductory session on routes to HKCGI membership
24 February 2022	1.00pm-2.00pm	Student Gathering (1): update on the CGQP and how to use the PrimeLaw online platform
26 March 2022	10.00am-1.00pm	The Career Paths of a Governance Professional 2022

Fast Track Professional route

From 1 January 2021, a new Fast Track Professional route became available for qualified lawyers or accountants (including those recognised by The Chartered Governance Institute and its divisions in other jurisdictions) who wish to become Chartered Secretaries and Chartered Governance Professionals.

For details, please visit the Fast Track Professional page under the Studentship section of the Institute's website: www.hkcgj.org.hk.

Notice

Policy – payment reminder

Studentship renewal

New policy effective from 1 July 2021

Students whose studentship expires in January, February or March 2022 should have received their renewal notice by email on 1 January 2022. Please be reminded to settle the renewal fee by Thursday 31 March 2022.

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

Featured Job Openings

Company name	Position
Harneys Corporate Services (Asia) Ltd	Corporate Services Junior Administrator
Computershare	Officer, Governance Services
Computershare	Manager/Senior Manager, Governance Services
Wah Kwong Maritime Agency Company Ltd	Company Secretarial Assistant
Sun Wah Hi-Tech (H.K.) Ltd	Company Secretarial Assistant
Company Secretarial Services, BDO Ltd	Senior Associate/Associate
Company Secretarial Services, BDO Ltd	Assistant Manager/Supervisor

For details of job openings, please visit the Job Openings section of the Institute's website: www.hkcgj.org.hk.

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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 midshore jurisdiction that provides fiscal, legal and currency neutrality, in addition to being an ideal location for cost-efficient substance creation.

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

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¹NBAA IFR theoretical range at Mach 0.85 with 8 passengers, 4 crew and NBAA IFR reserves. Actual range will be affected by ATC routing, operating speed, weather, outfitting options and other factors. All performance is based on preliminary data and subject to change.