

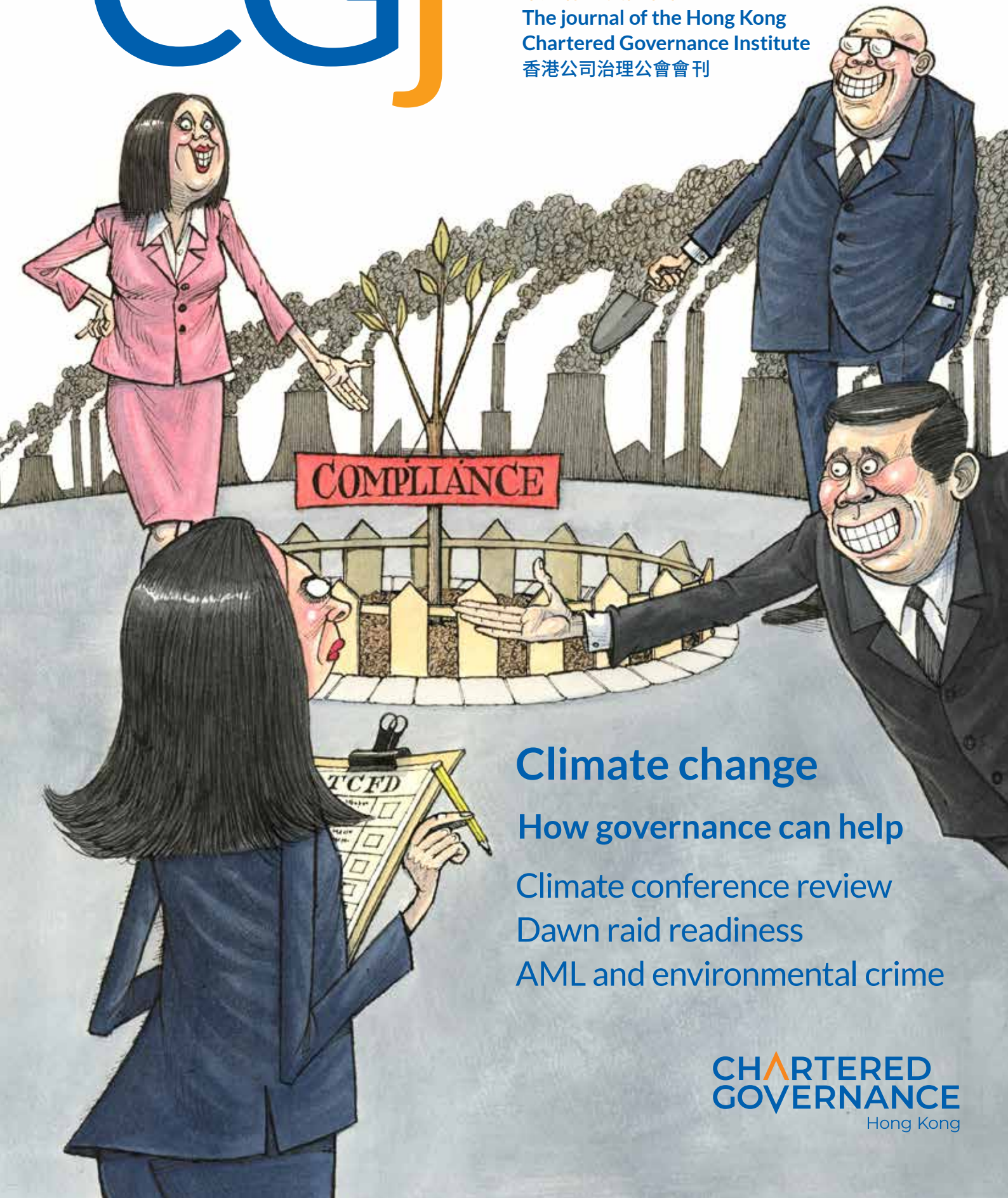


March 2022

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



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

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

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

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

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Climate change – how governance can help

Our journal this month reviews our Climate Change Conference 2022, held in January this year to share expertise and build knowledge and understanding of the climate-related risks and opportunities facing organisations today. The gravity of the climate change threat has become increasingly evident in successive reports of the United Nations' Intergovernmental Panel on Climate Change, but, as awareness of the threat increases, the response to it has in turn become a lot more coordinated.

Our Institute's conference is part of that response. The first session of the conference started with a tour of the latest relevant regulatory trends, both here in Hong Kong and globally. In jurisdictions around the world, we are already seeing disclosures aligned with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) being made mandatory for larger businesses, along with obligations to disclose targets to transition to carbon net zero. Another major development has been the creation of the International Sustainability Standards Board to harmonise the world's fragmented sustainability disclosure standards.

Regulatory regimes are also increasingly targeting the board's role and responsibilities in this area.

The TCFD, in addition to promoting its recommended disclosures, also reviews the degree to which organisations are adopting them. One finding has been that reporting on companies' governance structures and practices relevant to climate change has relatively low compliance levels. Regulators, Hong Kong Exchanges and Clearing Ltd included, are keen to reinforce the message that the governance of climate-related risks and opportunities is a board-level concern.

This takes the fight squarely into our territory as governance professionals. Members of our profession can play a key role in helping to get issues relevant to climate change the attention they deserve on the board. Our cover stories this month offer a wealth of practical guidance on how best to go about that. While the compliance imperative – the need to stay on the right side of the regulatory requirements mentioned above – will always be a good starting point, this month's cover stories emphasise the benefits of also highlighting the bigger picture.

Scenario analysis, for example, is a good way to get the board to consider the potential impacts of different climate scenarios. Similarly, setting up a dialogue between board members and key stakeholders, inside and outside

the organisation, is a powerful way of getting the board's buy-in on climate-related issues.

A key takeaway, then, is that taking a compliance approach to these complex issues will not be sufficient. Organisations of all kinds need to take these issues seriously if they want to survive and thrive in the low carbon, less environmentally destructive world that we need to transition to if we are to avoid the worst effects of climate change, biodiversity loss and environmental degradation. It is a sobering thought that the only organisations likely to be around in the next 10 to 20 years will be those that have already successfully integrated sustainability goals into their core business strategies.

Ernest Lee FCG HKFCG(PE)

气候变化 – 治理将如何发挥作用

本月会刊回顾了我們于今年 1 月召开的 2022 年气候变化研讨会，该研讨会旨在分享专业知识，增进大家对各组织目前面临的气候相关风险和机遇的了解与认知。在联合国政府间气候变化专门委员会 (Intergovernmental Panel on climate change) 连续发布的几份报告中，气候变化威胁的严重性愈发凸显。随着人们对这一威胁的认识不断深入，应对措施也愈加协调一致。

公会举办本次研讨会的目的也是为了应对气候变化。研讨会第一个环节首先介绍了香港及全球最新的相关监管趋势。在世界各地的司法管辖区，我们已经看到大型企业已经被强制要求按照气候相关财务信息披露工作组 (TCFD) 的建议进行信息披露，并且必须披露向净零碳过渡的目标。另一项重大进展是成立了国际可持续发展标准委员会 (International Sustainability Standards Board)，以协调全球各地不一致的可持续发展披露标准。

监管制度也越来越多地针对董事会在该领域的角色与职责。TCFD 除了推广其建议的信息披露外，也评估各组织在多大程度上能够采纳这

些披露建议。研究发现，与气候变化相关的公司治理结构和实践的报告工作合规水平相对较低。包括香港交易及结算有限公司在内的监管机构迫切希望传达并强调的一点是，气候相关风险和机遇的治理是董事会层面需关注的问题。

作为治理专业人士，我们将直面这一问题。我们这些专业人士可以在促进相关气候变化问题得到董事会应有的重视方面发挥关键作用。本刊封面故事就为如何发挥我们会员的这一作用提供了最佳实践指引。虽然保障必要的合规（按照上述监管的要求行事）从来都是良好的起点，但本期封面故事强调了拥有大局观的益处。

例如，情景分析是让董事会考虑不同气候情况潜在影响的一个好方法。同样，在董事会成员和组织内外的主要利益相关者之间建立对话，是在气候相关问题上说服董事会的有效手段。

因此，一个关键的启示是，仅从合规的角度来处理这些复杂的问题是不够的。如果我们想要避免气候变化、生物多样性丧失和环境退化带

来的最坏影响，我们就需要向一个低碳、环境破坏性较小的世界进行转型，如果大家想要在这个世界上持续生存与繁荣，各组织都该认真对待这一问题。令人警醒的是，在未来 10 到 20 年的时间尚能存活的组织，必将是那些已经成功将可持续发展目标纳入其核心业务战略的组织。



李俊豪 FCG HKFCG(PE)



Climate risk management

Climate Change Conference
2022 review: part one

This first part of CGj's review of the Climate Change Conference 2022, held by The Hong Kong Chartered Governance Institute (the Institute) in January this year, focuses on the latest developments relating to the governance of climate-related risks and opportunities.

As the systemic risks resulting from climate change have become better understood, there has been a growing momentum globally to improve corporate disclosures and practices in this area. In January this year, as part of the Asian Financial Forum 2022, the Institute held its first conference dedicated solely to this issue – Climate Change Conference 2022. This first part of our review of the forum focuses on the latest climate-related regulatory trends, the convergence of sustainability reporting standards under the newly created International Sustainability Standards Board (ISSB), and the way institutional investors are incentivising companies to take climate change, and indeed wider ESG and sustainability issues, seriously.

Regulatory trends

The global regulatory environment has been heading in the direction not only of mandatory reporting on

climate change-related issues, but also requirements for firms to publish targets and metrics on decarbonisation and their transition to net zero. In her presentation, Katherine Ng, Managing Director and Head of Policy and Secretariat Services, Listing Division, Hong Kong Exchanges and Clearing Ltd (HKEX), looked at these trends in Hong Kong.

In the decade since HKEX launched its ESG Reporting Guide, an increasing number of ESG aspects have become mandatory or subject to comply or explain. The latest upgrade of Hong Kong's Corporate Governance Code and Listing Rules, for example, brought in a new requirement that listed issuers consider their climate-related risks. In addition, disclosures relating to the board's oversight and governance of ESG matters, together with disclosures relating to materiality assessments, are now mandatory.

Highlights

- in addition to identifying their climate-related risks, listed issuers and IPO applicants need to ensure effective board oversight of ESG matters
- boards should be asking how their companies are identifying, monitoring and managing climate-related risks, and also how are they capturing the opportunities as the world moves towards carbon net zero
- on the back of its work harmonising global accounting standards, the IFRS Foundation has set up the International Sustainability Standards Board to create a global baseline for sustainability disclosure standards

“
We only have very limited time and I hope that every one of you will also wholeheartedly support this initiative. We all need to put up the fight of our lives to deliver this outcome, not only for ourselves but also for future generations.
 ”

**Teresa Ko BBS JP, Corporate Partner and China Chairman,
 Freshfields Bruckhaus Deringer**

HKEX has also been raising the bar for IPO applicants. Ms Ng emphasised that companies coming to list in Hong Kong can't afford to ignore the ESG risks that are material to them. 'ESG risk should not be an afterthought,' she said. 'It's not something you consider at the end of the first year of listing because you have to be compliant with the Listing Rules. It should be front and centre of your risk assessment before you come to listing.'

In addition to identifying their climate-related risks, she added, listed issuers and IPO applicants also need to ensure effective board oversight of ESG matters. She recommended conference participants look at the guidance published by HKEX on its website relating to Hong Kong's ESG disclosure requirements and to broader sustainability issues. In particular, she recommended they visit HKEX's ESG Academy website launched in 2021.

She then gave the conference a tour of the landscape ahead. The biggest story in climate change and sustainability at the moment is the creation of the ISSB.

At the recently concluded COP26 – the 26th Conference of the Parties to the United Nations Framework Convention on Climate Change – held in Glasgow, the International Financial Reporting Standards (IFRS) Foundation announced the launch of the ISSB to develop a global baseline of sustainability disclosure standards. Ms Ng said HKEX is looking forward to the launch of the ISSB standards and is committed to making sure that disclosure standards in Hong Kong keep pace with these developments. 'Our objective is to see better, more transparent and higher-quality ESG practices, in particular relating to climate change, in the coming years,' she concluded.

Convergence of reporting standards

Global climate change-related reporting standards have been converging for a number of years. The recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), for example, have already become widely accepted as a best practice benchmark in this area. The launch of the ISSB by the IFRS Foundation late last year, however, is

a very significant development. The conference was lucky to have the Co-Vice Chair of the IFRS Foundation, Teresa Ko BBS JP, Corporate Partner and China Chairman, Freshfields Bruckhaus Deringer, to speak about the work ahead of the ISSB.

She started her presentation by sketching out the problem that the ISSB has been set up to solve. The 'alphabet soup' of different ESG frameworks and scorecards around the world has given rise to 'rampant and serious greenwashing', she said. Late last year, the IFRS Foundation published prototype climate and general disclosure requirements intended to start the discussion regarding what an effective global baseline of sustainability disclosure standards might look like.

Ms Ko emphasised that the phrase 'global baseline' does not mean that the ISSB is looking to set the lowest common denominator when developing the global standard. 'Disclosures will need to be meaningful, sophisticated, credible and technically interoperable. The end goal is to produce auditable and decision-useful information,' she said. The model under consideration would devise interoperable 'building blocks' of disclosures that can be built up and integrated into one cohesive set of disclosures, she added.

To conclude, Ms Ko pointed out that the ISSB is only a standard setter and ultimately it is going to be up to domestic regulators and governments to decide on how to adopt and mandate the standards. She also emphasised that there is still a long

Follow the science

The science relating to the risks resulting from climate change has never been clearer and, in her introductory presentation of the Institute's Climate Change Conference 2022, Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), The Chartered Governance Institute Past International President, and Institute Past President, emphasised the importance of 'staying aligned with what science is telling us'.

Climate Change 2021: The Physical Science Basis, the latest report of the Intergovernmental Panel on Climate Change (IPCC) issued in August 2021, paints a bleak picture of the world we will be living in unless deep reductions in carbon dioxide and other greenhouse gas emissions occur in the coming decades. In addition to the weather and climate extremes we have already been

seeing in every region of the globe, the current trajectory of global warming would mean that heat extremes would more often reach critical tolerance thresholds for agriculture and health. Moreover, biodiversity loss and ecosystem degradation, in combination with climate change, are accelerating our current trajectory in a feedback loop that presents systemic threats to the ecosystems we depend upon for our survival.

While the scale of the climate change problem is not to be underestimated, Ms Shih also highlighted the scale of the initiatives already underway to do something about it. This was also the main theme of the second presentation of the conference by The Honourable KS Wong GBS JP, Secretary for the Environment, Hong Kong Special Administrative Region. Mr Wong reviewed the

government's strategy to address the challenge of climate change. Under the Climate Action Plan 2030, Hong Kong's overall target is to achieve carbon neutrality by 2050, but Mr Wong told the conference that the government is keen to set itself more ambitious targets. For example, the government's latest commitment plan sets an interim target to reduce Hong Kong's overall carbon emissions by half by 2025, using 2005 as the base year. There is also a plan to phase out the use of coal for regular power generation by around 2035. He added that Hong Kong's transition to zero carbon should not only be regarded as a challenge and risk for businesses. 'Hong Kong's green transition will also provide opportunities for the whole society, including the investors, business people and young people,' he said.

way to go to tackle climate change and limit global temperature rise to 1.5°C above the pre-industrial levels. The task ahead of us is to build a financial system entirely focused on carbon net zero, she said, quoting Mark Carney, former Governor of the Bank of England. This will require a wholesale rewiring of the global financial system.

'We only have very limited time and I hope that every one of you will also wholeheartedly support this initiative. We all need to put up the fight of our lives to deliver this outcome, not only for ourselves but also for future generations,' she said.

An investor perspective

One of the strongest incentives for companies to raise their game in the ESG and sustainability space is the pressure coming from investors. Amar Gill, Managing Director and Head of Investment Stewardship, APAC, BlackRock, shared with conference attendees the ways in which investors will be increasingly holding companies accountable for their governance of climate change-related impacts.

In this regard, institutional investors like BlackRock have the advantage of scale. Of the 16,000 companies globally that BlackRock has exposure to, about

1,100 companies make up 90% of global Scope 1 and Scope 2 greenhouse gas (GHG) emissions (Scope 1 refers to direct GHG emissions that occur from sources that are controlled or owned by a reporting organisation, while Scope 2 refers to indirect GHG emissions associated with its activities and use of its products). These carbon-intensive companies comprise BlackRock's target 'climate universe', Mr Gill said, and are the focus of its stewardship team's efforts.

One of the key ways in which institutional investors can influence corporate policies and practices in this

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 ”

Katherine Ng, Managing Director and Head of Policy and Secretariat Services, Listing Division, Hong Kong Exchanges and Clearing Ltd



area is via their support or opposition to director re-elections. Over the last 12 months, BlackRock has put into practice more stringent criteria on whether to support the re-election of directors in its target companies. ‘We are looking for the companies in our climate universe to be giving us disclosure on the actual emissions for the last financial year and their targets for what they expect to achieve in the medium term – not 2050 or 2060, when very few of us will be around anymore, but medium-term targets for 2030. We want to know what they expect to achieve and how are they going to get there,’ Mr Gill said.

He then turned to the urgency of the need to make ESG data comparable across jurisdictions. Blackrock is a strong supporter of the TCFD reporting recommendations and the work the ISSB is doing to harmonise global ESG reporting standards. The current situation has implications, Mr Gill pointed out, not only for individual companies but for the whole financial system. The lack of comparable data in corporate disclosures means, for example, that the correlation between the various ESG ratings currently

available is also poor. ‘Because corporate disclosures are still not sufficiently correlated, the third-party consultants that are rating the listed issuers have to extrapolate, interpolate and make estimates to fill in the gaps. Different consultants will be doing this differently so they come up with different results,’ he said.

He added that BlackRock is also a strong supporter of the HKEX initiatives designed to improve climate change and sustainability practices and disclosures by Hong Kong listed companies. Nevertheless, he expressed some concern about the level of commitment in the local market regarding integrating sustainability goals into core business strategies. He questioned, for example, why companies’ sustainability reports are often relegated to the last pages of their annual reports. Sometimes they are not even included in the annual report at all, he said, and frequently the CEO and Chairman statements make no reference to it.

‘That raises questions about whether companies are doing this for the sake of compliance. We need to get beyond

compliance to really integrate all of these risks, as well as the opportunities that present themselves in the transition to a low-carbon economy, into core business strategies,’ Mr Gill said.

Another advantage of large institutional investors, when it comes to their influence on policies and practices in this area, is their long-term investment horizons. There is already a significant flow of capital going to companies that take ESG and sustainability issues seriously, Mr Gill pointed out, and this shift of funds towards high-performing ESG companies is only just beginning.

‘This is a multi-decade theme that we’re just beginning to see the start of,’ he said. ‘For companies, there are significant implications for cost of capital and valuations, and we see this as an issue that all the members of the board should be aware of. Directors need to be asking what are the sustainability challenges, the climate risks and opportunities, and how is the company identifying, monitoring and managing the risks, but also how to capture the opportunities as the world moves towards lower carbon processes.’ [CGI](#)

A Turn of Events: Impact of Social Distance Measures

With Hong Kong currently dealing with the fifth wave of the pandemic, updated rules per Cap. 599F Prevention and Control of Disease (Requirements and Directions) (Business and Premises) have further restricted the holding of physical AGMs and EGMs. However, listed companies are mandated by listing regulations to hold an AGM for their shareholders. To overcome these restrictions without compromising investors rights while meeting regulatory obligations, Issuers can adopt virtual meetings solutions as regulators also encourage the use of new technology to reduce the need to have face-to-face meetings as well as to maximise shareholder participation.

Stakeholders Participation on the SPOT

Virtual meetings solutions are driving changes in how AGMs are conducted, while also changing user behaviour. Benefits of adopting the digital solutions for AGMs include:

- ▶ Overcome restrictions and challenges due to pandemic in holding in-person meetings
- ▶ Compliance with regulatory mandates
- ▶ Provide large scalability and enhance shareholders' participation from any location
- ▶ Boost corporate governance and improve corporate image and reputation
- ▶ Increase operational efficiency and lower costs
- ▶ Allow stakeholders to vote online and appoint e-proxy

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- ▶ Integrated functions of e-proxy, live streaming, online attendance, online real time e-voting and Q&A
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Catharine Wong
Head of Share Registry and Issuer Services, Tricor Hong Kong



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This second part of CGJ's review of the Institute's Climate Change Conference 2022 focuses on what company secretaries can do to facilitate effective board oversight of climate-related issues.

The Institute's conferences and CPD services have long had a practical orientation and its Climate Change Conference 2022, the Institute's first major forum dedicated solely to this issue, was no exception. This second part of our review of the forum looks at the practical guidance provided by speakers in the second session of the conference. They addressed what company secretaries can do to facilitate effective board oversight of climate-related issues, the benefits of aligning with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and the mindset needed to build sustainability goals into your company's business strategy.

The benefits of TCFD alignment

The TCFD was set up in 2017 by the Financial Stability Board to establish best practice benchmarks for corporate reporting on climate-related risks. Irene Chu, Partner, ESG Reporting and Advisory, KPMG China, focused her presentation on the key ways that aligning disclosure practices with the TCFD recommendations can help companies improve their performance and disclosure in this area.

'Understanding the TCFD recommendations is not difficult – the challenges come when you start to implement them – but aligning with these recommendations will bring major benefits, both in terms of better informing stakeholders and helping the company itself to make better decisions,' she said.

One of the main ways in which the TCFD framework does this is by helping companies to address the broader impacts of their products and business models on the environment. Ms Chu pointed out that many companies have started to report on climate change, but their disclosures tend to focus on a narrow view of their carbon footprint. In other words, the disclosure relates to Scope 1 and Scope 2 emissions, whereas the TCFD framework encourages a broader and more ambitious approach that takes Scope 3 emissions into account.

Another key benefit is the TCFD's focus on metrics and targets. The expectation of stakeholders is that companies should be setting targets to ensure that they have a future in a low carbon world, Ms Chu pointed out.

She then turned to two areas of weakness in climate-related reporting – the disclosure of companies' relevant governance structures and practices, and their resilience strategies under

different climate scenarios – and outlined the ways in which alignment with the TCFD recommendations can improve the quality of corporate disclosures in these areas.

1. Getting governance right

The first of the four pillars of the TCFD recommendations is 'governance' and companies, to be in alignment with the TCFD recommendations, need to disclose the board's role and responsibilities towards relevant risks and opportunities. Since 2018, the TCFD has been monitoring how far corporate disclosures are in alignment with their recommendations. The finding that relatively few companies are reporting on their governance of climate-related issues might seem rather surprising. You would expect that appropriate corporate governance structures would be a basic and fundamental requirement for all companies, Ms Chu said.

While the reasons for this are likely to be diverse, she recommended boards should certainly consider whether

Highlights

- there has been an increasing expectation that companies should report not only on financially material topics that influence enterprise value, but also on topics material to people, the economy and the environment
- many companies have started to report on climate change, but their disclosures tend to focus on a narrow view of their carbon footprint
- appealing to the hearts of board members, not just their heads, can be just as effective in getting their buy-in on climate change issues

they have the expertise to address the complex issues relevant to the management of climate change risks. 'A common best practice is to ensure that boards have at least one member with financial knowledge – should there be a similar approach to ESG and climate risks?' she asked.

In addition, she suggested that boards should review the company's compensation and incentivisation practices to align them with ESG performance metrics. She also recommended that companies seeking to improve this aspect of their disclosure regimes should take a look at the relevant guidance provided by Hong Kong Exchanges and Clearing Ltd.

2. Improving resilience

The second area of weakness identified by the TCFD relates to how far companies are disclosing their resilience strategies under different climate scenarios. A useful tool recommended by the TCFD to assist companies in this area is scenario analysis. Ms Chu explained that scenario analysis is not the same as forecasting. The latter is more about trying to predict future trends in a company's performance under a 'business-as-usual' scenario. The former starts from a hypothetical future and helps companies to identify the potential implications of different possible future states. There is bound to be a degree of uncertainty in this, of course, but it certainly helps to consider how you can best transition to a number of different future scenarios while minimising any negative impacts on your business, she said.

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aligning with [the TCFD recommendations] will bring major benefits, both in terms of better informing stakeholders and helping the company itself to make better decisions
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Irene Chu, Partner, ESG Reporting and Advisory, KPMG China

The role of company secretaries

The presentation by Gillian Meller FCG HKFCG(PE), Immediate Past President, The Hong Kong Chartered Governance Institute, and Legal and Governance Director, MTR Corporation Ltd, complemented that of Ms Chu by looking in more detail at how to improve the board's oversight and governance of climate-related issues.

She started her presentation with some tips on how company secretaries can get the relevant issues onto the board's agenda. Persuading directors of the need to comply with climate-related reporting requirements should not, of course, be a hard sell, but she suggested that company secretaries can use these requirements as a lever to open up broader discussions of the company's ESG disclosure and performance. 'You can use these requirements as a way to get beyond compliance and shine a light on what you are, or what you are not, doing as a company,' she said.

Thinking longer term, Ms Meller also recommended scenario analysis (discussed above) as a way to help boards address the impact of various climate change scenarios on the

business. 'Once you start talking about some of the hard numbers and possible scenarios, it generally tends to get people interested,' Ms Meller said.

One scenario raised by Ms Chu in her presentation was the possibility that extreme weather events, such as flooding, might impact the company's operations and assets. Ms Meller pointed out that this is an important consideration for MTR. 'Being a public transport provider, we have to make sure that our infrastructure will withstand future changes in the climate,' she said. 'So we regularly do reviews of our assets, and extreme weather and climate change impact studies, to make sure that our adaptation and resilience measures are adequate.'

On the flipside of these risks, directors also need to have an awareness of the potential benefits of taking climate change seriously. These would include access to finance focused on sustainable investments, potentially cheaper insurance premiums and the cost benefits of improving energy efficiency. Ms Meller emphasised that setting up a direct dialogue between board members and key stakeholders about the risks and opportunities

discussed above can be beneficial. Getting CEOs and finance directors to hear from active investors, for example, about their concerns relating to the firm's carbon emissions, reinforces the importance of such issues for the firm's future.

Appealing to the hearts of board members, not just their heads, can be just as effective in getting their buy-in on climate change issues, Ms Meller suggested. Setting up a dialogue between board members and younger employees might help here. 'It's anecdotal evidence, but it is said that when graduates are applying for a job, the first page they look at is the graduate recruitment page on a company's website, but the second page they look at is the sustainability page. I think younger people really take these matters to heart, so allowing your board to hear from them makes the point that, if you want to be an employer of choice, these are matters that you have to take seriously,' she said.

Building sustainability goals into your business strategy

The final speaker in the second session of the conference, and the Session Chair, Hendrik Rosenthal, Director – Group Sustainability, CLP Holdings Ltd, focused his presentation on the mindset needed to successfully build sustainability goals into a company's business strategy. He pointed out that this mindset has to go beyond compliance to a broader understanding of the expectations of stakeholders and the fundamental risks that the business is exposed to, whether that is climate, labour, supply chain, reputational or environmental.

'It is really up to corporates to respond to the information needs of their stakeholders, not just to meet the compliance requirements of the stock exchange. This is really an opportunity for every company to better understand and communicate its own business strategy,' he said.

Providing strategic advice on sustainability – the focus of Mr Rosenthal's role at CLP – therefore requires an understanding which goes beyond regulatory requirements. Similarly, governance professionals seeking to add value in this area would do well to acquire a broad awareness of the macro issues that are shaping the business, the region and the world as a whole. Since it is the duty of the board to be on top of the company's major risks, this is also a perspective that is desirable for board members.


'What kind of individuals do we need on our board? We need people who have that bigger picture view, for starters. An awareness of the ESG trends and issues that can really shape the business at its core, fundamentally creating or destroying enterprise value,' Mr Rosenthal said.

He then shared CLP's 'learning process' in working out how to turn ESG risks into opportunities and how to successfully communicate the resulting business strategy to the market. He said adopting the double materiality concept has helped the company better reflect ESG risks and opportunities in its business strategy from both a financial and an impact perspective, while ensuring that its reporting is relevant to its different stakeholders. Double materiality

refers to the expectation that companies should report not only on financially material topics that influence enterprise value, but also on topics material to people, the economy and the environment.

'This is really about understanding the external forces that are shaping our business, but at the same time understanding our impact on the communities in which we operate and on the natural environment, and the market and economy more broadly,' he said.

In addition to thorough research of the relevant trends, Mr Rosenthal recommended engagement with senior management and operational staff who are running the business, as well as external stakeholders and experts. The research and engagement should be subject to regular reviews, he added, to determine whether adjustments and changes of direction are needed. Once again, Mr Rosenthal emphasised the need for a broad perspective when assessing any trends or issues noted by this process. Are they likely to erode or create enterprise value? Will they have an impact on customers, the community, the environment, or the economy?

'We hope that, through this process, we can provide disclosure that is of use to our investors and the financial community, so that they can better understand how we are creating value and minimising risk. We also hope that our disclosure helps our various stakeholders to better understand how we're minimising our impacts,' he said. 



Money laundering and environmental crime



Sharan Gill, writer, lawyer and CGj contributor, reviews a new report highlighting the relatively neglected connection between money laundering and environmental crime.

The reality put forward in a new report by Finance for Biodiversity (F4B) – Breaking the Environmental Crimes-Finance Connection – is stark and unequivocal. Environmental crime is one of the top five most profitable global criminal enterprises, generating up to almost US\$300 billion annually. Associated tax revenue losses amount to nearly US\$30 billion per annum. Coming on the heels of the high-level commitments to reduce climate change risks and environmental destruction made at COP26 – the 26th Conference of the Parties to the United Nations Framework Convention on Climate Change – these figures are staggering. The stakes are high, illustrated by fact that nearly half the world’s tree species are at risk of extinction. This is a clarion call for enforcing the accountability of the financial actors involved.

The report, published on 12 January this year, was prepared for the UK Government–sponsored Global Resource Initiative (GRI), a taskforce assigned to provide recommendations

to the UK government on greening its international supply chains. Immediately clear from this report is that the issues and the corresponding proposals are of direct relevance to stakeholders and financial institutions (FIs) around the world. It makes a strong case for due diligence measures for FIs, among others, to adapt to a changing regulatory landscape, warning that they need to adopt their own methodology before this gets imposed on them at high cost.

The limitations of conventional AML rules

While different jurisdictions have their own particular anti–money laundering (AML) rules, the legislation and regulation in this area focuses on preventing the proceeds of criminal acts from being disguised as legitimate funds. The new report explores in detail the application of AML regulations in relation to environmental crime and highlights the practical difficulties arising in this relatively untested area of law.

Highlights

- practitioners involved in AML due diligence cannot afford to neglect this relatively under-reported aspect of money laundering
- financial institutions need to embed better screening and controls of environmental crime in their AML risk frameworks
- digitally powered innovations, from satellite imagery to blockchain, increasingly enable even the most complex traceability challenges to be overcome

Despite the differences between jurisdictions, global standards for determining offences have been put forward by the Financial Action Task Force (FATF), the global money laundering and terrorist financing watchdog. A specific crime that causes profits to be laundered within AML is referred to as a 'predicate offence', that is the underlying criminal activity that generates proceeds to be laundered. Illegal mining is a typical example of a predicate offence within the context of environmental crime, an activity that results in profits that may be laundered through the financial chain. The report argues that FIs, often unwittingly, incentivise environmental crimes by investing in, or providing capital for, enterprises that benefit from criminal activity. Through the profits made from these investments, these institutions effectively launder the proceeds of environmental crime.

The question is: why is this not already within the ambit of AML rules? FIs are required to report knowledge or suspicion of money laundering through suspicious activity reports. To identify suspicious activities, FIs employ mechanisms to screen investments, but the report highlights the way environmental crimes are slipping under the radar. Going back to the illegal logging example, if land which is illegally logged is subsequently used for agricultural production, the FI that finances the business which produces the food from that land is effectively laundering the proceeds from illegal logging. Under current application of AML laws, however, this investment is technically legal, essentially because the linkage to

illegal logging does not actually appear on the FI's balance sheet.

This problem is more widespread than it would initially seem. FIs tend to invest in nature-dependent sectors such as food and infrastructure, the profitability of which can be increased through environmental crime. Again, from the illegal logging example, there is a strong incentive to perpetrate environmental crime, as this drives startup costs down and increases profitability of the operations.

Lurking behind opaque supply chains

The report concedes that FIs are generally unaware that they are complicit in laundering the proceeds of environmental crime and often do make an attempt to scrutinise their supply chain. However the often complex supply chains make it difficult to identify environmental crimes, more so when there is blending of sourcing from both legal and illegal origins in supply chains. This makes it especially difficult to ascertain culpability.

The report underscores that even when an offence has been detected in the supply chain, there are rarely legal repercussions for FIs, which is hardly conducive to encouraging consistency in monitoring supply chains. Worse, it effectively renders AML laws ineffective when sources of legitimate financing are fully aware of, and indeed may be implicitly benefiting from, economic activities linked to environmental crimes.

The key, the report argues, is to enforce culpability beyond the balance sheet. There needs to be better tracking of environmental crimes and identification

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of guilty parties. It is likely that AML rules will eventually be tightened to expand their application and public demand will drive regulators to enforce these rules more effectively. The report points to several global precedents in this direction that are rapidly gaining momentum in the financial world and will have major implications for FIs that do not initiate a framework of due diligence to address these risks.

Global regulatory initiatives

To date, AML regulation has been applied to environmental crime mostly in the context of the illegal wildlife trade. More recently, according to the report, the practical application of AML rules has been applied to a broader range and number of environmental crimes. New mandatory environmental due diligence requirements will soon come into force in key jurisdictions.



The 2018 AML Directive of the European Commission (EU) explicitly references environmental crime. The EU's proposed Environmental Crime Directive will widen the range of offences covered, and will increase legal certainty by providing specific and clear descriptions of criminal offences. The new rules will also impose punitive sanctions such as withdrawal of permits, disqualifications and exclusion from access to public funding, including tenders.

In the UK, the proposed Environment Act will impose legal compliance on eligible members of the non-financial corporate sector to identify whether their commodities were illegally produced. While this does not currently affect FIs directly, there will be increased data available for scrutiny as a result. FIs without an

existing methodology to deal with this avalanche of data face the risk of being caught left-footed.

In the US, the Lacey Act makes it illegal for anyone to purchase, import, export or acquire illegally captured animals, or illegal forest or animal products, across US state lines or international borders. Additionally, the proposed FOREST Act in the US aims to prohibit commodities produced on illegally deforested land from US markets and includes illegal deforestation as a financial crime statute. The benefits derived from such financing must also be included in these regulations, as they ultimately sustain business operations dependent on environmental crime.

Adopting a brand new 'environmental crime free' regulatory requirement

would, the report points out, be complex and onerous, and would certainly meet significant resistance from the market. Nevertheless, the report argues that developments in AML are likely to follow a similar trajectory as those described above. Expect new rules requiring FIs to demonstrate the absence of environmental crime in their financing activities and requiring businesses, including financial institutions, to ensure that their value chains are absent of designated products or processes. Comparable regulations exist with anti-human trafficking laws, for example, to ensure the absence of slavery in value chains. The Kimberly process, which resulted in US regulations requirements that supply chains be free of 'conflict diamonds', is another compelling example.

Enforcing accountability

One reason for the lack of impetus for companies to scrutinise their dealings and supply chain for the proceeds of environmental crime has been the lack of punitive action, whether in the form of sanctions or otherwise. The report argues that companies will increasingly be held accountable for a lack of supervision and control, however.

Tougher legal requirements and enforcement can be imposed with rapidity, particularly in response to major events. The report points out the precedent set after the 9/11 attacks, for example, when it was discovered that much of Al Qaeda's financing had passed through US-based bank accounts. Congress rapidly passed legislation requiring improved know-your-customer practices at

“ the report argues that financial institutions, often unwittingly, incentivise environmental crimes by investing in, or providing capital for, enterprises that benefit from criminal activity

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FIs. Similarly, in the UK, the Anti-Terrorism Act was amended to make it mandatory to immediately report knowledge of a person committing an offence related to funding terrorism or laundering terrorist funds. This had ripple effects across global financial reporting, especially for FIs who were not prepared to deal with the new reporting regulations.

Will the current heightened awareness of the global and serious consequences of environmental crime have a similar galvanising effect? Accountability has already come for the financial community in other parts of the environmental landscape. The Prudential Regulation Authority's (PRA) supervisory statement SS3/19 identifies the expectation that a firm oversees and assesses risks imposed by climate change to the firm. In particular, the PRA expects that a Senior Management Function (SMF), will be appointed to accept personal responsibility for the identification and management of climate risks.

This is important as it drives personal accountability at senior management and board level and imposes personal liability should SMFs be in breach of their duties. While this does not currently apply to a broader context of environmental crime,

one could see the potential for such regulatory actions to be imposed for environmental crime in the future.

The role of stakeholders

There is a growing community of actors advancing finance-related actions to eradicate environmental crimes, including those with a long track record such as TRAFFIC in addressing illegal wildlife trafficking, and new coalitions such as the recently established Environmental Crimes Alliance. Moreover, the report points out that 'digitally powered innovations, from satellite imagery to blockchain, are rapidly removing the practical constraints to better understand where and how environmental crimes exist and intersect financial arrangements'. It argues that activist organisations and other advocates of environmental protection could go further and initiate civil action, which would play a vital role in establishing legal precedents and accelerate the more extensive use of AML rules.

There is thus an urgency for the financial community, and interested stakeholders, to develop and adopt more extensive due diligence measures to safeguard them from being unintended supporters, or beneficiaries, of environmental crime.

Conclusion

AML's application as a due diligence tool is already widely implemented in risk management frameworks globally, but there are limitations in the scope of these frameworks relating to environmental crime. A more resolute application of these rules will be needed, according to this report, to stem the flow of illicit funds being represented as legitimate on balance sheets. AML rules can only go so far, however, and national regulators need to take the lead, guided by legal precedents in other jurisdictions and industries.

FIs themselves should take the first step to understand what these developments mean. Voluntary measures allow FIs to gradually adopt the regulations without excessive cost or requiring high upfront capacity. FIs need to embed environmental crime within their risk frameworks or risk mispricing their credit exposures. Impacted corporations unable to demonstrate the absence of environmental crime in their supply chain may face considerable risk to their operations and supply chain structures. Developing a standardised methodology to process the mountain of data that will inevitably result from increasing regulatory requirements will be crucial. Ultimately, all stakeholders need to be actively involved.

Sharan Gill

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

The report reviewed in this article is available from the Finance for Biodiversity website: www.f4b-initiative.net.



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Live and let VIE

Nana Li, Research and Project Director, China, the Asian Corporate Governance Association (ACGA), answers some important questions about variable interest entities (VIEs) and discusses the future implications for Mainland companies using this structure.



A listing loophole used by tech firms such as Alibaba and Tencent to list overseas recently received a PRC regulatory stamp of approval. What is a VIE, why is it controversial and what does the future hold for these structures?

What is a VIE?

A VIE is a corporate structure used by privately owned Mainland companies, including Alibaba and Tencent, to circumvent PRC restrictions on direct foreign investment in key sectors such as telecoms and the internet. It was first used by Sina Corp for its 2000 listing on Nasdaq in the United States and hundreds of other firms have followed suit over the past 20 years, enabling them to raise billions of dollars from foreign investors.

In a VIE structure, foreign shareholders own shares in a shell company – often registered in the Cayman Islands (Caymans) or the British Virgin Islands (BVI) – and use complex contracts to control the operating entity inside the Mainland (see Figure 1).

Why are VIEs controversial?

For years, VIEs have stood on shaky legal ground. If strictly interpreted according to Mainland law, they are de facto illegal. There have been cases where courts have disallowed VIEs. But historically, the state has never formally clarified their legitimacy. Therefore there was a risk that VIEs could be declared void, wiping out foreign investment in these issuers overnight.

Over the years, it seemed as if the Mainland would clarify its stance.

For example, in the first draft of the Foreign Investment Law issued by the Ministry of Commerce in 2015, the authorities proposed to address the VIE issue by making sure the controlling shareholders of these structures were Chinese nationals. However, this proposal raised various concerns among market participants, particularly how to reverse-engineer companies like Tencent with its largest shareholder being Naspers, a South Africa-based company.

The trade war between the US and the Mainland from 2018 served as a further distraction for the Mainland government in solving this issue. In the final version of the Foreign Investment Law published in 2019, the VIE issue was not mentioned at all.

What do US regulators make of VIEs?

Over the past two decades, both the US and the Mainland seemed to have given tacit approval for the structure by steering clear of this grey area. When the Mainland

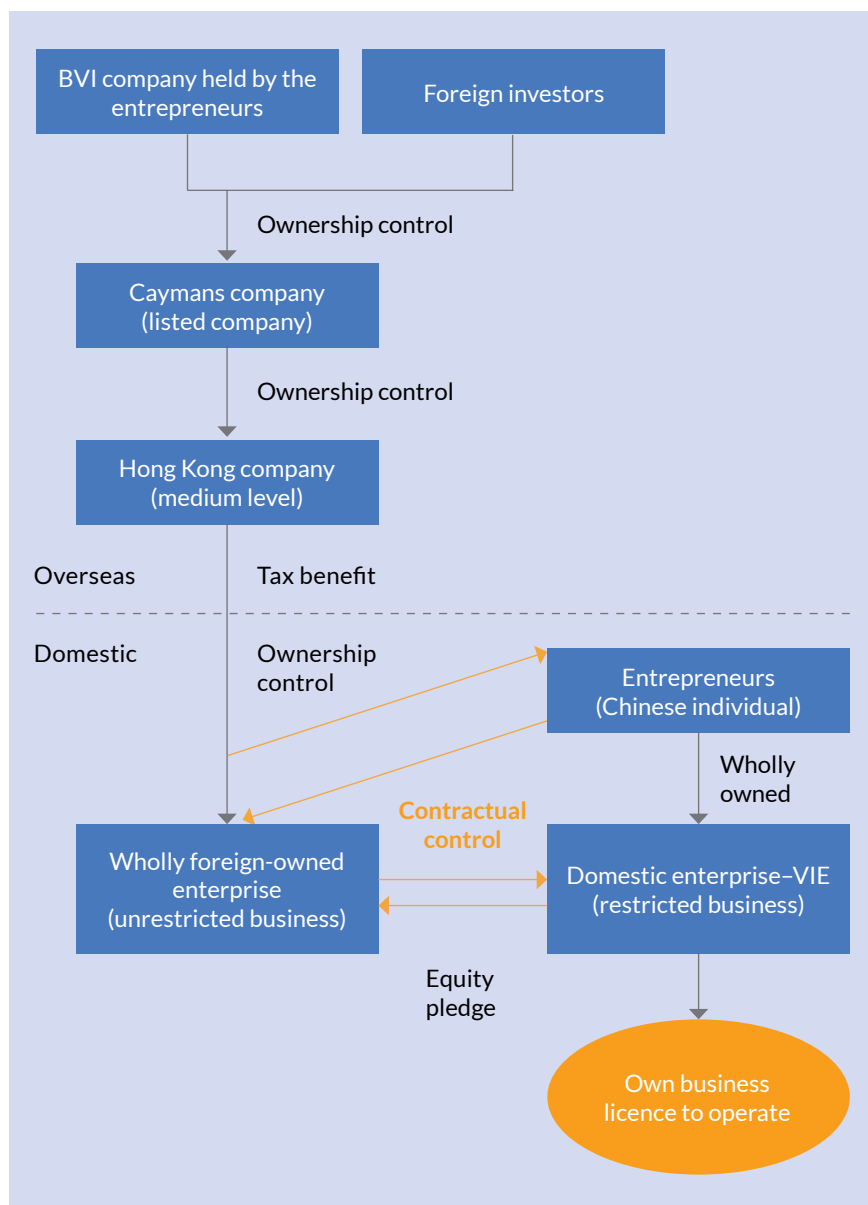
launched the new tech board under the Shanghai Stock Exchange in 2019, the regulator allowed VIEs to list on the bourse and treated them the same as other issuers. Such a ‘silent strategy’ significantly benefited both international investors and the Chinese private sector.

But the silence was broken by US Securities and Exchange Commission (SEC) chairman Gary Gensler in July 2021 when he talked about ‘offshore shell companies’ in a speech. It was seen as a response to the PRC government’s further restrictions on Mainland-based companies seeking overseas listings amid data security concerns. The regulator has since then stopped processing IPO applications from Chinese companies. On 2 December 2021, Gensler also warned that Chinese companies would not be allowed to raise money in the US and would be delisted in three years unless they allowed audit inspections by the Public Company Accounting Oversight Board.

Highlights

- draft rules issued by the China Securities Regulatory Commission (CSRC) in December 2021 propose an increased oversight of Mainland companies listing overseas, including those using variable interest entities (VIEs)
- as both Mainland and US regulators have tightened up rules on Chinese companies listing in New York, it is potentially more challenging for Mainland companies with a VIE structure to raise capital overseas
- the CSRC has stated that a Hong Kong listing, including for VIE structures, does not count as an overseas listing, thus opening the doors to a possible influx of Mainland companies delisting from the US and listing in Hong Kong, which some see as a potential windfall, while others have expressed concerns

Figure 1: A typical VIE structure



Source: ACGA Research

This development proved to be a shock to many investors, judging by the share performance of many US-listed Chinese companies in 2021. But many of these companies disclosed their exposure to such risk in their IPO prospectuses. For

example, Alibaba clearly stated in its F-1 filing back in 2014:

'If the PRC government deems that the contractual arrangements in relation to our variable interest entities do not comply with PRC governmental

restrictions on foreign investment, or if these regulations or the interpretation of existing regulations changes in the future, we could be subject to penalties or be forced to relinquish our interests in those operations.'

The China Securities Regulatory Commission (CSRC) released draft rules on 23 December 2021 to increase oversight of Mainland companies listing overseas, including those using VIEs. It seems to now be saying companies can still use the VIE structure for overseas listings. Is that right?

Yes, the CSRC has recently said in several public speeches that they had no intention of banning companies, including those with the VIE structure, from overseas listings. The consultations published by the CSRC in December put an emphasis on companies making proper registration with the regulators so that they can effectively monitor the listing status of the applicants.

It is not beneficial to the Mainland economy to curb foreign financing of Chinese companies, especially privately owned ones, and the government knows this. There has been no major lowering of hurdles for companies to obtain domestic finance over the past two decades, so Chinese companies rely on this pipeline to maintain long-term growth.

What kind of companies would be likely to still use a VIE structure to list overseas?

The same types of companies will continue to use VIEs, but private firms in the technology and education sectors, as well as others which are restricted by the authorities, are more

limited in their ability to directly list overseas. And as both the Mainland and the US tighten up rules on Chinese companies listing in New York, I think it will be challenging for a Mainland company with a VIE structure to raise capital overseas.

It was reported in December 2021 that Mainland authorities, including the state planner, commerce ministry, securities regulator and central bank, were preparing a blacklist which would closely confine the main channel used by private PRC firms to attract global funds and list overseas. The blacklist will target new companies in sensitive sectors that raise data or national security concerns. The move is aimed at limiting the role of foreign capital in the Mainland's next generation of tech giants, but is not expected to affect existing VIEs.

For companies already listed overseas with VIE structures, what do you think the draft rules will mean in practice?

The CSRC has said that the rules shall not have a retrospective effect, so companies with existing VIE structures should not be affected. The regulator has also said that a Hong Kong listing does not count as an overseas listing in this respect.

The tricky question is how both Mainland and US regulators will deal with existing VIEs. The Mainland has been asking companies to transfer their databases to state-owned entities or to allow government access to their critical intellectual properties (gaining board seats, integrating systems and so on). On the other hand, the SEC issued disclosure guidance on December 20 to ask US-listed

Chinese companies to provide more information on their use of VIEs. It will be interesting to see how these companies will disclose VIE-related risks in their next annual reports.

Do you think the CSRC's decision not to ban VIE structures, and instead to tolerate them, will make any difference to the way the US regulators view VIEs?

No. I think Gary Gensler's speech in July 2021 demonstrated that the US is on a clear path. Having said that, I doubt it took the SEC 20 years to realise how poorly investors' interests were protected under this structure. I think on this issue the US regulators are being driven by a combination of market supervision issues, geopolitics and business concerns, hence the decision for the US to take action over the past two years.

Will Hong Kong see an influx of Mainland companies delisting from the US and choosing to list here?

DiDi Chuxing (Didi) already announced on 3 December 2021 that it was delisting from the New York Stock Exchange and would choose Hong Kong as a 'homecoming' listing. It had not even been half a year since the company chose New York over Hong Kong to perform its US\$4.4 billion IPO. Such a retreat so soon after listing is taking a toll on Didi's shares – the stock fell from the IPO price of US\$14 to less than US\$5 in late January 2022.

Our contacts close to the CSRC have told us that the regulator had no intention of limiting opportunities for companies with a VIE structure to list in Hong Kong. Taking the hint, US-listed Mainland tech giants such

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a listing loophole used by tech firms such as Alibaba and Tencent to list overseas recently received a PRC regulatory stamp of approval

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as Alibaba, JD.com, Baidu, NetEase and Weibo have already performed a secondary listing in Hong Kong in recent years.

Is this a windfall for Hong Kong? Those who look at it merely through a fundraising lens may think so. But ACGA is concerned with some of the hallmark attributes of these 'new economy' stocks, such as their dual-class share structures, low ESG scores and, more importantly, the decision by founders of some of the Mainland's biggest tech giants to formally relinquish their leadership roles. You could equally argue that Hong Kong runs the risk of becoming a landfill for poorly governed US-listed Chinese companies in the near term.

Nana Li, Research and Project Director, China


ACGA

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This article first appeared as a [blog on ACGA's website on 25 January 2022](#). For further details about ACGA, please visit www.acga-asia.org.



New guidance note: how to respond to a dawn raid



CGJ shares some practical tips for responding to a dawn raid in the context of competition law enforcement in Hong Kong, derived from the latest guidance note issued by the Competition Law Interest Group of The Hong Kong Chartered Governance Institute (the Institute).

In light of the recent Competition Tribunal proceedings brought by the Hong Kong Competition Commission (the Commission) against two companies, as well as certain ‘relevant’ individuals, and the concomitant referral for the first time ever by the Commission to the Police for criminal investigation in the obstruction of its investigative powers (see this month’s Case Note), the seventh guidance note issued in December 2021 by the Institute’s Competition Law Interest Group could not have been more timely.

The Commission’s powers of investigation

The Commission has wide investigative powers in connection with a suspected breach of the Competition Ordinance, including the right to physically search your company premises without prior notice; to search, copy or confiscate

pertinent documents and equipment, including mobile phones, computers and personal devices; and to demand explanations from employees about any documents they consider apposite to their investigation.

These raids are known as ‘dawn raids’ because they most frequently occur during the hours of early morning. Any obstruction of a Commission’s search, or of its requests for documents or information, during such a raid can constitute a criminal offence for the individuals concerned – yet there are limits to what the Commission can seize or copy, as well as certain restrictions on the scope of their investigation.

It is therefore vital that everyone in a company, from frontline staff or receptionists all the way up to senior management, is aware of the steps to take in the event of a dawn

Highlights

- the Competition Commission’s recent case involving obstruction of its investigative powers highlights the dangers of non-compliance with an investigative raid in the context of competition law enforcement
- companies need to be properly prepared and aware of what steps to take, and should understand the scope of any dawn raid investigation, in order to mitigate the disruption
- it is important to establish contact and protocols with internal or external legal counsel with competition law expertise well in advance of any potential dawn raid

raid, as well as having a clear and accurate understanding of what the Commission’s officers can and cannot do.

What to expect in the event of a dawn raid

Handling a dawn raid is rarely easy. The effects of such a potentially intimidating experience can be mitigated only if a company is properly prepared, knows what can be expected and is familiar with what steps to take.

If a team of the Commission’s officers enters your premises, it will usually be at the beginning of office hours. They will produce a warrant giving them the right to search your offices immediately, although they can usually agree to wait up to 30 minutes for you to contact your internal or external lawyers.

First and foremost, remain calm. Immediately seek help from your internal and/or external lawyers or legal counsel, while remaining

cooperative and polite. In practical terms, the first responder should undertake the following:

- Ask to see and scan or copy the officers’ search warrant, official authorisation from the Commission proving their status as ‘authorised officers’ and proof of their individual identities (IDs).
- While waiting for verification of the above, ask the officers to wait in a meeting room away from the main office.
- Immediately telephone your company’s designated person, who could be in-house counsel or senior management.
- Immediately email the designated person with copies of the search warrant, official authorisation and individual IDs, which should then be forwarded to external lawyers.
- Return all documents to the Commission’s officers and let them know your in-house or external lawyers are on their way.

If the officers have agreed to wait for your internal/external lawyers before formally beginning their search, hand over to the lawyers as soon as they arrive, with support if needed from relevant staff such as your IT team. If the officers insist on starting their search prior to this, they should be allowed to do so, but should also be ‘shadowed’ by a member of staff.

How to handle a dawn raid

The guidance note offers a number of key tips that will help steer your

Practical tips

Dos	Don'ts
Train your staff – make sure they understand and are familiar with your dawn raid protocols	Don't be hostile to or do anything to obstruct the Commission's officers during the dawn raid
Establish emergency contacts with suitable external counsel well in advance	Don't inform any third parties (beyond external counsel) about the dawn raid
At the outset of the raid, verify: (a) the officers' search warrant, (b) official authorisation from the Commission proving their status as 'authorised officers', and (c) proof of their individual identities	Don't destroy any physical or electronic documents or correspondence, including private messages (eg WhatsApp, WeChat, Signal)
Reach out to your designated lawyers (internal and/or external) as soon as possible	Don't let the Commission's officers wander around or search the premises without a 'shadower'
Politely tell the Commission's officers that your colleagues will cooperate and comply with their requests once internal/external lawyers arrive	Don't let staff speak to the Commission's officers without a lawyer being present
Keep things confidential – only inform staff about the dawn raid on a need-to-know basis	

“
**any obstruction of a
 Commission’s search,
 or of its requests
 for documents or
 information... can
 constitute a criminal
 offence for the
 individuals concerned**
 ”



company and colleagues through the raid (also see ‘Practical tips’), including:

- cooperate, be respectful and comply with requests from the Commission’s officers, as far as is practicable
- ascertain the exact scope of the investigation as described in the search warrant, as officers are not permitted to enter or search premises that are not strictly specified in the warrant, nor are they entitled to inspect documents that are subject to legal professional privilege
- ensure your lawyers accompany each officer throughout their search, taking note of everything that happens and any document that is looked at
- colleagues should seek legal advice from your lawyers prior to answering any questions
- do not destroy or delete any documents, and

- do not compromise your position in any way, including by informing any third party about the raid.

After a dawn raid

A raid by the Commission can last several hours or days. If they wish to continue their investigation in the following day(s), your lawyers should agree on the protocol for sealing your premises with the officers, a protocol that must be complied with.

Once the search has been completed, your lawyers should retain a comprehensive log of all documents

physically or electronically copied or seized, as well as copies of all such documents.

A post-raid briefing with your lawyers is very helpful as a means of reflecting on matters that arose during the raid, which could then extend to discussions on a defence strategy and immediate next steps. [CGJ](#)

The guidance note reviewed in this article is available under the Thought Leadership section of the Institute’s website: www.hkcgj.org.hk.

Credits

The Institute would like to thank the members of its Competition Law Interest Group: David Simmonds FCG HKFCG (Chairman), Adelaide Luke, Alastair Mordaunt, Brian Kennelly QC, Mike Thomas and Neil Carabine. Gratitude is expressed to Natalie Yeung, Partner, Slaughter and May, as the author of the guidance note reviewed in this article.

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



First competition case in Hong Kong involving alleged obstruction of investigation



Natalie Yeung, Partner, and Katie Cheung, Associate, Slaughter and May, discuss the first case involving alleged obstruction of investigation by the Competition Commission and the attendant implications for competition law enforcement in Hong Kong.

On 14 December 2021 the Hong Kong Competition Commission (the Commission) commenced proceedings against Hong Kong Commercial Cleaning Services Ltd (HKC) and Man Shun Hong Kong & KIn Cleaning Company Ltd (MS) in the Competition Tribunal. Consistent with the Commission's continued focus on personal liability, three directors of the companies are also named as respondents in these proceedings. This is the first time the Commission has referred a case to the Police for criminal investigation of the obstruction of its investigation powers. In this article, we provide an overview of the case and discuss its implications for competition law enforcement in Hong Kong.

Overview of the Commission's allegations

The Commission alleges that the two companies engaged in price-fixing in 17 tenders submitted to the Hong Kong Housing Authority (HA) for the procurement of cleaning services for public housing estates between May 2016 and August 2018. According to the Commission's findings, the companies shared common offices and IT access, and exchanged competitively sensitive information in various tenders when the companies were bidding for the same HA cleaning service contract, including the quoted prices and information on salary and production costs which formed part of the companies' tenders. The Commission alleges that such conduct is in

contravention of the First Conduct Rule of the Competition Ordinance (CO).

The first obstruction of investigation case claimed by the Commission

In particular, the Commission also alleged that, during a search at HKC's office conducted by the Commission, some individuals tried to delete electronic evidence potentially relevant to the case (such as commercial documents and shortcuts linking the computers of one company to the servers of another company). For the first time, the Commission referred this alleged obstruction of its search to the Police for criminal investigation. This sends a strong message that the Commission will not tolerate any violation of the criminal provisions of the CO.

As the first precedent on this subject matter, the case will provide helpful guidance on the development of

the case law on obstruction of investigation. The maximum penalty for the criminal offence is a fine of HK\$1,000,000 (approximately US\$130,000) and imprisonment for two years.

Standard of proof in proceedings for a pecuniary penalty being tested

Another notable learning is that the Commission is strategically pleading its case on both civil and criminal standards of proof, thereby allowing the Commission to revisit the applicable standard of proof on appeal if required.

In a previous case (*Competition Commission v W Hing Construction Co Ltd & Ors*), the Court of Appeal rejected the Commission's cross appeal and reaffirmed that the standard of proof in competition proceedings for a pecuniary penalty should be the criminal standard of

Highlights

- the Competition Commission has recently referred its first case to the Police for criminal investigation of the obstruction of its investigation powers, and is also pleading its case on both civil and criminal standards of proof
- remedies are being sought for the alleged price-fixing against the two companies involved, as well as three directors on the basis of personal liability, but not against other apparently relevant individuals
- the proceedings may offer insights into the basis on which individuals are considered 'relevant' by the Commission, and could therefore be pursued on an individual basis



this sends a strong message that the Commission will not tolerate any violation of the criminal provisions of the Competition Ordinance



beyond reasonable doubt. However, the appellate court also acknowledged that it would be better for the Commission's argument (that the civil standard should be applied) to be tested in an actual case where the application of the criminal standard of proof would have a real impact and where the Tribunal has dealt with the issue in its evidential assessment, before the point is considered by an appellate court.

The Commission now appears to be adopting the Court of Appeal's suggestion by putting forward its case on both civil and criminal standards of proof. Specifically, the Commission submits that it is more likely than not (on a civil standard of proof) that the two companies have engaged in price-fixing through exchanging competitively sensitive information, based on a mix of circumstantial evidence (for example, the fact that the companies' proposals contained identical or similar pricing and mistakes, and were signed on the same day) and documentary evidence (such as emails containing the breakdown of the values of various HA contracts of both companies). In any event, even if the criminal standard of proof is applicable, the Commission submits

that there is an irresistible inference from the evidence available that the parties must have engaged in price-fixing during the relevant period.

Implications for businesses

This case again confirms the Commission's enforcement focus and priority against cartels, especially those that aim to take advantage of government funding and/or have a wide impact on people's livelihood, which the Commission described as 'particularly egregious'.

On the remedies front, the Commission is seeking remedies against the companies as well as the three directors involved, including director disqualification orders and pecuniary penalties (on all respondents, including individuals). While this is consistent with the Commission's recent focus on personal liability, it is notable that in this case, the Commission is only enforcing against the three directors but not the other individuals who also appeared relevant to the case (such as the office purchasing clerk and the Head of Human Resources, who allegedly worked for both companies). As the case develops, it may offer useful insights into the basis on

which the Commission determines which individuals are considered 'relevant' and should be pursued on an individual basis.

Recently, there has been a wave of settlements as more businesses prefer the time- and cost-effective enforcement outcomes through cooperation. This case, however, is an exception. Contrary to the recent trend, the parties did not cooperate with the Commission. This illustrates that it remains a complex assessment requiring consideration of all relevant facts and circumstances of the case to determine the most appropriate strategy to adopt, and cooperation may not always be the best approach.

We will continue to keep an eye on the developments of the case, in particular whether the obstruction of search would result in a successful prosecution. Businesses should take note that the Commission takes the criminal provisions of the CO seriously.

Natalie Yeung, Partner, and Katie Cheung, Associate

Slaughter and May

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For enquiries, please contact Leaf Tai: 2830 6010 or Lily Or: 2830 6039, or email: student@hkcg.org.hk.



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Corporate purpose and stakeholder interests

Corporate Governance Paper Competition 2021 – Best Paper

The Best Paper of the latest Corporate Governance Paper Competition held by The Hong Kong Chartered Governance Institute (the Institute) looks at the challenges involved in tying governance to a sense of corporate purpose that takes into account multiple stakeholder interests.



The Institute holds its annual Corporate Governance Paper Competition and Presentation Awards to promote awareness of corporate governance among local undergraduates. This article is a summary of the Best Paper of the 2021 Corporate Governance Paper Competition. In this first part of the paper, the authors discuss the incentives to exercising purposeful governance from three perspectives – profitability, sustainability and ethics.

Introduction

The possibility of corporations pursuing purposes other than profit has been the subject of debate for several years, with two competing theories: shareholder theory and stakeholder theory. The stakeholder theory recognises the responsibilities of corporations in the world today, whether they be economic, legal, ethical or even philanthropic. Numerous multinational companies claim to have corporate social responsibility (CSR) at the centre of their corporate strategy.

The current Covid-19 pandemic has led to a market downturn and has constrained investor enthusiasm for investment. To reheat the market and rekindle investor sentiment, corporations are now compelled to perform comprehensive and intelligent governance and trade-offs.

Theoretical background

Corporate governance

Corporate governance was originally defined as ‘the system by which companies are directed and controlled’. Corporate governance is now coming to prominence in the

business world, based on contributions from professionals and academics. Its theories are based on several disciplines: finance, economics, accounting, law, management and organisational behaviour. Some prominent fundamental theories have been developed to demonstrate corporate governance and the relationship among the parties connected to companies, notably agency theory, stewardship theory, stakeholder theory, resource dependency theory, transaction cost theory and political theory. More importantly, two mainstream theories have drawn the attention of scholars: shareholder theory and stakeholder theory.

Shareholder theory

Shareholder theory, the original theory of corporate governance, primarily focuses on agency theory. Under this theory, corporate governance aims to eliminate or minimise conflicts of interest between shareholders and directors, and to maintain investor optimism in the long run. Also, it is essential to figure

“
the stakeholder approach is more appropriate for the business world of the 21st century as it considers society as a whole

”

out effective ways of monitoring management teams’ actions for the companies. In other words, the board of directors must manage the corporation’s business on behalf of the shareholders.

However, this theory does not put any emphasis on the interests of external stakeholders, such as the community or the environment. Shareholder theory is often understood to preclude companies from considering CSR in the decision-making process. Milton Friedman, who first advanced shareholder theory, claimed that the

Highlights

- in addition to improving profitability, the stakeholder approach also benefits the company in ways less quantifiable ways, such as improving the firm’s public image, increasing investor confidence and making it easier to recruit employees
- convergent stakeholder theory combines the approaches of the normative and instrumental stakeholder theories, emphasising both moral commitments in the decision-making process and the need for this to result in economically viable outcomes
- ‘creating shared value’ puts less emphasis on corporate social responsibility and more on the benefits of creating value with other stakeholders

social responsibility of businesses is to increase profits. From Friedman's point of view, a business should seek profits as its aim, rather than CSR, because it reduces the conflicts of interest among employees, shareholders and the board of directors. Hence, the shareholder theory emphasises profits only.

Stakeholder theory

With the development of corporate governance, stakeholder theory has become one of the mainstream theories. Stakeholder theory is significantly different from shareholder theory, as it explicitly addresses morals and values as central features of organisational management. In comparison with shareholder theory, stakeholder theory emphasises the needs of stakeholders, and thus concerns the needs of every group who can affect and/or can be affected by the companies' decisions. In line with this, Richard Branson and Simon Sinek concluded that companies should emphasise purposes and values created beyond profit, suggesting that companies should create value to benefit their internal and external stakeholders, rather than simply making profits for shareholders.

The stakeholder approach considers fundamental stakeholders to include customers, shareholders, investors, employees, suppliers, the government, communities and the environment (see 'Stakeholders' interests diagram'). The stakeholder approach is more appropriate for the business world of the 21st century as it considers society as a whole.

We will now turn to the incentives to exercising purposeful governance

from three perspectives – profitability, sustainability and ethics.

Incentives

1. Profitability

Profitability, as a likely result of purposeful governance, nurtures the growth of the company. It can motivate companies to further improve their ethical corporate governance and thereby form a virtuous cycle.

One study, conducted by scholars from the University of California in 2011, shed light on the positive correlation between stakeholder relationship management and return on assets (ROA), which serves as an indicator of profitability. The Kinder, Lydenberg, Domini & Co (KLD) database was employed, providing data on corporate social performance and different stakeholder relationships. Referring to the research, five key measures were selected: employee relations, product safety/quality, diversity, environment and community. By conducting regression analysis on the statistics, the result reveals that employee relations and product safety/quality are the most significant among the five measures. The result verifies the hypothesis that stakeholder relationship management in corporate governance positively impacts financial performance.

Other relationships with stakeholders also influence the performance of the company. For instance, one study found a positive correlation between a corporate governance mechanism that prioritises the interests of alliance partners and the associated gains. This stakeholder orientation increases the loyalty and commitment to the alliance, eventually pursuing the maximisation

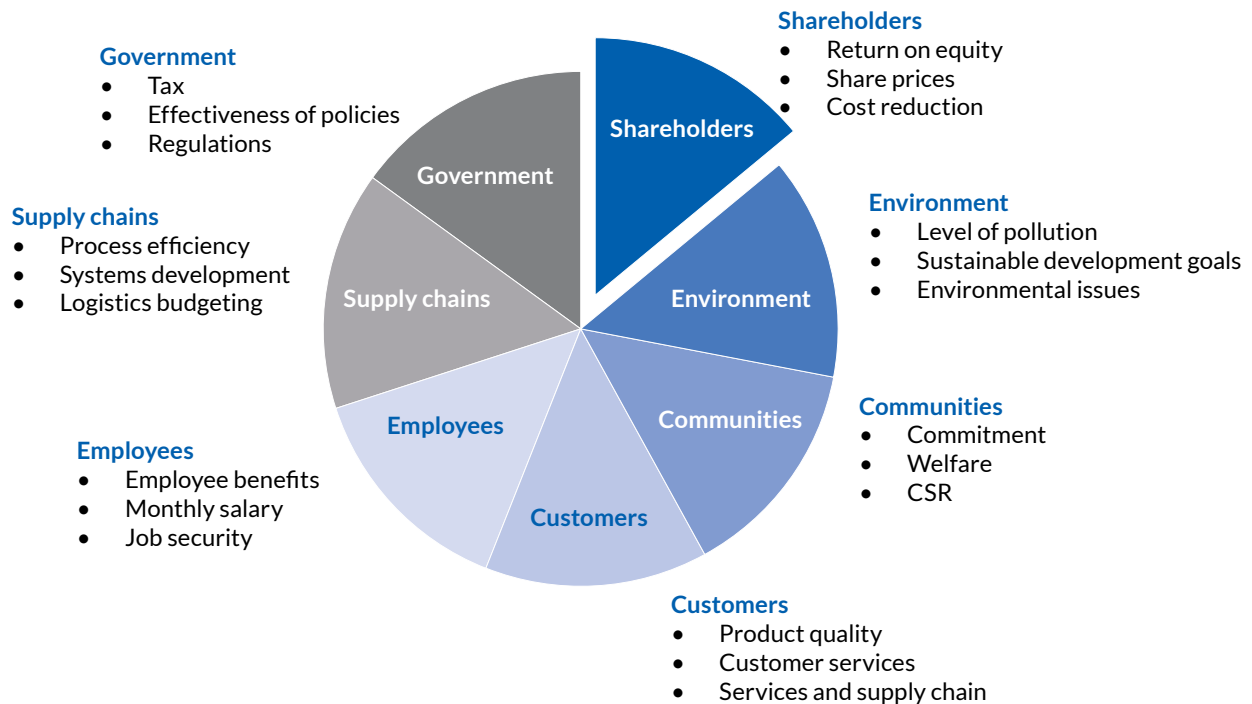
of shareholder interests. Concerning the environmental perspective, another study revealed the positive effect of environmental CSR on corporate profitability. CSR refers to a range of company activities focusing on stakeholder welfare, where the environment is one of its stakeholder groups. Benefits of implementing CSR, where the environment is taken into consideration, include improved brand reputation and consumer purchase intention, driving the consumers to purchase environment-friendly products. At the same time, customers are more willing to pay higher prices, offsetting the increased costs incurred of CSR practices. As a result of the higher quantity and higher price, environmental consideration impacts positively on corporate profitability.

Analysing the above studies, a well-governed company based on a stakeholder perspective results in an improved financial performance. This is also in line with the instrumental stakeholder theory, which asserts that a firm with stakeholder management will have better profitability, growth, stability and other aspects. In other words, this is the expected return, which is why taking a stakeholder perspective is considered necessary. The expected profitability pushes the firm to improve corporate governance from a stakeholder standpoint, providing possibilities of purposeful management given a myriad of stakeholders' views.

2. Sustainability

More importantly, sustainability can be achieved through purposeful governance with a stakeholder perspective. There are two types

Stakeholders' interests diagram



of sustainability: organisational sustainability and global sustainability.

Organisational sustainability. Not only does the stakeholder approach accelerate profitability, which can be quantified, but it also benefits the company in ways that are unquantifiable, such as an improved public image, increased investor confidence, easier employee recruitment and so on. These intangibles contribute to the firm's self-interest in the long run through the achievement of social power. In terms of the workforce, for example, favourable policies and promoted welfare towards its employees will result in a recognition of the company as being employee-orientated and having corporate citizenship. Employee

engagement will likely be improved and trust will be built, supporting the organisation's sustainability.

Global sustainability. Global sustainability goes beyond organisational sustainability and includes the interests of the natural environment and future generations. The World Commission on Environment and Development defines sustainable global development as 'satisfying the present need without compromising the ability of future generations to satisfy their needs', which is from the perspective of a relatively longer timeframe and a broader range of parties.

Global sustainability can be achieved when taking account of the interests

of future generations from the basis of organisational sustainability. For example, the concept of the environment's 'carrying capacity' was proposed for the aviation sector, the purpose of which is to stipulate the respective usage rates of renewable and non-renewable resources, as well as the rate of pollution emissions for sustainable airport development. The consideration for the natural environment and future generations in corporate governance prompts the achievement of global sustainability, becoming an advantage and giving the possibility of stakeholder orientation.

3. Ethical considerations

Moreover, there are currently three prominent stakeholder theories: normative stakeholder theory,

“ stakeholder relationship management in corporate governance positively impacts financial performance ”

instrumental stakeholder theory and convergent stakeholder theory.

Normative stakeholder theory states that moral and normative commitments should be the core motivating factors behind the decision-making process. The theory has two main elements: denying the separation fallacy and its usefulness in corporate governance, and recognising and maximising the intrinsic value of stakeholders. In this regard, it can be considered as one kind of general movement, which provides powerful alternatives to the 'dominant' shareholder model. In other words, the normative stakeholder theory claims that all stakeholders have intrinsic moral value. People who support the normative stakeholder theory consider this approach to be just and fair to everyone.

The instrumental stakeholder theory focuses on the performance consequences of having a highly ethical relationship with stakeholders, characterised by a high level of trust, cooperation and information sharing. To illustrate, an increase in efficiency and effectiveness of operations, better performance in terms of financial position and, ultimately, higher profits are the goals of this approach. Hence, the proponents of instrumental stakeholder theory are

the stakeholders who care about profit as their priority.

Scholars differ in opinion regarding these two emphases. A new theory was therefore developed, namely convergent stakeholder theory, as being 'morally sound in its behavioural prescription and instrumentally viable in its economic outcomes'. As convergent stakeholder theory is both normative and instrumental, it has a strong basis in morality, which accepts that the basic intention behind specific aims should be to achieve an ethically acceptable outcome. From this perspective, the convergent stakeholder theory can be considered the best version of stakeholder theory as it combines ideas from both schools.

Creating shared value (CSV) is a familiar concept under the convergent stakeholder theory. However, CSV is slightly different from CSR. To illustrate, CSR is a cost centre to a business rather than a profit centre, from which cash flows out to other parties, such as NGOs. In addition, CSR only emphasises a company's responsibility to the community, including such activities as donating to universities, reducing carbon footprint and improving labour policies.

In contrast, CSV does not concentrate on company responsibility, but rather on

creating value with other stakeholders. To illustrate, CSV is a business model that will accelerate the achievement of sustainable development goals for the benefit of society as a whole. Referring to the scholars' definition, CSV is comprised of strategies and policies that make companies more competitive, while simultaneously advancing the economic and social conditions in the communities in which they operate. The definition of CSV reveals that its goal is to create value to help the community.

To apply CSV in the real business world, one example is G for Good, a Hong Kong start-up and a subsidiary of New World Development Company Ltd (NWD). G for Good has two goals: building communities of social innovators to assist them in delivering CSV projects to the broader public and investing in potential social innovation companies with a CSV model. In only a few years, G for Good has successfully impacted the Hong Kong community, and in 2019 – its founding year – was a recipient of the Shared Value Awards, the first Hong Kong company to obtain this award.

In conclusion, CSV is also appropriate for a business to implement in the long run, as evidenced by the successful role of G for Good in building an excellent social image for NWD.

Shevin Fan, Isaac Lee, Hellen Liu and Magnolia Wang
City University of Hong Kong

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

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.

Join us on Saturday, 26 March 2022 to learn about:

- The Career Prospects for a Governance Professional
- Interact with Senior Members of the Institutes and Other Experts
- Opportunities and Industry Trends
- Learn Practical Interview Techniques from HR Professionals
- Essential Skillsets
- Entry Requirements and Routes to the Institute's Membership



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Professional Development

Seminars: January 2022

5 January

Sanctions: key concepts & sanctions compliance programme in practice



Chair: Elaine Chong FCG HKFCG, Institute Professional Development Committee member, and General Counsel-Hong Kong, CLP Power Hong Kong Ltd

Speaker: Richard Ip, Founder, Richard Ip Consultancy

11 January

An update on the IRD's views on charitable institutions – time to take a tax 'health check'

Chair: Natalia Seng FCG HKFCG(PE), Institute Past President, Council Member, Audit Committee Chairman, Mainland China Affairs Committee Chairman, Mainland China Focus Group Convenor, and HKCGI Prize Judging Panel member

Speakers: Chee Weng Lee, Global Head of Tax, and May Li, Senior Tax Manager, Tricor Services Ltd

17 January

Corporate rescue bill – pros and cons



Chair: Daniel Chow FCG HKFCG(PE), Institute Treasurer, Education Committee member, Professional Development Committee member and Investment Strategy Task Force member, and Senior Managing Director, Corporate Finance & Restructuring, FTI Consulting

Speaker: Terry Kan ACG HKACG, Partner, ShineWing Specialist Advisory Services

24 January

Whistleblowing: key compliance and cultural requisites – practical overview and case sharing



Chair: Mike Chan FCG HKFCG, Institute Professional Development Committee member, and Fraud Control Officer, Head of Operational Risk Management, CMB Wing Lung Bank Ltd

Speakers: Samuel Lung, Partner, Financial Services Business Consulting, Greater China Financial Crime Compliance Leader, and Dudley Tyen, Senior Manager, Financial Services Business Consulting, Ernst & Young

25 January

New inspection regime – a technical brief

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

26 January

Corporate Governance Code changes: overview and practical impacts



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

Speaker: Ellie Pang FCG HKFCG, Institute Chief Executive

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
22 March 2022	6.45pm-8.45pm	Climate change: enhancing competency for effective board advice	2
25 March 2022	4.30pm-6.00pm	The Corporate Governance Code changes – masterclass on practical issues with perspectives from regulators, issuers and investors	1.5
7 April 2022	3.30pm-5.30pm	The SPAC regime: opportunities for Hong Kong – a practical and technical brief	2
12 April 2022	6.45pm-8.45pm	Resolving cross border disputes – by arbitration	2

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.

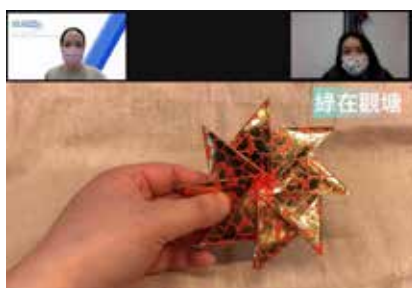
Chan Hei Tung, Rafina	Fong Ka Hei	Lau Chun Yan	Ng Wing Suen	Wu Jie
Chan Kar Yin, Wendy	Ho Man Fung	Lau Man	Pak Yee Ping, Cheryl	Wu Sze Lai, Mandy
Chan Kit Lam	Ho Ming Wai, Teresa	Lau Po Chu, Edith	Shiu Cheuk Sze	Yan Chin Fung
Chan Nga Ying	Hong Quan	Lee Chi Ho	Tan Yiyi	Yeung Kar Yan
Chan Sau Ching, Gladys	Ip Sing Man, Theresa	Lee Ching Ying	Ting Chun Yip, Nelson	Yeung Sui Ho
Chan Yuk Wing	Jor Ka Man	Lee Chui In	Tsang Ching Yi	Yip Nga Mei
Cheung Ki Ching	Kwan Ka Ming	Li Wing Yu	Tsang Chun Ho	Yu Man Kit
Cheung Lim Chi, Cecilia	Kwok Ying-hin, Rachel	Lou Pui Yu	Tsang Pik Wah	Yue Hiu Tung
Cheung Man Shan, Louisa	Lai Cheuk Yin	Ma Wai Yin	Wong Chun Ho, Christ	Zheng Yufeng
Choi Po Yee	Lai Wing Suen	Man Yee Mei	Wong Po Chu	
Chow Sai Hung	Lam Kang Chi	Ng Ka Yi	Wong So Ying	
Cui Xinyue	Lam Lai Man	Ng Tsz Yan	Wong Yee Nor	

Membership (continued)

Membership activities: February 2022

19 February

**Fun & Interest Group – red packets
upcycling workshop (free webinar)**



Forthcoming membership activities

Date	Time	Event
24 March 2022	1.00pm–2.00pm	A guide to wills and probate for estate planning in Hong Kong (free webinar)

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

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 CGI and the Articles of Association of the Institute.

Notice of Disciplinary Tribunal decisions

Disciplinary tribunal case 2021-01(M), Cheng Po Yuen

Hearing date: 6 Dec 2021

Decision date: 28 Jan 2022

The Disciplinary Tribunal found that Mr Cheng had failed to perform sufficient audit procedures, nor prepare adequate documentation in his work as an auditor, in breach of the requisite professional standards expected of him. He is publicly reprimanded and is ordered to settle costs of HK\$5,000 with the Institute.

For details, see ‘List of Decisions made by Disciplinary Tribunal’ on the Discipline page of the Institute’s website.

Disciplinary tribunal case 2021-04(M), Wong Nam Marian

Hearing date: 6 Dec 2021

Decision date: 28 Jan 2022

The Disciplinary Tribunal found that Ms Wong had committed insider dealing in breach of the requisite professional standards expected of her. She has been suspended from membership of the Institute for two years, and is publicly reprimanded and ordered to settle the fine of HK\$25,000, as well as costs of HK\$5,000 with the Institute.

For details, see ‘List of Decisions made by Disciplinary Tribunal’ on the Discipline page of the Institute’s website.

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

Case studies on INEDs found liable for breach of duties and the Listing Rules

The governance professional working for listed issuers is frequently called upon to support INEDs. With this in mind, and in light of the recent amendments to the Corporate Governance Code under the Listing Rules, the Institute held a webinar on 17 February, titled INEDs – Relevant Issues for the Governance Professional and Other Thoughts. The webinar was designed to provide the governance professional with updated

practical working knowledge through bringing together industry experts to discuss the relevant issues, as well as thoughts relating to further regulatory developments.

Ernest Lee FCG HKFCG(PE), Institute President and Technical Partner, Deloitte China; Ellie Pang FCG HKFCG, Institute Chief Executive; Zoe Lau, Vice President, BlackRock Investment Stewardship; and Professor CK Low FCG HKFCG, Institute Council member and Associate Professor in Corporate Law, CUHK Business School, shared

their insights. Topics covered at this thought-provoking event included HKEX's INED requirements, the roles and responsibilities of INEDs, INEDs' accounting and finance expertise, effective board structure, investors' take on the sufficiency of the CG Code amendments, and further thoughts on the 'sliding scale negative voting' approach to the election of INEDs.

For more information, please visit the Institute's website at www.hkcgj.org.hk.



Survey on the Institute's new brand and services

Following the unveiling of the Institute's new brand identity and revamped website on 20 January 2022, a series of celebratory activities is in the pipeline. These activities are designed to broaden the authority of the Institute and to promote the concept of 'Better Governance. Better Future'. The series is also aimed at

enhancing the employment and other business opportunities for members, whose roles and responsibilities as governance professionals have evolved to embrace a wider remit of practical governance concerns.

In this connection, the Institute circulated its survey on the new brand and services, which was closed on 10 March 2022. 1,797 members,

graduates and students responded to the survey, each of whom earned 0.5 ECPD points for their participation.

The Institute wishes to thank all those who took the time to complete the survey.

For more information, please visit our website at www.hkcgj.org.hk.

Advocacy (continued)

Discussions relating to HKEX's proposed amendments to the Listing Rules relating to listed issuers' share schemes

In October 2021, HKEX issued a consultation paper to seek market views, titled Proposed Amendments to Listing Rules Relating to Share Schemes of Listed Issuers. The major point of the proposal is to amend Listing Rules Chapter 17 to also govern share award schemes, not just the share option schemes as provided by the current framework, and to review Chapter 17 to provide more flexibility to issuers and improve share grant disclosures.

On 26 January 2022, the Institute and Clifford Chance LLP jointly published a discussion paper relating to these proposed amendments. It is hoped that the analysis will help listed issuers to understand the regulatory thinking behind the proposals, as well as future regulatory trends.

To view the discussion paper in Chinese, please visit the Institute's website at www.hkcgj.org.hk.



Governance Professional Mentorship Programme: online Closing Ceremony for 2021 cum Launch of 2022 Programme

On 24 February 2022, Ernest Lee FCG HKFCG(PE), Institute President and Technical Partner, Deloitte China, made a speech to initiate the Institute's 2021 Mentorship Programme Closing Ceremony cum Launch of 2022 Programme. Ellie Pang FCG HKFCG, Institute Chief Executive also joined in to celebrate this momentous occasion.

Since the inception of the Mentorship Programme in 2015, the programme has been positively received as a platform that fosters future leaders of governance professionals. It aims to broaden the perspectives of young members and students and to make a meaningful impact on their career and personal development.

The online event signified the closing of last year's Mentorship Programme, and also kick-started this year's programme. The Institute is pleased to announce that we have 135 mentors and mentees for the forthcoming 2022 programme. To this year's participants, the Institute sincerely hopes that our mentees will seize every opportunity to learn from your mentors and appreciate the diverse scope of the programme.



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 from the Login area of the Institute's website.

Pass rates

A summary of the pass rates for the CGQP November 2021 examination diet is set out below.

Module	Pass rate
Part One	
Corporate Governance	16%
Corporate Secretaryship and Compliance	24%
Hong Kong Company Law	32%
Interpreting Financial and Accounting Information	72%
Part Two	
Boardroom Dynamics	67%
Hong Kong Taxation	45%
Risk Management	19%
Strategic Management	40%

Module Prize and Merit Certificate awardees

The Institute is pleased to announce the following awardees of the Module Prizes and Merit Certificates for the November 2021 examination diet. The Module Prizes are sponsored by The Hong Kong Chartered Governance Institute Foundation Ltd. Congratulations to all awardees!

Module	Module Prize awardees
Corporate Governance	Wai Yuen Sze
Corporate Secretaryship and Compliance	Chow Yuen Sang, Timothy
Hong Kong Company Law	Chan Wai Shan
Interpreting Financial and Accounting Information	Chan Nga Shan, Claudia Ho Wing Kei Kwan Wing Sum Lam Yick Ming Lung Yi Mo Yingfei

Module	Merit Certificate awardees
Boardroom Dynamics	Au Oi Yee Tong Yat Hin
Corporate Governance	Cheung Long Ching, Terry Hui Yuen Ki, Yuki Lam Yin Yam Law Hei To, Vela Poon Chi Long
Corporate Secretaryship and Compliance	Ko Tsz Shan
Hong Kong Company Law	Law Hong Kwan Sham Wing Yin Tsea Po Kwan Tsoi Wai Hang, Iris Zhu Yunfei
Interpreting Financial and Accounting Information	Au Ming Yuk Chan Ka Ning Chan Mei Chun Fung Ching Kwan Kwong Man Yin Lam Yik Kwan Leung Hoi Ting, Vanessa Ng Janet Ka Ying Ng Kam Yu Pang Karman Qin Yingshi Ye Zijie Yeo Sze Hua Yue Weiyu

Chartered Governance Qualifying Programme (CGQP) (continued)

June 2022 examination diet

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

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

Recruitment – examiners/reviewers of the CGQP examination papers

The Institute is now looking for experts in the CGQP module topics who would like to contribute to the Institute by serving as examiners and reviewers of the examination papers.

For details, please visit the News & Events section of the Institute's website: www.hkcgj.org.hk.

Learning support

CGQP examination technique workshops

The CGQP examination technique workshops will be held online between March and April 2022, and are set in two parts. In part one, students will attend a two-hour online workshop and will receive one take-home mock examination paper. In part two, students who have attended and submitted their answers to the mock examination paper will receive feedback and guidance on their answers. The enrolment deadline is 28 March 2022.

For details, please visit the News & Events section of the Institute's website: www.hkcgj.org.hk.

Studentship activities: February 2022

17 February

Introductory session on routes to HKCGI membership



23 February

Briefing Session for CCA New Graduates 2022



24 February

Student Gathering (1): update on the CGQP and how to use the PrimeLaw online platform



Forthcoming studentship activities

Date	Time	Event
26 March 2022	10.00am–1.00pm	The career paths of a governance professional 2022
March 2022–April 2022	Please refer to the Institute's website	CGQP examination technique workshops (eight modules)

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.

Notice (continued)

Featured Job Openings

Company name	Position
Harneys Corporate Services (Asia) Ltd	Corporate Services Junior Administrator
Kerry Properties Ltd	Assistant, Company Secretariat
Intertrust Group	Assistant Manager, Trust & Corporate
Intertrust Group	Assistant Manager, Company Secretarial

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



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Enquiries: 2830 6011 / 2881 6177 / cpd@hkcg.org.hk

THE 23RD ANNUAL CORPORATE AND REGULATORY UPDATE

ACRU 2022

Thursday, 9 June 2022
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Early Bird
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