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September 2022

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香港公司治理公會會刊

Data governance and ethics

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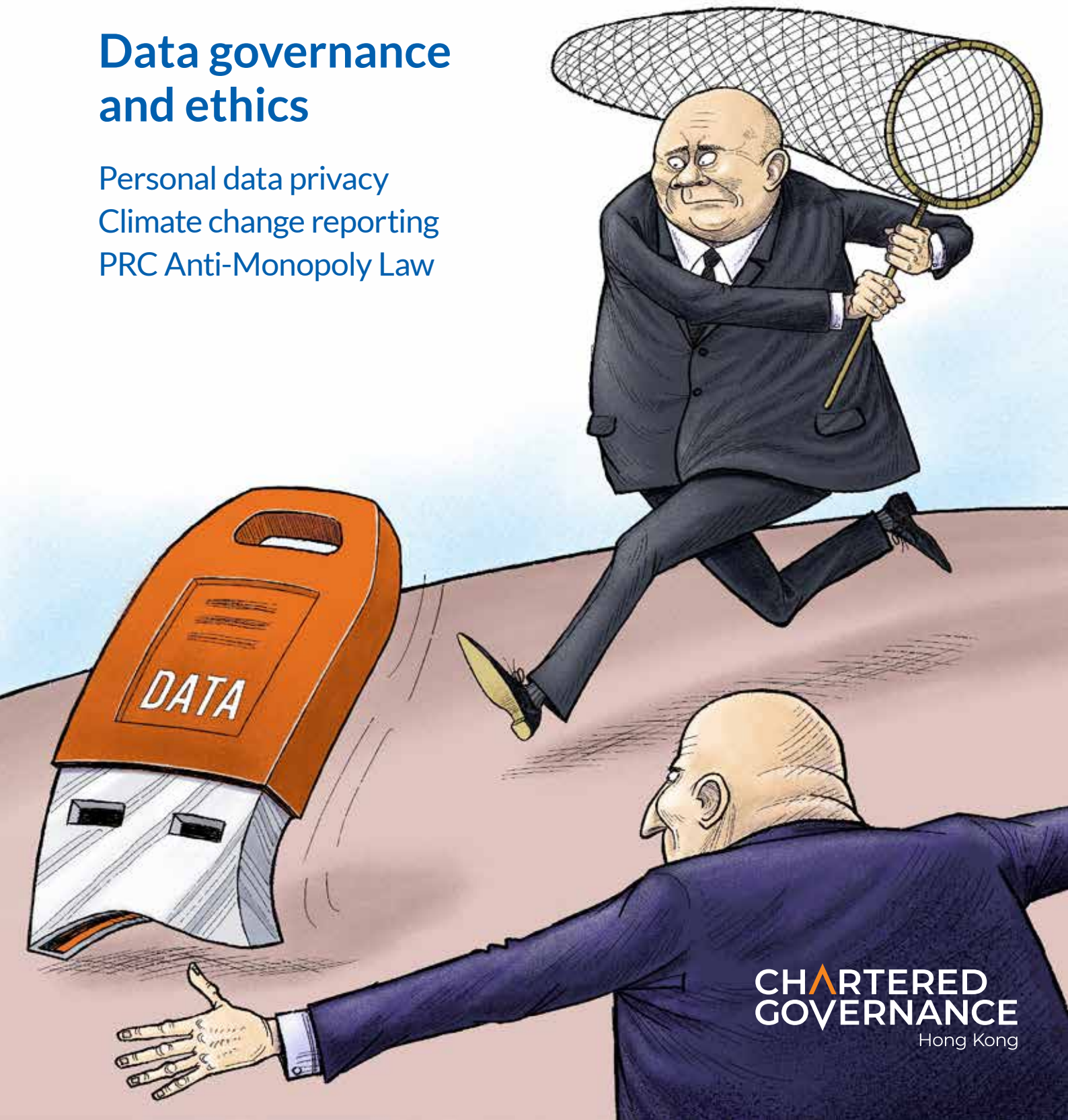
Climate change reporting
PRC Anti-Monopoly Law



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About The Hong Kong Chartered Governance Institute

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

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

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

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

Membership and studentship statistics update

As of 31 July 2022, the statistics were as follows:
Students: 2,819 **Graduates**: 440 **Associates**: 6,153 **Fellows:** 801

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CGC 2022 – a taster

This month, our Institute will be hosting the latest in our series of Corporate Governance Conferences (CGCs). Readers of this journal will know that our CGCs are the most ambitious undertakings of our CPD calendar. They not only take aim at the specific issues our members need to grapple with in their daily work, but also seek to ask hard questions about the broader context within which we operate. This year's event will be no exception. It has set its sights on answering how the purpose of the company, the governance professional and governance itself should be redefined to meet the needs of the 21st century.

As usual, a full review of the event will be available in this journal (our November 2022 edition will be on this theme), but this edition of *CGj* offers an appetiser for the day's discussions. Technology and climate change governance will feature prominently in those discussions and both themes are a central focus of this month's journal.

Our cover stories, for example, look at the roles of governance professionals in data governance and ethics. Even where organisations have officers dedicated to overseeing IT issues, data governance is highly relevant to our role. This relevance is obvious in the area of regulatory compliance – organisations need to remain in compliance with the increasingly complex regulation and legislation relating to data privacy, data protection and data retention – but our involvement with these issues does not end there. Building good internal controls, and advising the board on the strategic and ethical issues that need to be considered are equally important.

A particularly interesting but complex area for boards at the moment relates to the ways in which organisations can best adopt the emerging technologies of data analytics and artificial intelligence (AI). These technologies can represent a significant competitive advantage for organisations – apart from anything else they can greatly assist with board decision-making – but they can also represent significant risks. As our recent research report (Roles of Governance Professionals in Today's Post-Pandemic and Dynamically Changing Risk Environment, published jointly with Corporate Secretaries International Association (CSIA) and Ernst & Young Advisory Services Ltd) points out, advising the board on technology-related issues is a relatively new and challenging area for members of our profession. Our Institute will continue to make this a focus of our CPD and research work.

Climate change governance is another key topic that our upcoming CGC will be addressing, and our In Focus article this month reviews the Institute's latest research report, published jointly with KPMG China and CLP Holdings Ltd, offering guidance on the tougher regulatory regime relating to climate change reporting that is likely to be in place in Hong Kong by the end of next year. Climate Change Reporting: Imminent, Challenging & Mandatory – The Opening Moves, published on 12 July 2022, seeks to help organisations in Hong Kong prepare for the imminent regulatory regime, but also to assist governance professionals to ensure good governance of climate change reporting and performance.

I leave you, then, to another action-packed edition of your journal and look forward to joining you later this month at our flagship thought leadership event – the Corporate Governance Conference 2022.

Ernest Lee FCG HKFCG(PE)

公司治理研讨会2022 – 探索者

本月下旬，公会将举办最新一届公司治理研讨会 (CGC)。如本刊的读者所知， CGC 是公会持续专业发展项目中最重大的一项活动。公会的公司治理研讨会不仅探讨公会会员在日常工作中需要解决的具体问题，还寻求就我们执业的更广领域提出尖锐问题。今年的研讨会也不例外，研讨会将致力于回答如何重新定义公司、治理专业人士和治理本身的使命，以满足 21 世纪的需求。

与往常一样，本期会刊将对此次研讨会进行全面报道（ 2022 年 11 月的会刊将以此为主题），本期会刊将为本次研讨会预热，技术和气候变化治理将是研讨会的重要专题，这两个主题也是本期会刊报道的核心。

例如，本期封面故事着眼于治理专业人士在数据治理和道德方面所扮演的角色。虽然组织有专门负责 IT 事务的专业人员，数据治理与我们的职能也高度相关。这种相关性在监管合规领域是显而易见的——随着数据隐私、数据保护和数据保留相关监管和立法日益复杂，组织需要确保合规 —— 但我们在此方面的职责并不限于此，建立良好的内部控制以及针对需要考虑的战略和道德问题向董事会提供建议同样重要。

目前，对于董事会来讲，一个特别有趣但复杂的领域涉及到组织如何最优化地采用新兴的数据分析和人工智能技术。这些技术可以为组织带来显著的竞争优势——除此之外，它们可以在很大程度上帮助董事会决策——但它们也可能带来重大风险。正如公会最近与公司秘书国际联合会和安永咨询服务有限公司联合发布的研究报告《治理专业人士在后疫情时代以及动态变化的风险环境中的角色》所指出，就技术相关问题向董事会提供建议对于公会会员来说是一个相对较新且具有挑战性的领域。公会将继续将其作为公会持续专业发展工作以及研究工作的重点。

气候变化治理是公会即将举办的研讨会将要探讨的另一个关键议题，本月的焦点文章报道了公会与毕马威中国和中电控股有限公司联合发布的最新研究报告，为企业如何应对可能会在明年年底前在香港实施的与气候变化相关的更严格的监管制度提供指导。《气候变化报告：如何就这项迫在眉睫、充满挑战的任务做出部署》于 2022 年 7 月 12 日出版，旨在帮助香港的机构为即将实行的监管政策做好准备，同时也协助治理专业人士发挥作用，确保在气候变化报告与气候变化管理绩效方面的良好治理。

敬请阅读充满行动力的本期会刊，本人期待在本月下旬与您一起参加公会的重大思想引领活动——公司治理研讨会2022。

李俊豪 FCG HKFCG(PE)

Data governance and ethics

Governance professionals can play a key role in helping organisations navigate the digital transformation process. *CGj* looks at the contributions they can make to ensuring best practice in data governance and ethics.

Mention the word 'data' in an organisational context and 'risk' immediately comes to mind. With data breaches being routine headlines in media reports, companies are more than ever confronted with the need to have proper data governance practices in place.

With data being ubiquitous in every organisational aspect, sources interviewed for this article spoke of the importance of having an effective framework for data governance. 'Data governance is absolutely critical, otherwise there's no accountability or oversight. Without a data governance framework, you're basically fighting fires all the time,' says Jason Lau, Adjunct Professor at the Hong Kong Baptist University School of Business.

A data governance framework gives a much broader overview and oversight of the assets the company or organisation must protect, says Professor Lau, whose area of expertise includes cybersecurity and privacy. This allows the company to build a good strategy around how to protect the assets and the level of risks it is willing to take. Moreover, in areas like security and/or privacy, good governance helps to safeguard internal assets as well as external customers, he explains.

Risks from dealing with data either through storage, access or other means have become dramatically different as the digital transformation of all organisations accelerates. Most companies have moved, or are going to move, away from the traditional fixed data centres of the past to embrace cloud providers such as Amazon Web Services and Microsoft Azure.

Professor Lau adds that, as people are no longer only accessing data in physical offices (they may also need to access it from their homes due to work-from-home practices or on their mobile

Highlights

- with data breaches being routine headlines in media reports, companies are more than ever confronted with the need to have proper data governance practices in place
- the risks of dealing with data have become dramatically different as the digital transformation of all organisations accelerates
- by embracing their roles in data governance, governance professionals will learn more about the management of risk and will build their own CVs in the process

devices such as iPads and mobile phones), data storage and access are becoming increasingly distributed and decentralised.

Wendy Ho FCG HKFCG(PE), Institute Council member, and Executive Director, Corporate Services, Tricor Hong Kong, points out that companies are increasingly interested in not only protecting the data and information they have, but also in controlling access to it, even from within the organisation or company itself.

'The challenge for organisations is in paying attention to allocating access rights to different tiers of user and making sure all staff are held responsible for the data they keep or use. The people in the organisation also need to know and pay close attention to best practices when doing data searches, analysis or cleansing,' Ms Ho stresses. Organisations would be well advised to hold town hall meetings or issue codes of conduct so that all employees know what their responsibilities are, and what the best practices are, when dealing with data in their work, she suggests.

People and processes come first

The information security industry generally focuses on 'people, processes and technology', with each of these three elements mutually reinforcing one another to increase information systems' resilience to attacks. Sources interviewed for this article, however, are in agreement in that people and processes come first.

'Some argue that technology should come first,' says Professor Lau. He agrees that having the right technology in place is certainly important in reducing exposure to common forms of cyberattack such as 'phishing' – using fraudulent means to persuade individuals to reveal personal information, such as passwords and credit card numbers. However, relying only on technology can expose the organisation to gaps. Good processes, on the other hand, can help flag the risk of phishing, as well as other security threats. Where staff are educated and trained to report any incidents to security teams, organisations can then address those types of risky threats, which could be in the form of ransomware.

'Realistically, technology can only help you to achieve what you want, but you need to start with your people and your strategy. One of the biggest issues is overconfidence in the technology that you have. Overreliance on technology can expose you to many different risks. You need to build the processes in place and then you have the technology to support that,' he adds.

Ms Ho recommends simplifying and standardising the processes for keeping data where possible. Different departments in the same organisation may have different requirements and responsibilities, and may not pay attention to regulatory requirements in storing or keeping the data, she explains. The departments may also have different standards for keeping data. In addition to ensuring the right access controls for different people and at different tiers in the organisation hierarchy, she emphasises the benefits of keeping data that is consistent organisation-wide, and that is relevant to the organisation so that different teams or departments know what data is being kept.

Moving to an integrated approach to risk

A potential benefit of the increasing focus on data governance is the trend towards a more integrated approach to the management of risks. Anir Bhattacharyya, Co-Head of Integrated Risk Management Asia at AlixPartners, points out that this can be seen in the area of anti–money laundering (AML).

'One of the things I think that is evolving as a result of the availability of technology, the increasing sophistication of criminals, the overlap in data used across the management of different risk types and increasing expectations of employees is that it is getting harder and harder to justify why we're looking at AML risk and the data around AML risk on its own,' he explains.

Approaches to data governance, together with improvements in the available technology, are leading to a recognition of the connectivity between many different areas of risk (such as fraud and AML).

Cliff Lam, a Director at AlixPartners, with experience in investigations and financial crime compliance, agrees. 'From a data management perspective, it makes sense to look at what data is actually available in the organisation and how that can benefit different risk types. If there is a suspicious transaction in terms of money laundering, for example, can you locate the phone or computer used by the criminal to launder the money and apply the data for wider investigations?

> **Data governance is absolutely critical, otherwise there's no accountability or oversight. Without a data governance framework, you're basically fighting fires all the time.**
>
> **Jason Lau, Adjunct Professor at the Hong Kong Baptist University School of Business**

What is lacking at the moment is really that integration – and the robustness in terms of the risk strategy, process, data and technology platforms to support it,' Mr Lam says.

Mr Bhattacharyya advocates using interdisciplinary approaches in data design. 'We need to be smart about creating data models, aggregating data and thinking about access and the benefits of that data, as well as the benefits of merging across different risk categories,' he says.

Both Mr Lam and Mr Bhattacharyya would also like to see data model design becoming more human-centric, moving away from 'factory' processes, and putting customers back at the centre of the design. When building a customer journey through a digital retail banking app, for example, you need to anticipate the risks at each part of the process, Mr Lam suggests. The model needs to be 'secure by design'. 'This also allows organisations to better manage the customer experience and control the costs of operations in dealing with risk management and data governance,' he says.

Mr Bhattacharyya points out that this goes back to the need to put people back at the centre of the design. 'So many times, the approach to regulatory compliance and risk is designed around policy and systems – the people involved have often been forgotten. We invest so much in these systems, in these policies, why aren't we investing in the people we want to change and behave in a different way? Let's stop forgetting the people and bring human-centricity back to the way we design models and projects,' he says.

The role of governance professionals

The renewed focus on the need for better data governance has been highly relevant to the work of governance professionals. Ms Ho, who has a wide experience of board membership in Hong Kong, emphasises the important role governance professionals play in ensuring that the board is well informed, particularly when it comes to the management of risks and understanding any relevant compliance issues.

She adds that governance professionals also help the directors to manage the internal controls of the organisation, and help the board and the organisation cultivate a good governance culture. One aspect of this, she points out, is the establishment of an effective whistleblowing channel, which can play a critical role when it comes to regulatory breaches and misconduct.

She also highlights the role of governance professionals in promoting good board composition policies – particularly in terms of board diversity. 'Board diversity is not just about gender,' she says, 'but is also about having directors that can bring different experience and backgrounds, such as those in finance, risk management and IT, to the board. It

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>
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also involves diversity in terms of age, cultural and educational background, and professional experience, such as getting younger people on the board with the new mindsets of the younger generation,' she adds. This will help cultivate a healthy organisation in the interests of all stakeholders.

Having board members with cybersecurity and privacy management experience on a company board is particularly relevant to data governance, and a practice Professor Lau expects to become more popular. 'I would like to see regulators locally in the region and globally making it mandatory for certain types of organisations, such as publicly listed companies, to have an experienced Chief Information/ Security Officer, and/or an experienced Data Protection Officer on the board of directors. Making these roles mandatory would help drive accountability and would be a key benefit for organisations,' he says.

The way forward

So how can governance professionals prepare themselves for their role in assisting better data governance in a world of changing technology? Ms Ho believes the key point is to adopt a change-mindset. They need to be more proactive, she explains, and to adopt lifelong learning and training as regulations and technology are ever-changing.

'Governance professionals need not be expert in all the technical areas, but they should be proactive in keeping abreast of the changes in the rules and governance trends, as well as the new tools available in the market. They should also communicate with different experts, such as the risk compliance officer or the technology officer, so that they can gain new perspectives to support the board,' she explains.

Mr Bhattacharyya stresses that governance professionals should not undervalue their role. Technology cannot stand on its own – without the foundations of good governance and data, organisations will leave themselves at a significant competitive disadvantage. Moreover, by embracing their roles in data governance and working in a more integrated way with business and risk colleagues, governance professionals will learn more about the management of risk and will build their own CVs in the process.

Professor Lau suggests that data governance professionals should also consider getting relevant certifications to enhance their data governance role. These would help demonstrate that they have the right operational background. ISACA, the international professional body associated with IT governance, provides the globally recognised CISA (Certified Information Systems Auditor) and the CGEIT (Certified in Governance of Enterprise IT) certification, for example. The IAPP (International Association for Privacy Professionals) certification for privacy professionals has both CIPP (Certified Information Privacy Professional) and CIPM (Certified Information Privacy Manager), which would also be relevant.

Mr Lam emphasises that it is important for governance professionals to know both the governance requirements and how IT professionals implement data management controls. In this way they can position themselves as bridging the gap between the business and the IT side.

'A data governance officer can be an ultimate "span breaker" – someone who manages multiple aspects of the business – because they do not belong to any specific risk type,' Mr Lam says. 'In a way they are agnostic to risk types and they deal with data for the whole organisation. They serve as a span breaker and connect the managers in different parts of the organisation, for example, AML, cybercrime and fraud, to build synergy and avoid overlaps in existing or planned projects,' he adds.

Poo Yee Kai
Journalist

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Excellence Award
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Data governance – the privacy considerations

Interviewed by *CGj*, Privacy Commissioner for Personal Data, Ada Chung Lai-ling FCG HKFCG, argues that ensuring best practice is followed in the handling of personal data is a crucial part of the governance professional's role.

Some practitioners may argue that technology is not within their jurisdiction – particularly since most organisations have specialised IT officers handling tech issues. Do you think data governance should be a concern for governance professionals, and, if so, what contribution can they make to ensuring best practice in data governance?

'Given that data is increasingly recognised as the new oil in the digital age, I consider that data governance should not only be of concern to governance professionals, but a crucial part of their professional role, especially when nowadays many governance professionals would also be appointed as data protection officers (DPOs) of their respective companies.

As the DPO, a governance professional has to ensure that the collection, holding, processing or use of the personal data of the company's employees, customers or other stakeholders are in compliance with relevant privacy laws.

Although the relevant technologies in data management may be managed or supervised by IT departments, governance professionals can make vital contributions by acting as a bridge between the board, management and IT colleagues and providing valuable advice on all data protection matters, including but not limited to offering advice to the board on the formulation of policies relating to data governance at a strategic level and assessment of the risks of data breaches, and the like.'

What's your view of how governance professionals can assist organisations in ensuring regulatory compliance in the areas of data privacy, data protection and data retention?

'In ensuring that their companies comply with data protection laws, governance professionals have an indispensable role to play in establishing and implementing Personal Data Privacy Management Programmes (PMPs) within their respective companies. Implementing a PMP helps companies embrace personal data protection as part of their corporate policies and culture, and enhances accountability.

Accountability means that organisations are required to put in place measures to ensure compliance. Accountability has been increasingly incorporated into data protection laws around the world, such as the European Union's General Data Protection

Highlights

- governance professionals need to be prepared and agile to cope with the changes ahead in order to provide proper advice to the board in ensuring good corporate governance, and data governance, in the new normal
- companies should put in place a Personal Data Privacy Management Programme to illustrate that they have taken practical steps to safeguard personal data
- personal data privacy is not just a compliance issue, organisations need to weave privacy considerations into the planning and development of new technologies, products and services

Regulation (GDPR), which was passed in 2016, Singapore's Personal Data Protection Act, which was first passed in 2012 and amended in 2020, and the Mainland's Personal Information Protection Law, recently passed in 2021. In Hong Kong, the accountability of the data user runs through practically all of the requirements under the Personal Data (Privacy) Ordinance (PDPO). It is important, therefore, for a company to put in place a PMP to illustrate that it has taken practical steps to safeguard the personal data handled by the company.

A PMP has 12 major components, some of which may well be within the remit of governance professionals, such as:

- the development of internal policies on personal data handling, and
- the establishment of an internal reporting mechanism to make sure that top management is well informed about the operation of the PMP and any privacy risks identified by the PMP.

I would call on governance professionals to impress upon their boards the importance of establishing and implementing a PMP in their respective companies.'

In addition to their involvement in regulatory compliance, can governance professionals also play a role in strategic issues relevant to data governance and digital transformation?

'Certainly. Given the rising expectations of individuals regarding their privacy, data protection authorities around the world consider that companies should think of privacy not just as a compliance issue. Companies are encouraged to weave privacy considerations into the planning and development of new technologies, products and services. This is often referred to as "privacy by design" and "privacy by default".

Adopting the privacy by design and privacy by default mindset elevates data governance and protection from a compliance issue to a strategic consideration, which will no doubt require greater involvement from governance professionals, such as offering assessment of the privacy risks of a project from an early stage and advising the board in this regard.

This indeed applies to digital transformation. The increasing use of data analytics, artificial intelligence (AI), cloud computing and other digital technologies in Hong Kong illustrates that companies are embracing digital transformation.

It is important to note that emerging technologies very often carry with them data privacy or ethical risks, such as risks of discrimination or bias against certain customers. My office issued guidance on this (Guidance on the Ethical Development and Use of AI) last August. We advocate three data stewardship values, seven commonly accepted principles and four major business processes for the ethical development and use of AI. Whether as advisers to the board or in their roles as DPOs, governance professionals should acquaint themselves with the developments in the area so that they are well prepared to cope with the challenges brought by emerging technologies.

In the long term, I would call on governance professionals to strive to foster a culture of respect for personal data in their respective companies to ensure sustainable data protection and compliance.'

Do you have any advice on how governance professionals can assist the board to ensure effective board oversight of data governance?

'Buy-in from the top is a critical factor for the success of all major business

initiatives. Personal data protection is no exception. In the Privacy Management Programme: A Best Practice Guide published by my office, we encourage companies to adopt a top-down approach.

Top management, such as the board of directors, should support the PMP, actively participate in the assessment and review of the PMP, and receive timely reports on the critical issues of the PMP, such as any significant privacy risks identified.

Governance professionals, with their access to top management and indispensable role in board meetings, can play the key bridging role of ensuring board oversight of the PMP, as well as facilitating the implementation of the PMP.

I would encourage governance professionals to be proactive in terms of getting privacy issues onto the board's agenda, and ensuring the board is fully aware of the significance of privacy issues and risks, including the risks of hacking or data breaches by other means.'

What impact has Covid-19 had on the issues discussed above?

'The outbreak of Covid-19 led to various kinds of social distancing measures and restrictions. As a result, Covid-19 reshaped both the way we socialise and the way we work, which incidentally accelerates digital transformation, as well as the adoption of emerging technologies.

The new normal, which comprises work-from-home or a hybrid mode of working, carries with it increased risks in terms of data security and personal data privacy. Under work-from-home or hybrid arrangements, organisations may have to access or transfer data through employees' home networks and devices, which are generally less secure. Also, the use of video conferencing software has become prevalent since the outbreak of Covid-19.

Indeed, according to a report published by the Hong Kong Computer Emergency Response Team Coordination Centre (HKCERT) in August 2022, there was an increase of 94% in security events (which included malware and phishing) related to Hong Kong in the second quarter of 2022, when compared to the first quarter.

To enhance the protection of data in the new normal, my office issued three guidance notes under the series Protecting Personal Data under Work-from-Home Arrangements for organisations, employees and users of video conferencing software. I believe that this series of guidance notes will serve as a good reference when governance professionals seek to formulate or modify their work-from-home policies.

To cite another example, to address concerns relating to the collection of health data from employees, my office issued the Guidance for Employers on Collection and Use of Personal Data of Employees during the Covid-19 Pandemic in March 2022. Governance professionals may refer to our guidance to ensure the legitimate collection and use of personal data from employees.'

Where do you think the trends discussed above will be heading in the years ahead and how should governance professionals be preparing themselves for their future roles?

'The role of governance professionals has been evolving over the last decade. Nowadays, governance professionals have to deal with a business environment that is characterised by increasingly complex compliance requirements, as well as the rising expectations of the public regarding corporate governance and corporate social responsibility.

The next decade, in my view, will see further transformation of our society through the rapid development and use of emerging technologies empowered by data. My advice for governance professionals is that they need to understand their responsibilities as gatekeepers of governance. This will mean being prepared and agile to cope with the changes ahead in order to provide proper advice to the board in ensuring good corporate governance, and data governance, in the new normal.

"I would encourage governance professionals to be proactive in terms of getting privacy issues onto the board's agenda, and ensuring the board is fully aware of the significance of privacy issues and risks"

As an example, the agility of governance professionals is best illustrated by the way the profession worked together to resolve the crisis relating to the holding of annual general meetings (AGMs) back in early 2020, when the world was very hard hit by the pandemic, and when people were still struggling with video-conferencing techniques. Thanks to the great efforts of the Institute and members of the profession, we weathered the storm and the 2020 AGMs for most companies, big or small, were held as scheduled, smoothly and successfully.

As mentioned earlier, my office has issued different guidance notes that will assist governance professionals in dealing with emerging data protection and privacy issues. I would encourage governance professionals to make reference to these guidance materials whenever necessary in their day-to-day operations.'

What is the future for data privacy laws considering the evolving nature of technological infrastructure and potentially more biometric data being stored or used?

'Notwithstanding that the use of biometric data, together with emerging technologies, brings convenience to our daily lives, the use of such data or technology also brings with it unprecedented privacy risks that should be addressed.

While some jurisdictions (for example, some states in the US) have introduced or proposed new laws to regulate the collection and use of biometric data and the use of, for example, facial recognition technology, some others seek to address the problems through guidance issued by the appropriate authorities.

Regarding the future of data privacy laws, instead of banning or placing unrealistic legal obstacles on the use of emerging technologies, I believe that we need laws and regulations that enable the responsible use of technologies that will uphold the protection of personal data privacy. In essence, future privacy laws should recognise the fundamental rights to personal data privacy while strengthening accountability in the use of technologies.'

What will be your regulatory focus in the coming years?

'Since the amendments to the PDPO came into effect in October 2021, my office has spared no effort in enforcing the new provisions to combat doxxing acts that are intrusive to personal data privacy. In the coming years, we will continue to strengthen our capabilities to carry out criminal investigations and prosecutions to more effectively combat doxxing.

In line with developments in other jurisdictions, we are also working with the government on a comprehensive review of the PDPO. I hope that the legislative amendments can cover, among other things, direct regulation of data processors, a mandatory data breach notification regime and empowering the Privacy Commissioner to impose administrative fines.

For obvious reasons, privacy protection in the context of technological development and Covid-19 will be another focus in the coming years. In addition, data security will be a priority area. We issued the Guidance Note on Data Security Measures for Information and Communications Technology recently, and I envisage that much more attention and resources will be given to enhancing data security in the years to come.

Needless to say, as many data privacy issues cut across borders, we will continue to foster our connections internationally, including establishing a closer network with our counterparts in other jurisdictions. I believe that, as the Co-Chair of the International Enforcement Working Group of the Global Privacy Assembly, we will play a more active role in coordinating with other authorities in taking enforcement work, or addressing privacy issues, in the international arena.'

Climate change reporting

Are you prepared for Hong Kong's emerging regulatory regime?

A new report published jointly by the Institute, KPMG China and CLP Holdings Ltd in July this year will be a welcome resource for governance professionals eager to prepare themselves for the imminent arrival of tougher regulatory requirements relating to climate change reporting.

The increasing urgency for listed companies in Hong Kong to prepare for a much tougher regulatory regime relating to climate change reporting has been impacting a wide range of professionals. Governance professionals, however, are in the front line of these developments, not only in their role as compliance specialists, but also because they are increasingly relied upon by boards to provide a wide range of advice in this area.

In this context, the Institute has made climate change reporting and performance, and the roles governance professionals can play in assisting organisations adapt to the emerging regulatory regime in Hong Kong, a focus of its training and research work. A new report published jointly by the Institute, KPMG China and CLP Holdings Ltd offers guidance in this complex area. Climate Change Reporting: Imminent, Challenging & Mandatory – The Opening Moves (the Report), published on 12 July 2022, is both a primer on the regulatory regime emerging in Hong Kong as a result of international developments in the sustainability reporting space, and a practical guide on what steps need to be taken now to prepare for its arrival.

Are you prepared?

As the Report's title suggests, the emerging regulatory regime in Hong Kong relating to climate change reporting is imminent, challenging and mandatory. Global developments in this space have been moving fast. These include the convergence of ESG and sustainability reporting standards around the recommendations of the Task Force on Climate-related Financial Discloses (TCFD) and the new standards due to be finalised by the end of this year by the International Sustainability Standards Board (ISSB), set up by the International Financial Reporting Standards (IFRS) Foundation.

The new standards will become the IFRS Sustainability Disclosure Standards and, if adopted in Hong Kong, they would require a much finer grained reporting regime regarding companies' relevant risks and opportunities. Regulators in Hong Kong have already made it clear that they intend to transition the local regulatory regime to keep up with international standards. For example, a consultation is expected to be released by Hong Kong Exchanges and Clearing Ltd (HKEX) soon, proposing specific areas where the local and the global standards can converge.

In an Institute webinar held on 5 May this year – Climate Change Reporting: Changes Are Coming Quickly – Kelly Lee, Vice-President, Policy and Secretariat Services, Listing Division, HKEX, identified some of these areas. In particular, Hong Kong is likely to adopt tougher requirements for listed companies to report on their transition plans to a low-carbon economy.

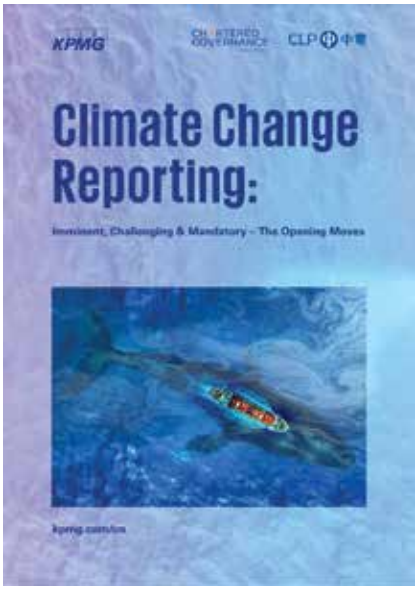
It may also include a recommendation for companies to use scenario analysis to assess their exposure to climate-related risks and opportunities. Scenario analysis is a tool that can help companies assess a range of climate change outcomes. It usually involves looking at various future climate scenarios, based on different bands of temperature rise, and assessing how they would impact the company from a physical and a transitional risk perspective.

The emerging regime is also likely to address the metrics and targets used by companies in their climate change reporting. HKEX is considering, for example, whether to follow the TCFD/ISSB approach of requiring companies to report on their Scope 3 emissions. 'Scope 3' greenhouse gas (GHG) emissions are those resulting from activities and assets indirectly impacted by the company via its value chain. Alignment with international standards here would significantly expand the scope of climate reporting required of Hong Kong listed companies.

Highlights

- the emerging regulatory regime relating to climate change reporting will likely require much finer grained disclosures regarding companies' relevant risks and opportunities
- Hong Kong is likely to adopt tougher requirements for listed companies to report on their transition plans to a low-carbon economy
- if Scope 3 emission disclosures are required in Hong Kong, this would significantly expand the scope of climate reporting required of Hong Kong listed companies

> “the Institute has made climate change reporting and performance... a focus of its training and research work”



A new regulatory regime incorporating at least some of the aspects discussed above is expected to be in place in Hong Kong by 2023. This begs the question of whether listed companies are ready for the tougher requirements soon to be in place. The 5 May webinar mentioned above (Climate Change Reporting: Changes Are Coming Quickly) gave some indications of an answer. It surveyed the 125 respondents, primarily governance professionals from Hong Kong, of the webinar audience about their organisations' preparedness for the new regime and the results were not encouraging. For example, only 17% of respondents had performed a climate-related scenario analysis. Moreover, 86% of respondents stated that their companies had not set a climate transition plan and 47% considered that their companies would be unlikely to set one. In this context, the Report makes the point that preparing for the new regulatory regime should be a matter of urgency for listed companies in Hong Kong.

In keeping with the remit of all of the Institute's publications, however, the Report does not confine itself to identifying the problem – it presents a number of practical recommendations on how companies can prepare themselves.

Practical guidance

As its title suggests, the Report is designed primarily as a guide to the necessary 'opening moves' companies can consider in preparation for the new regulatory requirements relating to climate change reporting in Hong Kong. In particular, it identifies five focus areas where the new disclosure standards are likely to require additional work by companies and governance professionals to ensure they remain in compliance.

1. Adopting an 'enterprise value' approach to materiality

The Report points out that the draft ISSB standards, published for consultation in July this year, take an 'enterprise value' approach to the identification of materiality. Sustainability-related financial information is material if it influences assessments of the company's enterprise value (the total value of the company).

Furthermore, the reporting boundary will quite likely be broad under the new standards. Companies will be expected to disclose information, for example, about parties outside the company when such information affects the assessment of enterprise value. For instance, a company may determine that information about sustainability risks and opportunities arising from suppliers is material to an assessment of its enterprise value.

Nevertheless, the ISSB has not taken the 'double materiality' approach to climate reporting. Other sustainability reporting frameworks, for example the Global Reporting Initiative (GRI), require disclosure of climate-related issues that impact the company, and also those issues relating to the company's impact on the environment and society. The ISSB approach has been to focus on the former rather than the latter.

2. Quantifying the current and anticipated financial effects of climate issues

The ISSB approach focuses on the need for companies to disclose quantitative information about the financial effects of climate-related risks and opportunities. This includes how the company expects its financial position and financial performance to change over time, given its strategy to address these risks and opportunities.

Directors often have legal liability concerns about disclosing forward-looking information however, and climate change is likely to have significant effects far into the future, well beyond the typical business planning timelines. Moreover, even where such concerns are overcome, obtaining the relevant data might be a challenge.

Despite these challenges, the emerging regulatory regime in Hong Kong, following the TCFD/ISSB approach, is likely to require companies to disclose much more granular quantitative data on the climate-related risks and opportunities they are exposed to. In this context, the Report suggests that companies should consider getting their finance function more involved in sustainability reporting. Another speaker at the 5 May webinar – Pat-Nie Woo, Partner, KPMG China, and Head of Environment, Social and Governance, Hong Kong and Global Co-Chair, Sustainable Finance, KPMG IMPACT – made the point that companies need to build cross-functional teams to address climate change. Such teams should certainly involve personnel from the finance function, but should also include legal, research and development, and sustainability personnel.

3. Conducting climate-related scenario analysis

Many of the caveats mentioned above relating to quantifying the current and anticipated financial effects of climate issues would also apply to any requirement for companies to use climate-related scenario analysis. How should companies determine what time horizons to use in the analysis? Also, how reliable will any judgements be about the likelihood of different future climate scenarios – given that these are dependent on a complex interplay of policy decisions, macroeconomic and energy use trends, and technology developments?

On the other hand, getting an idea of the potential impacts of flooding on a business, for example, based on different projected sea level rises, or the fire risk based on different ranges of temperature changes, will be highly useful to both investors and companies themselves. At the initial stage, use of this tool is therefore likely to be a voluntary recommendation – this would mirror the ISSB approach that has been to recommend the use of climate-related scenario analysis 'unless a company is unable to do so'.

The Report makes the point that scenario analysis is a valuable tool for organisations to understand the resilience of their business models and strategies to climate change. 'Such an analysis allows a company to explore and develop an understanding of how climate-related risks and opportunities may impact its business, strategies and financial performance over time,' the Report says.

4. Formulating a climate transition plan and setting targets

In 2015, at the United Nations (UN) conference of parties summit in Paris, all parties to the UN Framework Convention on Climate Change (UNFCCC) agreed to work towards the central goal of limiting global warming to well below 2°C, and preferably to 1.5°C, relative to pre-industrial levels. This agreement was adopted (though not ratified) by all 196 parties to the UNFCCC and was the first time all such parties had agreed to commit to a decarbonisation pathway.

The agreement allows each party to chart its own course and there is no formal system for ensuring compliance, but parties have signed up to their own Nationally Determined Contributions and have committed to revisit and increase their targets every five years. The Mainland aims to reach peak carbon emissions by 2030 and is committed to being carbon neutral by 2060. The Hong Kong SAR Government has pledged to achieve carbon neutrality by 2050 and set out its strategy to achieve this in its Climate Action Plan 2050.

To align with these goals, companies are expected to come up with their own transition plans outlining their targets and actions to transition towards a lower carbon business model. This will require disclosure of how they intend to reduce GHG emissions over time, the time horizons used, the metrics used to track progress and their assessment of how this transition will affect the company over time. The Report emphasises that disclosure of companies' transition plans will enhance the credibility of their climate change commitments and recommends use of the guidance on transition plans and targets developed by the TCFD as a starting point.

5. Determining and reporting on the metrics such as Scope 3 emissions

As mentioned above, one of the

key characteristics of the emerging regulatory regime relating to climate change reporting in Hong Kong is that companies will be required to disclose much more granular quantitative data on the risks and opportunities they are exposed to. The Report makes it clear that this is where most preparation work will be required and this is particularly true for reporting on Scope 3 emissions. What, for example, should companies do if reliable and sufficiently granular primary data relating to the company's indirect value chain is unavailable?

In such cases, the Report recommends companies use 'secondary' data or industry-specific data. It points out that companies will be helped by the growing number of initiatives in this area. Relevant data relating to specific industries – particularly those with high exposure to climate change risks and opportunities – are increasingly available to companies in their reporting exercises. The industry-based metrics in the current ISSB proposals, for example, are derived from the SASB Standards.

The Report adds, however, that most SASB reporters are domiciled in the US (only 10.4% of SASB reporters were domiciled in Asia Pacific in 2021). The SASB Standards may therefore be relatively new to Hong Kong companies and they will therefore need to apply materiality judgements to these metrics and adapt their existing data compilation processes accordingly.

> ***The report reviewed in this article is available on the Institute's website (www.hkcgi.org.hk).***

Key recommendations

1. Educate the board. As the board takes accountability for monitoring and managing climate-related risks and opportunities, it should understand the latest developments in climate issues and the related reporting landscape, the company's potential exposure to climate-related risks and opportunities, and the potential implications for the company's strategy and business model. Governance professionals should educate the board about the emerging climate reporting requirements and the potential impacts and challenges. Various platforms such as HKEX's ESG Academy and TCFD Knowledge Hub provide useful resources in this regard.

2. Integrate climate issues into governance structures. The board should integrate climate-related issues into strategy and decision-making processes and enhance board-level oversight over monitoring and management of climate-related risks and opportunities. This helps to secure commitment and support from the leadership. Governance professionals may assist the board in enhancing the current governance structure, including the roles of the board and management.

3. Establish a cross-functional team. A cross-functional team is important to both act on climate issues and report on the company's climate responses. A diverse team helps to obtain buy-in and support from across the organisation. It also brings together different skill sets. For instance, sustainability professionals have an understanding of climate issues. Strategy professionals and risk management experts can advise on the impacts on strategy and business models. Finance professionals can help understand and quantify the financial effects, and connect climate and financial reporting. Governance professionals may assist the board in establishing the multidisciplinary team to implement the needed processes and tackle the relevant challenges.

4. Expand systems, processes and controls. Companies will need processes and controls to quantify the financial effects of climate issues, conduct climate-related scenario analysis and report on metrics. Companies should engage with current process owners to understand how information is being defined, captured and reported, and where there are data gaps and control gaps. The cross-functional team may need to assist the board in identifying these gaps and expanding existing systems, processes and controls to ensure data integrity and avoid duplication between different types of reporting.

Source: Climate Change Reporting: Imminent, Challenging & Mandatory – The Opening Moves

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CHARTERED GOVERNANCE
Hong Kong

Modernising Chinese antitrust

What's to come from the amended Anti-Monopoly Law

Natalie Yeung, Partner, Alexander Lee, Counsel, and Michele Ho, Associate, of Slaughter and May, explain the recent amendments to the Mainland's Anti-Monopoly Law and examine the implications of these changes for Chinese antitrust enforcement.

Change is coming to antitrust law in the Mainland. After over two years of consideration and consultation, the Chinese legislature recently passed its first amendment to the Anti-Monopoly Law (AML), with changes ranging from an updated merger control regime to new substantive rules and safe harbours governing anti-competitive conduct, and enhanced sanctions across the board. Corresponding updates to detailed antitrust and merger regulations were published for consultation shortly after the revised legislation was passed. We take a brief look at what these changes mean for Chinese antitrust enforcement going forward.

Key changes coming to Chinese antitrust

The AML revisions were approved by the Standing Committee of the 13th National People's Congress on 24 June 2022, making this the country's biggest effort to modernise its antitrust regime to date. The AML's legislative amendments, which took effect on the law's 14th enforcement anniversary on 1 August 2022, come as no surprise to antitrust practitioners, as they are broadly in line with the proposed amendments published during previous consultations since January 2020.

Proposals to update antitrust and merger regulations came hard on the heels of the AML amendments, as the State Administration for Market Regulation (SAMR) published six draft regulations for public consultation on 27 June 2022, covering revisions to its existing regulations on anti-competitive (monopolistic) conduct, abuse of market dominance, abuse of intellectual property rights, merger control thresholds (Draft Merger Thresholds Regulation) and review, and abuse of administrative power (collectively, Draft Regulations). Consultation on the Draft Regulations ended on 27 July 2022.

Here are the key changes:

China merger control 2.0

The amended AML and Draft Regulations seek to introduce a number of changes that will bring fundamental change to the existing merger control regime, including:

1. ***Higher jurisdictional thresholds.*** With a view to better capture transactions that merit review, SAMR is proposing in the Draft Merger Thresholds Regulation to increase filing thresholds to:
   - the parties having a combined worldwide turnover exceeding RMB12 billion (approximately US$1.8 billion), or Chinese turnover exceeding RMB4 billion (approximately US$600 million), in the preceding financial year, and
   - at least two parties each having Chinese turnover exceeding RMB800 million (approximately US$120 million), which is double the current Chinese turnover requirement of RMB400 million.
2. ***A catch-all power for 'killer acquisitions'.*** The amended AML now enshrines SAMR's power to call in transactions that fall below turnover thresholds. In addition, the Draft Merger Thresholds Regulation envisages a special merger notification requirement for businesses whose Chinese

Highlights

- the recently passed amendments to the Mainland's Anti-Monopoly Law (AML) are the country's biggest effort to modernise its antitrust regime to date
- changes include updated jurisdictional thresholds and procedural mechanisms in the Chinese merger control regime, as well as new substantive antitrust rules and safe harbours for vertical agreements
- penalties for all aspects of AML infringements, including those for personal accountability, have been increased significantly

turnover exceeds RMB100 billion (approximately US$15 billion), and the other party's market value (note: not turnover) exceeds RMB800 million (approximately US$120 million) if its Chinese turnover represents more than a third of its global turnover. This catch-all power is expected to capture killer acquisitions, for example, market incumbents acquiring a nascent rival to stifle future competition.

3. ***New 'stop-the-clock' mechanism.*** SAMR will have the power to suspend the merger review period by written notice in circumstances where more time is needed (such as when a deadline to provide requested information is not met, or new material facts require verification). Notifying parties may also apply to suspend the review process to allow time for remedy discussions. With this power, SAMR may no longer need to ask parties to 'pull and refile' complex notifications in order to allow more time to discuss remedies, but it also gives rise to a risk that SAMR could issue requests for information just to buy itself more time to review the transaction.

4. ***A 'classification and grading' system.*** While details of this system are yet to be announced, the new system is expected to allow SAMR to triage merger filings for better administration and resource allocation, possibly on the basis of sector-specific filing thresholds. SAMR launched a three-year pilot programme on 1 August 2022 to delegate simple cases with a local nexus to its provincial or local branches in Beijing, Shanghai, Guangdong, Chongqing and Shaanxi. The delegated agencies will be responsible for reviewing assigned cases, whereas SAMR will supervise such reviews and decide on the outcome of such cases.

Refinements on substantive rules

The revisions to the AML include a number of additions that bring the Chinese rules more into line with international standards of competition enforcement.

1. ***Safe harbours for vertical agreements.*** The amended AML introduces, for the first time, a general safe harbour for all vertical agreements, provided no harm to competition would arise from the vertical restriction, and the market shares of relevant parties fall under a specified threshold. Currently, SAMR is proposing a 15% market share threshold for this safe harbour for vertical agreements under the Draft Regulation on the Prohibition of Monopolistic Agreements.

2. ***Rebuttable presumption of illegality for resale price maintenance (RPM).*** While RPM is expressly prohibited under the original AML, the amended AML specifies that RPM may not be illegal if parties can prove that the restriction does not harm competition – although the difficulty of discharging this burden remains unclear. This is nevertheless a notable change, as SAMR and its provincial/local branches have in the past appeared to prioritise enforcement against RPM on a 'per se' basis. Businesses would therefore be prudent to wait and see, and to seek legal advice before implementing RPM in their supply or distribution agreements in the Mainland, even if they consider there are good arguments that this would not harm competition.

3. ***Express liability for facilitators of anti-competitive agreements.*** The amended AML includes a new prohibition on organising or assisting others to reach anti-competitive agreements. This is expected to cover all indirect forms of collusion, including hub-and-spoke cartels. Liability under this prohibition will be imposed on a standalone basis, meaning the facilitator to collusive arrangements will be sanctioned as though it were a member of the cartel in question.

4. ***Tailored rules for the digital economy.*** Big tech is a notable theme that stands out among the many changes to the AML. In particular, 'the use of data, algorithms, technologies, capital advantage and platform rules' are now specified as potential means of infringing the prohibitions against anti-competitive agreements and abuse of market dominance. The flexible language leaves the door open for Chinese authorities to scrutinise future variants of anti-competitive conduct as new technology or business models emerge.

Table 1: maximum fines under the amended AML

	Current AML	Amended AML
Prohibition against anti-competitive agreements		
Agreement reached	10% turnover in preceding year	10% turnover in preceding year
Agreement reached, but party had no turnover in the preceding year	Not specified	RMB5 million (approximately US$750,000)
Agreement reached, without implementation	RMB500,000 (approximately US$75,000)	RMB3 million (approximately US$450,000)
Organising or assisting others to reach an anti-competitive agreement	Not specified	Same penalties apply as if the organiser was a party to the agreement
Agreement reached via trade association	RMB500,000 (approximately US$75,000)	RMB3 million (approximately US$450,000)
Personal liability for reaching agreement	Not specified	RMB1 million (approximately US$150,000)
Prohibition against abuse of market dominance		
Abuse of dominant market position	10% turnover in preceding year	10% turnover in preceding year
Merger control		
Failure to notify reportable transaction that has anti-competitive effects	RMB500,000 (approximately US$75,000)	10% turnover in preceding year
Failure to notify reportable transaction that has no anti-competitive effects	RMB500,000 (approximately US$75,000)	RMB5 million (approximately US$750,000)
General penalties		
Obstruction of investigation	RMB1 million (approximately US$150,000)	1% turnover in the preceding year or RMB5 million (approximately US$750,000) if there were no sales in the preceding year or the amount is difficult to calculate
Personal liability for obstruction of investigation	RMB100,000 (approximately US$15,000)	RMB500,000 (approximately US$75,000)
Any of the above infringements (including anti-competitive agreements, abuse of dominance, failure to notify reportable transactions, obstruction of investigation) that are particularly egregious	Not specified	Two to five times the prescribed fine

Harsher sanctions for AML infringements

Deterrence under the amended AML will be significantly higher, as penalties for all aspects of AML infringements are increased.

1. ***Higher fines for antitrust violations, particularly for gun-jumping.*** The maximum fine for a failure to notify a reportable transaction will see the highest jump in penalty: from the current cap of RMB500,000 (approximately US$75,000) to 10% of turnover in the preceding year if the deal has anti-competitive effects, or RMB5 million (approximately US$750,000) for other cases. A new ‘two to five times penalty multiplier’ has also been introduced for particularly egregious antitrust violations. See Table 1 for a summary of the potential fines under the amended AML.

2. ***Personal accountability for AML infringements.*** Individuals in charge of Chinese businesses (such as legal representatives or company directors) or individuals directly responsible for the company’s anti-competitive agreement may find themselves personally subject to a fine up to RMB1 million (approximately US$150,000). Personal pecuniary penalties for obstruction of AML investigations have also been raised substantially from the current cap of RMB100,000 to RMB500,000 (approximately US$75,000).

3. ***Corporate social credit record for AML.*** Administration penalties for AML violations will be kept on the company’s social credit record. As China’s social credit record system is public, this may have a reputational impact on businesses that violate the AML.

4. ***Civil recourse via public interest litigation.*** Businesses found to have breached the AML may also be subject to public interest civil lawsuits (similar to class-action litigation) brought about by the People’s Procuratorate (public prosecutorial bodies in China).

A new era of antitrust enforcement

There are many welcomed changes in the amended AML. The revamped merger control regime is expected to allow better case management, while capturing transactions that more likely merit SAMR’s review (for example, killer acquisitions). However, it also introduces a certain degree of uncertainty and we will have to see how SAMR exercises its new powers in practice. The additional guidance on substantive antitrust rules and safe harbour for vertical agreements affords greater legal certainty for businesses operating in the Mainland. The rules specifically tailored for the digital economy add a layer of future-proofing to the AML. Together, the amendments bring the Chinese antitrust regime closer to international equivalents and are expected to strengthen antitrust enforcement with greater fines.

Businesses should note that proposals under the Draft Regulations may be subject to SAMR’s fine-tuning, depending on comments received during the consultation. The revised Regulations have yet to be published as of the date of writing, but such revisions are expected to be published in the near future, so as to align with the AML amendments that came into effect on 1 August 2022.

Natalie Yeung, Partner, Alexander Lee, Counsel, and Michele Ho, Associate

Slaughter and May

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Strategise before you strike

Recent cases concerning the Hong Kong court's powers to wind up foreign companies and recognise foreign insolvencies

Wynne Mok and team from Slaughter and May summarise two recent court decisions that are pertinent to creditors considering issuing a winding-up petition against a debtor company incorporated overseas, but with some Hong Kong connection.

The Court of Final Appeal (the CFA) has recently clarified whether a Hong Kong court should exercise its winding-up jurisdiction over foreign companies if the petitioner would derive benefit from the invocation of the court's winding-up process, but not from the making of a winding-up order (*Shandong Chenming Paper Holdings Ltd v Arjowiggins HKK2 Ltd* [2022] HKCFA 11).

The Court of First Instance has also explained the correct approach to assessing whether foreign liquidation should be recognised and whether assistance should be given to liquidators appointed overseas *(Provisional Liquidator of Global Brands Group Holding Ltd (In liquidation) v Computershare Hong Kong Trustees Ltd and another* [2022] HKCFI 1789).

This article discusses these recent decisions, which are important especially to creditors who are considering their options vis-à-vis debtor companies that are incorporated overseas, but which have some connection with Hong Kong.

Shangdong Chenming Paper – the benefit requirement

The Hong Kong court has a discretionary jurisdiction to wind up foreign companies pursuant to sections 327(1) and (3) of the Companies (Winding-Up and Miscellaneous Provisions) Ordinance (CWUMPO). One of the circumstances in which a foreign company may be wound up is if the company is unable to pay its debts. The court's statutory winding-up jurisdiction is subject to self-imposed restraints that the CFA has previously articulated as three core requirements in the Yung Kee restaurant case (*Kam Leung Sui Kwan v Kam Kwan Lai* (2015) 18 HKCFAR 501). These three core requirements are:

1. there must be a sufficient connection with Hong Kong
2. there must be a reasonable possibility that the winding-up order would benefit those applying for it (the benefit requirement), and
3. the court must be able to exercise jurisdiction over one or more persons in the distribution of the company's assets.

The case of *Shangdong Chenming Paper* concerned the benefit requirement.

Shandong Chenming Paper (the Appellant), a company incorporated in the Mainland, was (and still is) listed in Hong Kong (and also in Shenzhen). At the material times, it was solvent though it had no assets or business operations in the territory. When the Appellant refused to pay its joint venture partner, Arjowiggins HKK2 (the Creditor), damages as ordered in an arbitration, after which it was served a statutory demand, it applied for a declaration to prevent the Creditor from presenting a winding-up petition against it. Originally, the Appellant claimed that the Creditor would not be able to satisfy the three core requirements. However, it later conceded that the first and third requirements were met, so the

Highlights

- the Hong Kong court has recently clarified its jurisdiction in relation to the winding-up of foreign companies, as well as its approach to assessing whether foreign liquidation should be recognised and assistance given to overseas-appointed liquidators
- the three core requirements, including the benefit requirement, are not statutory provisions, rather they are self-imposed restraints adopted by the courts in deciding whether to exercise winding-up jurisdiction over a foreign company
- a debtor's place of incorporation should not be the exclusive criterion for granting recognition and assistance to foreign insolvency practitioners, instead the court should first determine the company's centre of main interest

> **the Court of Final Appeal accepted that commercial pressure to achieve the repayment of an undisputed debt is an entirely proper purpose of a creditor's winding-up petition**

remaining issue was whether the benefit requirement was also met.

The Appellant argued that there was no reasonable prospect that the Creditor would benefit from the making of a winding-up order in Hong Kong because the company's only connection with Hong Kong was its listing here, and it had no assets which a liquidator could realise for the benefit of the Creditor. Further, the appointment of a liquidator by a Hong Kong court would not be recognised in the Mainland. As such, a winding-up order made in Hong Kong would be an exercise in futility.

On the other hand, the Creditor contended that the benefit requirement was satisfied by the H share listing on The Stock Exchange of Hong Kong being a valuable and realisable asset, or alternatively, by steps a liquidator might take in the winding-up process. More specifically, if a winding-up order was made in Hong Kong, the liquidator would have the power to investigate certain restructuring previously conducted by the Appellant, which resulted in assets falling into the hands of a subsidiary.

In the first instance, whilst rejecting the arguments advanced by the Creditor, Harris J ruled that the Creditor would nevertheless benefit from a winding-up order given that the imminent prospect of such a winding-up order and the potential adverse consequences on the Appellant (in particular on its listed status) would create pressure on the Appellant to pay the award. This leverage created by the prospect of a winding-up petition constituted a sufficient benefit for the Creditor for the purpose of the benefit requirement. The judge considered that the core requirements that have been adopted by the Hong Kong courts could be moderated in this case, as otherwise the Appellant would be able to take the benefit of access to Hong Kong's financial system without the burden of complying with the laws. Indeed, the judge considered that the Appellant had shown a disregard for the integrity of the Hong Kong legal system by refusing to honour the arbitral award.

The Court of Appeal upheld the first instance decision.

The issue put before the CFA was restricted to the nature of the benefit that would satisfy the core requirements as approved in Yung Kee, that is, whether the leverage created by the commencement and existence of winding-up proceedings in Hong Kong is sufficient.

The Appellant's principal argument was that, as articulated by the CFA in Yung Kee, the benefit must arise from 'the making of a winding-up order' and not from any pressure, or leverage, arising before such an order is actually made. The necessary benefit must be a tangible benefit. Further, the commercial pressure on a solvent company to pay is an illegitimate form of benefit for the purposes of the benefit requirement.

The CFA refused to read the articulation of the benefit requirement in Yung Kee as restricting sufficient benefit only to possible benefits flowing from, or consequences materialising only upon the making of, a winding-up order. The benefit requirement and the other two core requirements are not statutory, but are self-imposed constraints adopted by the courts in deciding whether to exercise winding-up jurisdiction over a foreign company. The requirements should not be construed as if they were statutory provisions and have to be applied contextually in light of the facts of the case. The courts should adopt a pragmatic approach in assessing whether it would be useful to entertain a winding-up petition.

The CFA accepted that commercial pressure to achieve the repayment of an undisputed debt is an entirely proper purpose of a creditor's winding-up petition. CWUMPO provides for a statutory demand mechanism whereby a company is deemed to be unable to pay its debts if it fails to comply with a statutory demand served on it. The company's failure to comply with a statutory demand will in turn form a proper basis for the creditor to invoke

the winding-up jurisdiction, even if the company is in fact solvent. The court therefore did not see anything improper in the service of a statutory demand and the presentation of a winding-up petition in order to put pressure on a debtor to pay an undisputed debt. However, this should be contrasted with the threat of issuing a winding-up petition where the debt is genuinely in dispute, as that would be regarded as an abuse of process.

Since the use of the winding-up process was accepted as a proper means to bring commercial pressure to bear to obtain repayment of an undisputed debt, the CFA did not see any justification for excluding the commercial pressure as a relevant benefit for the purposes of the benefit requirement.

The Appellant also sought to argue that the three requirements are jurisdictional restraints and must be interpreted in light of comity, which required the CFA to pay sufficient deference to the jurisdiction of the company's state of incorporation. It would be in breach of comity if a Hong Kong court exercised insolvency jurisdiction over the Appellant in the absence of sufficient connection with Hong Kong.

The CFA determined that comity was relevant to the assessment of the first requirement (that is, a sufficient connection with Hong Kong), but not the second requirement in the present case. Since the Appellant had already conceded on the first requirement, the court did not consider it necessary to address the comity argument at any greater length.

What the Appellant was in effect trying to contend, in the views of the CFA, was that winding up a foreign company is only justified when the jurisdiction of incorporation cannot fulfil its function so that Hong Kong is the most appropriate jurisdiction to fill the lacuna. The CFA, however, considered that there is no room for adding a further requirement.

With the clarification by the CFA on the nature of the benefit that will satisfy the benefit requirement, it seems that it will become easier to invoke the Hong Kong court's jurisdiction to wind up foreign companies, even if a winding-up order may not be fruitful in bringing about tangible benefit to the petitioner in the form of realisable assets. The key is to show that the winding-up process would serve some useful purpose.

Global Brands – a modified approach to recognition and assistance of foreign insolvency proceedings in Hong Kong

Global Brands was incorporated in Bermuda, and operated in North America and Europe. It had been listed in Hong Kong since 2014 (Global Brands was delisted on 25 July 2022). When debt restructuring attempts failed, the company applied for a winding-up order in Bermuda in November 2021. Given that the company had assets in Hong Kong (namely, the proceeds of the sale of shares held by Computershare and a balance held by HSBC in the company's bank account), the provisional liquidator appointed in Bermuda sought recognition and assistance so as to take possession of the company's assets and books in Hong Kong.

The court ordered that the foreign liquidation be recognised and that the liquidator had the power to secure and obtain the company's assets and documents in Hong Kong. As explained in the decision, this accorded with the established principle of private international law, which supports recognition of foreign office-holders' appointment in the country of incorporation as the company's lawful agents, in accordance with agency theory and ordinary conflict of laws principles for corporations.

Harris J discussed at length the basis on which, in future, Hong Kong should grant recognition and assistance to foreign insolvency practitioners. It is particularly relevant to the insolvencies of companies that have little connection with their places of incorporation, but which have businesses and/or assets in Hong Kong.

Prior to this case, in the absence of comprehensive statutory codes to regulate recognition and assistance of foreign insolvencies, the Hong Kong courts generally followed the orthodox common law position when considering applications for recognition and assistance, namely that foreign insolvency proceedings should be recognised and assisted if they are collective insolvency proceedings, and commenced in the company's country of incorporation.

Harris J considered it justified to modify the existing common law approach in view of the circumstances in which transnational insolvencies currently arise in Hong Kong. As noted by the judge, in recent years,

> **recognition and assistance has been increasingly used to address issues arising in insolvency cases that largely result from the extensive use of holding companies incorporated in offshore jurisdictions**

recognition and assistance has been increasingly used to address issues arising in insolvency cases that largely result from the extensive use of holding companies incorporated in offshore jurisdictions, whilst the business groups affected consist of operating and asset-owning companies in Hong Kong (and the Mainland). Such a group structure is rather artificial and may lead to the tricky question of where the home or principal insolvency jurisdiction is, given that the places of incorporation are no more than a letterbox.

To better reflect the current commercial practice in Hong Kong, the court considered that a debtor's place of incorporation should not be the exclusive criterion for recognition, but instead, in future, the court should first determine whether the foreign liquidation takes place in the jurisdiction of the company's centre of main interest (COMI) at the time of the application for recognition and assistance. If it does not, recognition and assistance should be declined unless the application falls within one of the following two categories:

1. the application is limited to recognition of a liquidator's authority as the lawful agent of the debtor and is seeking 'managerial assistance' which is incidental to such authority, or

2. the assistance sought is 'limited and carefully prescribed' and required by a liquidator appointed in the place of incorporation as a matter of practicality.

As to the elements of COMI (which is not defined in statutes or the UNCITRAL Model Law on Cross-Border Insolvency), the judge considered that matters similar to the following are relevant to the Hong Kong court's determination of whether or not the COMI of a company is in the jurisdiction of the foreign insolvency proceedings:

- the location of directors and board meetings
- the location of the companies' principal officers
- the location of operations
- the location of assets
- the location of bank accounts
- the location of books and records, and
- the location in which any restructuring activities take place.

As made clear by the judge, the concept of COMI will be relevant in cases in which a foreign liquidator requires more than an order that confirms the liquidator's status and rights arising out of his or her appointment in the place of incorporation. As such, the judge did not decide whether Hong Kong was indeed the COMI of Global Brands before granting the orders as sought by the foreign liquidator. Therefore, if it is anticipated that asset tracing is required in the territory (hence the need to exercise a liquidator's power to investigate the company's affairs), it might be safer to invoke the winding-up jurisdiction of a Hong Kong court, rather than getting a winding-up order in place of jurisdiction, and then seeking recognition and assistance in Hong Kong. This question, however, will become more complicated if the liquidation process involves other countries that only recognise the appointment of liquidators in the place of incorporation.

It will be interesting to see how the concept of COMI will be applied by the Hong Kong courts in future applications for recognition and assistance of foreign insolvencies. There may be difficulties in identifying the COMI of international conglomerates with operations in multiple jurisdictions, and the issue is often fact-sensitive. The COMI of a company may also change over time. It should be noted that the relevant point in time for determining a company's COMI is when an application for recognition is made, not when foreign liquidation proceedings are commenced or when the hearing of the application for recognition occurs. If there is a risk that a company's COMI

may change in the life of insolvency proceedings, creditors should apply for recognition of such proceedings before the company's COMI deviates from the place of insolvency proceedings.

Cross-border insolvencies between Hong Kong and the Mainland could be less complicated given the arrangement between the two jurisdictions on mutual recognition of and assistance to insolvency proceedings (Cooperation Mechanism), whereby the courts in Shanghai, Shenzhen and Xiamen may recognise and assist Hong Kong–appointed liquidators if the company's COMI is in Hong Kong. COMI is usually the place of incorporation of the company, but other factors, such as the place of the company's head office and the principal places of business and assets, will also be taken into account.

Takeaways

If you are a creditor and are considering options vis-à-vis your debtors, it is important to bear in mind the following:

- If there is genuinely no dispute over the debt you are owed, it is entirely proper for you to issue a statutory demand and also commence winding-up proceedings (if the debtor does not comply with the statutory demand notwithstanding the expiry of 21 days from the date of service). No abuse of process is involved. You do not need to demonstrate that the debtor is in fact insolvent.

- If the debtor is a foreign company, you should assess which jurisdiction should have the primary jurisdiction over its liquidation.

- The place of incorporation of the debtor does not necessarily have the primary jurisdiction in the eyes of a Hong Kong court. If the debtor has significant assets in Hong Kong, you may consider commencing insolvency proceedings here if the legal advice sought suggests that Hong Kong is the COMI of the company, albeit it is incorporated elsewhere.

- There would be an additional advantage to commencing winding-up proceedings in Hong Kong if there are assets in the Mainland, as you may be able to benefit from the Cooperation Mechanism. Having said that, the Cooperation Mechanism is currently only applicable to Shanghai, Shenzhen and Xiamen.

- If the debtor has assets in other parts of the world, you should also consider whether the insolvency commenced in Hong Kong, if it is not the place of incorporation, would be recognised by the other jurisdictions.

- The Hong Kong courts will continue to recognise and assist in foreign insolvencies, based on the established principles of private international law. However, they may not be prepared to go beyond providing managerial assistance incidental to the status and authority of the foreign liquidators as the lawful agents of the debtor, unless the primary insolvency jurisdiction is exercised by the courts of the COMI of the debtor.

Wynne Mok, Partner, Jason Cheng, Associate, Audrey Li, Associate, Sharon Law, Trainee, and Jason Chan, Trainee

Slaughter and May

Professional Development

Seminars: July 2022

5 July

Company secretarial practical training series: formation of common vehicles in Hong Kong

Chair: *Susan Lo FCG HKFCG*
Speaker: *Frances Chan FCG HKFCG, Institute Professional Services Panel member, and Founder and Director, K. Leaders Business Consultants Ltd*

6 July

Handling business payments: litigation and money-laundering risks you may not have thought about

Chair: *Tom Chau FCG HKFCG, Institute Council Member, Education Committee Vice-Chairman and Mainland China Focus Group member, and Partner, Corporate, Herbert Smith Freehills Beijing/Hong Kong*
Speakers: *Jojo Fan, Partner, Dispute Resolution, Vicky Man, Senior Associate, Financial Services Regulatory, Tiffany Chan, Senior Associate, Dispute Resolution, and Jody Luk, Associate, Dispute Resolution, Herbert Smith Freehills Hong Kong*

11 July

CSP foundation training series: company meetings

Speaker: *YT Soon FCG HKFCG(PE)*

13 July

Recent Listing Rules enforcement cases

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: *Eve Chan, Principle, YC Solicitors*

22 July

Company secretarial practical training series: disclosure of interests in securities – practice and application

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

27 July

China-appointed attesting officers – system and attested documents

Chair: *Jenny Choi FCG HKFCG(PE), Institute Professional Services Panel member, and Partner, Ernst & Young Company Secretarial Services Ltd*
Speaker: *Koo Tsang Hoi, Council member, Association of China-Appointed Attesting Officers Ltd*

28 July

Share repurchase in Hong Kong – a practical perspective

Chair: *Wendy Ho FCG HKFCG(PE), Institute Council member, Professional Development Committee Vice-Chairman, Professional Services Panel Vice-Chairman and Rebranding Working Group member, and Executive Director, Corporate Services, Tricor Services Ltd*
Speakers: *Benita Yu FCG HKFCG, Partner, and Justin Chan, Partner, Slaughter and May*

ECPD Videos on Demand

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

Details of the Institute's ECPD Videos on Demand are available in the Professional Development section of the Institute's website: www.hkcgi.org.hk.

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

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
28 September 2022	4.00pm–5.30pm	Directors' responsibilities and company secretaries' roles under Listing Rules	1.5
29 September 2022	4.00pm–5.30pm	Director induction: overview, best practice and case sharing	1.5
30 September 2022	4.00pm–5.30pm	Shareholders' protection – overview, application and company secretaries' & investor relations' roles	1.5
5 October 2022	4.00pm–5.30pm	Competition law enforcement: key cases, recent trends and director disqualification orders	1.5

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

Membership

Membership/graduateship renewal for the financial year 2022/2023 – final call

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

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

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

Membership (continued)

New graduates

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

Chan Kwok Yan	Li Wing Yee
Chan Oi Ye, Tracy Robyn	Lim Phei Chi
Chao Ling Ching	Liu Lele
Chen Hao	Lu Yanling
Cheng Yuk Ting	Lui Tin Wah
Cheung Yee Ling	Mau Ka Ling
Chong Mei Lin	Nambiar Srijit Shankaran Kutty
Chow Wynsum	Ng Kwan Ming
Chu Wing Sum	Ng Nga In
Chung Ming	Pang Mo Cheung
Fung Lai Sum	Sham Yi Ting
Ho Wun Lam	Tam Chun Yin, Zenith
Hui Cho Wai, Victor	Tam Fung Yu
Lai Yuen Kiu, Fiona	Tsang Chi Hung
Lam Ka Wai	Wai Ka Mun, Elena
Lau Tsz Mui	Wong Hoi Chun, Jenny
Lei Miao	Wong Mei
Leung Chung Yan	Wong Sin Kwan
Leung Ka Hong	Wong Wing Yee
Leung Kam Fai, Anthony	Wong Yuen Fan
Leung Tsz Ching	Yao Yuan
Leung Wai Hei	Yeung Lai Ping, Joyce
Leung Wing Man, Billie	Yeung Yin Wa
Leung Yeuk Yin, Joyce	Young Chun Yin
Li Kin Cheong	Zhang Qi

New Fellows

The Institute would like to congratulate the following Fellow elected in July 2022.

Ko Yuk Yin, Teresa FCG HKFCG

Ms Ko is the China Chairman and Senior Partner of Freshfields Bruckhaus Deringer, Hong Kong. She is an eminent legal adviser and a market leader in corporate, capital markets and governance work in Hong Kong. Ms Ko currently serves as Co-Vice Chair of the International Financial Reporting Standards Foundation. She chairs its Due Process Oversight Committee and is a member of its Nomination Committee. She has been involved in the establishment of the International Sustainability Standards Board (ISSB) as a member of the Steering Committee.

As the first female to chair the Hong Kong Stock Exchange's Listing Committee from 2009 to 2012, Ms Ko continues to serve as one of four Co-Chairmen of the Listing Review Committee. She was a Non-Executive Director of the Securities and Futures Commission of Hong Kong from 2012 to 2018 and is currently a Deputy Chairman of its Takeovers and Mergers Panel.

Over more than 30 years of experience, Ms Ko has represented numerous unique or 'first of its kind' Hong Kong listings of Chinese and international companies, including advising on eight out of the 10 largest IPOs ever in Hong Kong. She also has an impressive record on public and private M&A transactions, and advises on joint ventures and restructuring matters.

Recently, Ms Ko was featured in the HERoesWomen Role Model Lists 2021 for the fourth consecutive year and in Forbes' Asia's Power Businesswomen list 2021.

Forthcoming membership activities

Date	Time	Event
24 September 2022	10.00am–12.00pm	Mentorship Programme training – creative thinking for solutioning (by invitation only)
24 September 2022	3.30pm–4.30pm	Wellness series: gong bath workshop (session B)

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

Membership activities: July 2022

5 July

Wellness series: prevention and treatment for insomnia in Chinese medicine (free webinar)

26 July

Wellness series: healthy diet to fight against viruses (free webinar)

Advocacy

The Hong Kong Chartered Governance Institute 2022 Annual General Meeting – call for nominations for election to Council

Members are invited to nominate candidates for election to Council of the Institute at the 2022 Annual General Meeting (AGM). The Articles of Association of the Institute provide that Fellows who are ordinarily resident in the Divisional Territory are eligible to stand for election. More details are available on the Institute's website: www.hkcgi.org.hk.

Duly completed and signed nomination forms must be returned to the Institute's Secretariat in person or by post no later than 6.00pm on the nomination closing date of Wednesday 5 October 2022.

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

Advocacy (continued)

New brand video

On 20 July 2022, the Institute premiered its new brand video, featuring the following speakers who shared information on the rebranding of the Institute and its new brand pillars:

- Ernest Lee FCG HKFCG(PE), Institute President, and Technical Partner, Deloitte China
- Gillian Meller FCG HKFCG(PE), Institute Immediate Past President and Ex-officio Council member, and Legal and Governance Director, MTR Corporation Limited
- Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), Past International President, and Institute Past President, and Executive Director and Company Secretary, CK Hutchison Holdings Ltd.

In addition, three ceremonies were held at the Past President and Council Luncheon 2022, on 20 July 2022, when our Immediate Past President handed on the President's medal to our new President, our new President in turn passed the Past President medal to our Immediate Past President, and the HKCGI Prize 2021 was presented to April Chan FCG HKFCG, Institute Past President, TCP Chairman, Appeal Tribunal Chairman, TCP – Public Governance Interest Group Chairman, Special Entry Scheme Interview Panel member, and Nomination Committee member, and CSIA Inaugural President.

Climate Change Reporting: Imminent, Challenging & Mandatory – The Opening Moves

The Institute, jointly with KPMG China and CLP Holdings Ltd, has recently published a report, titled Climate Change Reporting: Imminent, Challenging & Mandatory – The Opening Moves. Recognising that ESG and climate change are some of the most pressing issues of our time, the Institute has intensified its efforts to bring the most up-to-date information, guidance, thought leadership and training to its members, students and the wider governance community.

Chinese YMCA of Hong Kong awards the Institute the Perfect Partner designation

The Institute is dedicated to being an active contributor to the community. We are pleased to announce that the Institute has been awarded the Perfect Partner designation under the Chinese YMCA of Hong Kong's Y-Care CSR Scheme for the year 2021/2022, in recognition of our commitment to serving the community. The Institute will continue to promote an increasing number of CSR initiatives so that members, graduates and students can play a greater role in shaping a better future.

Nominations for the HKCGI Prize 2022

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

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

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

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

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

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

Advocacy (continued)

Student Ambassadors Programme summer internship 2022

The Institute invited companies and organisations to offer summer internship positions to undergraduates participating in its Student Ambassadors Programme (SAP), with the aim of promoting the role of Chartered Secretary and Chartered Governance Professional to the younger generation in Hong Kong. The internship lasted for a maximum of eight weeks, from June to September 2022.

This year, a total of 19 undergraduates from seven local universities – City University of Hong Kong, Hong Kong Metropolitan University, Hong Kong Shue Yan University, The Chinese University of Hong Kong, The Hang Seng University of Hong Kong, The Hong Kong University of Science and Technology and The University of Hong Kong – received internship offers from 12 companies, listed below in alphabetical order.

- Annatto Consultancy Ltd
- Baker & McKenzie
- Companies Registry
- CS Legend Business Services Ltd
- Foxtrot Partner Ltd
- Guoco Management Company Ltd
- McCabe Secretarial Services Ltd
- Public Bank (Hong Kong)
- Reanda EFA Secretarial Ltd
- SWCS Corporate Services Group (Hong Kong) Ltd
- Tricor Services Ltd
- Vistra Hong Kong

The Institute would like to thank the participating companies for their support of the programme.

The 64th Governance Professionals ECPD webinar

The Institute held its 64th Governance Professionals ECPD webinar (previously known as the Affiliated Persons ECPD webinars/seminars) on 4 and 5 August 2022, under the theme of 'continuous responsibilities and obligations of directors/ supervisors and regulatory sanctions'. The seminars attracted over 100 attendees, mainly comprising directors, supervisors, board secretaries and equivalent personnel, and other senior management from companies listed or to-be-listed in Hong Kong and/or the Mainland.

Institute Chief Executive Ellie Pang FCG HKFCG(PE) and other senior professionals shared their insights on the following topics:

- directors, supervisors and senior managers' leadership roles in ESG, and their accountability focus
- continuous liabilities and governance functions of directors of listed companies
- Hong Kong enhanced market enforcement – enforcement highlights and cases of disciplinary actions by The Stock Exchange of Hong Kong Ltd, investigations by the Securities and Futures Commission and inspections by the Independent Commission Against Corruption
- the role and practice of directors' liability insurance in light of claims cases
- transactions and directors' regulatory responsibilities as defined in the Listing Rules
- a multiple-perspective on directorship in listed companies, from compliance to governance, and
- how to spot corporate financial and transaction fraud by reading financial statements.

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

Chartered Governance Qualifying Programme (CGQP)

June 2022 examination diet

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

Pass rates

A summary of the pass rates for the CGQP June 2022 examination diet is set out below:

Module	Pass rate
Part One	
Corporate Governance	23%
Corporate Secretaryship and Compliance	25%
Hong Kong Company Law	39%
Interpreting Financial and Accounting Information	50%
Part Two	
Boardroom Dynamics	71%
Hong Kong Taxation	71%
Risk Management	24%
Strategic Management	36%

Module Prize and Merit Certificate awardees

The Institute is pleased to announce the following Module Prize and Merit Certificate awardees for the June 2022 examination diet. The Module Prizes are sponsored by The Hong Kong Chartered Governance Institute Foundation Ltd. Congratulations to all awardees!

Module	Module Prize awardee
Interpreting Financial and Accounting Information	Wong Sin Yi

Module	Merit Certificate awardees
Boardroom Dynamics	Ng Sarah Yan Wah
Corporate Governance	Leung Wai Chi
Corporate Secretaryship and Compliance	Law Hong Kwan Yeung Lok Yan
Hong Kong Company Law & Risk Management	Poon Chi Long
Hong Kong Taxation	Cai Jin
Interpreting Financial and Accounting Information	Lau Nga Lam Lau Tsz Fung Luk Ka Yan Tsoi Wai Hang, Iris Yip Man Wai Yip Nga Sze

November 2022 examination diet timetable

The November 2022 examination diet of the CGQP will be held between 15 and 25 November 2022.

Week one

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

Week two

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

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

Key dates for the November 2022 examination diet

Key dates	Description
11 October 2022	Pre-released case study
Late October 2022	Release of examination admission slips
16 December 2022	Closing date for examination postponement applications
Mid-February 2023	Release of examination results
Mid-February 2023	Release of examination papers, mark schemes and examiners' reports
Late February 2023	Closing date for examination results review applications

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

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

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

Chartered Governance Qualifying Programme (CGQP) (continued)

Learning support for the CGQP examinations preparation

The Institute provides a variety of learning support services for students to assist them with preparing for the CGQP examinations.

Key dates for the examination technique online workshops

Key dates	Description
25 July–31 August 2022	Enrolment period for the examination technique online workshops
3–11 September 2022	• Examination technique online workshops – part I • Release of mock examination paper
25 September 2022	Examination technique online workshops – submission deadline for the mock examination paper
5–10 October 2022	Examination technique online workshops – part II

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

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

Examination technique online workshops and student seminars

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

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

Studentship renewal for the financial year 2022/2023 – final call

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

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

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

Student Ambassadors Programme 2022/2023 – recruitment of mentors

Our Student Ambassadors Programme (SAP) is an effective platform for introducing the dual qualification of Chartered Secretary and Chartered Governance Professional to local undergraduates. One of the key features of SAP is the Mentorship Programme, which gives our student ambassadors the chance to learn from experienced members of the profession.

We would like to cordially invite Institute members to join the SAP Mentorship Programme. Your participation as a mentor in the programme gives you the opportunity to contribute to the profession by sharing your professional experience and knowledge with mentees.

For details of SAP, please visit the Student Ambassadors Programme page under the Student Promotion & Activities subpage of the News & Events section of the Institute's website: www.hkcgi.org.hk.

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

Forthcoming studentship activities

Date	Time	Event
17 September 2022	10.00am–1.00pm	Corporate Governance Paper Competition and Presentation Awards 2022
20 September 2022	1.00pm–2.00pm	Governance Professionals Information Session (Cantonese session)
29 September 2022	1.00pm–2.00pm	Student Gathering (5th session): sharing from outstanding students in the CGQP examinations

Studentship activities: August 2022

6 August

Student Ambassadors Programme (SAP): general presentation skills training

Corporate Governance Paper Competition and Presentation Awards 2022

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

The Institute is pleased to announce the six finalist teams. These teams will present their papers on Saturday 17 September 2022 to compete for the Best Presentation Award and Audience's Favourite Team Award. Members, graduates and students who are interested in observing the presentation competition are welcome to attend.

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

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

Notice

Update of the CGQP exemption policy

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

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

Update of the CGQP syllabus and study materials

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

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

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

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

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

Featured job openings

Company name	Position
China Power International Development Ltd	Assistant Company Secretary
Hongkong Land Group Ltd	(Assistant) Company Secretarial Officer
LC Management (International) Ltd	Assistant Company Secretary
Ocorian Corporate Services (HK) Ltd	Senior Corporate Administrator
NagaCorp Ltd	Assistant Company Secretary
VTech Corporate Services Ltd	Senior Company Secretarial Officer

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

Agenda for Green and Sustainable Finance

On 2 August 2022, the Securities and Futures Commission (SFC) published its Agenda for Green and Sustainable Finance (Agenda) setting out further steps the SFC will take to support the development of green and sustainable finance in Hong Kong, and the transition to a greener economy, by increasing transparency and building trust for investors. The SFC will focus on:

- enhancing corporate disclosures
- monitoring the implementation of, and enhancing existing measures relating to, ESG funds and expectations for fund managers, and
- identifying an appropriate regulatory framework for any proposed carbon markets.

The Agenda, along with the Strategic Framework for Green Finance published in September 2018, is available on the SFC's website: www.sfc.hk.

HKEX update

HKEX issues Director Unsuitability Statement

On 14 July 2022, The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX) issued a Director Unsuitability Statement against six former directors of China Creative Global Holdings Ltd. A Director Unsuitability Statement is a public statement that, in the Exchange's opinion, the relevant directors are unsuitable to occupy a position as director or within senior management of the company or any of its subsidiaries.

This is the first Director Unsuitability Statement the Exchange has issued since new Listing Rule amendments enhancing the Exchange's disciplinary powers and sanctions came into effect on 3 July 2021. The Listing Rule amendments coincided with the publication of a revised Enforcement Policy Statement and a revised Enforcement Sanctions Statement, updating the market on the revised approach to enforcement and disciplinary matters that the Exchange would be taking. A key message of those statements was that a failure to respond to, or cooperate with, the Exchange in its investigations would be viewed as serious misconduct.

The Director Unsuitability Statement published in July this year resulted from a failure of the relevant directors to respond to the Exchange's enquiries in an appropriate manner. The Listing Division made enquiries with the directors in relation to the circumstances surrounding the delay in the company's publication of financial statements, the winding up of its major subsidiary and the disposal of its PRC subsidiaries. One of the directors acknowledged receipt of the Listing Division's reminder letter but still failed to respond to the enquiries. The other directors did not respond to the enquiries at all.

The Exchange takes the view that directors who fail to comply with their obligation to cooperate with its enquiries and investigations are not suitable to be directors or members of senior management of an issuer.

New rules on share schemes

On 29 July 2022, HKEX published conclusions to its consultation on Proposed Amendments to Listing Rules relating to Share Schemes of Listed Issuers. The consultation paper was published on 29 October 2021 and the consultation period ended on 31 December 2021. The Listing Rules are to be extended to govern all share schemes involving grants of share awards and share options. Moreover, there will be enhanced share schemes regulation to manage dilution of listed shares and provide informative disclosure to maintain high levels of shareholder protection. The Listing Rule amendments will come into effect on 1 January 2023 and HKEX has published a series of frequently asked questions to provide guidance on the amended Listing Rules and the transitional arrangements for existing share schemes.

More information is available on the HKEX website: www.hkex.com.hk.

AML/CFT risk assessment report

On July 8, the HKSAR Government published the latest issue of its Money Laundering and Terrorist Financing Risk Assessment Report (Report). To ensure that the anti–money laundering and counter–financing of terrorism (AML/CFT) regime of Hong Kong can address challenges brought about by the ever-changing market developments, the government updates the Report from time to time.

The risk assessment is prepared based on the requirements of the Financial Action Task Force (FATF) – the intergovernmental body that sets international standards in this area. It examines the AML/CFT threats and vulnerabilities facing various sectors in Hong Kong and the city as a whole. This Report also assesses the risk of proliferation financing faced by Hong Kong for the first time.

To address the risks identified in the assessment, the government will focus on five major areas of work:

1. enhancing the AML/CFT legal framework
2. strengthening risk-based supervision and partnerships
3. stepping up outreach and awareness-raising
4. monitoring new and emerging risks, and
5. strengthening law enforcement efforts and capability of gathering intelligence.

In particular, the government will introduce a legislative proposal to the Legislative Council to amend the Anti–Money Laundering and Counter–Terrorist Financing Ordinance to introduce a licensing regime for virtual asset service providers and a registration regime for dealers in precious metals and stones in order to mitigate the risks of these sectors and to protect investors.

The latest risk assessment report is available on the Financial Services and the Treasury Bureau website: www.fstb.gov.hk.

Data privacy update

Guidance Note on Data Security Measures for ICT

On 30 August 2022, the Office of the Privacy Commissioner for Personal Data (PCPD) published its Guidance Note on Data Security Measures for Information and Communications Technology (Guidance). The Guidance notes that data users are confronted with considerable challenges to the protection of personal data privacy, in particular as regards data security, in the current business environment. In this context, the Guidance provides data users with recommended data security measures for information and communications technology (ICT) to facilitate their compliance with the requirements of the Personal Data (Privacy) Ordinance (PDPO).

Charges laid in doxxing case

On 17 August 2022, the PCPD laid a total of seven charges against a defendant for disclosing personal data without consent, contrary to section 64(3A) of the PDPO. This is the second time charges have been laid under the new anti-doxxing regime, which came into operation in October 2021.

Pursuant to section 64(3A) of the PDPO, a person commits an offence if the person discloses any personal data of a data subject without the relevant consent of the data subject:

- with an intent to cause any specified harm to the data subject or any family member of the data subject, or
- being reckless as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject.

A person who commits an offence under section 64(3A) is liable on conviction to a fine of HK$100,000 and imprisonment for two years.

More information is available on the PCPD website: www.pcpd.org.hk.

CHARTERED GOVERNANCE
Hong Kong

HKCGI ECPD Videos on Demand

What's New:

Climate Change Conference 2022 - Session Two

What You Need to Know About Insider Dealing and the Legal Implications for Senior Management

Doing Business in China Series: Strategies on Corporate Changes and Restructuring

Risk Management Series:

Fraud Risk Management/Mitigation

AML/CFT Risks, Compliance Standards and Tools

Risk Management and Internal Control Systems – Combat Corruption and Promote Good Governance

Register *now!*

For more details, please check the Professional Development section of HKCGI website: www.hkcgi.org.hk

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

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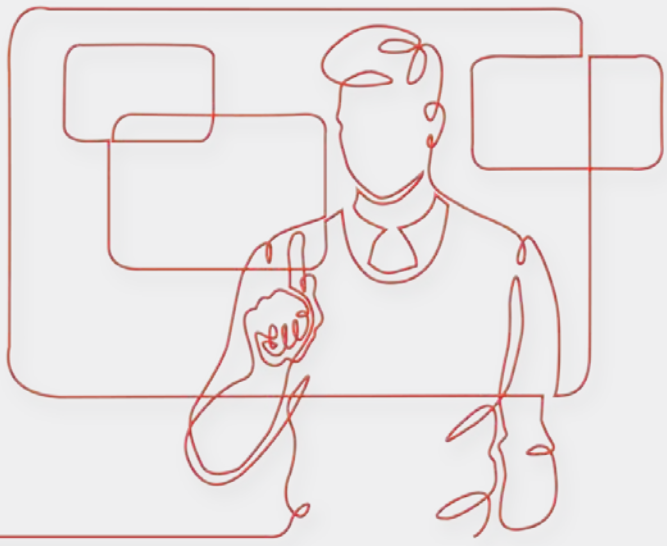

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