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April 2023

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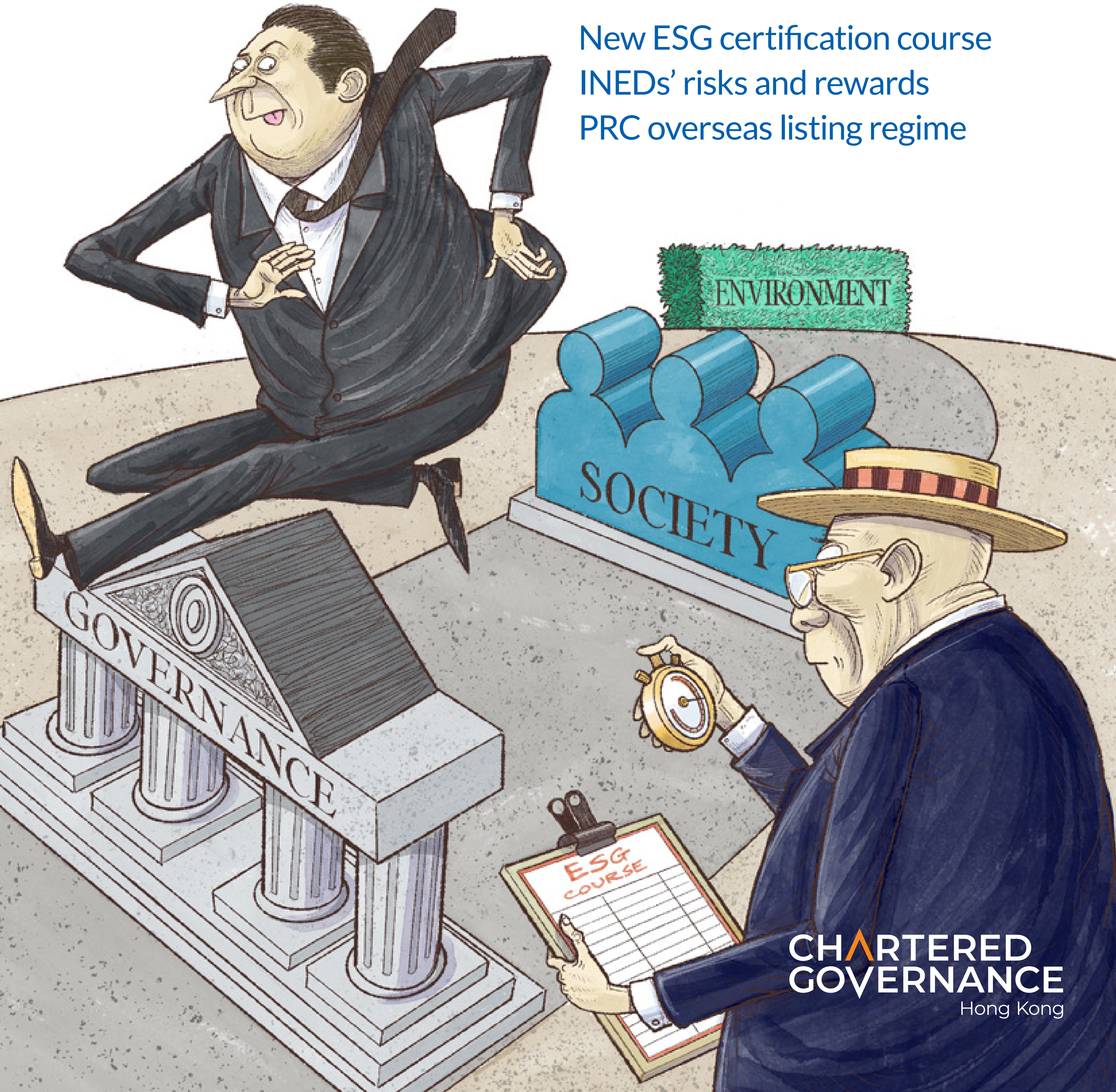
The journal of the Hong Kong Chartered Governance Institute
香港公司治理公會會刊

Skills for sustainability

New ESG certification course
INEDs' risks and rewards
PRC overseas listing regime



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Good governance comes with membership

About The Hong Kong Chartered Governance Institute

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

The Institute was first established in 1949 as an association of Hong Kong members of The Chartered Governance Institute (CGI). In 1994 the Institute became CGI's Hong Kong Division and, since 2005, has been CGI's 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 28 February 2023, the statistics were as follows:
Students: 2,640 **Graduates:** 464 **Associates:** 6,202 **Fellows:** 830

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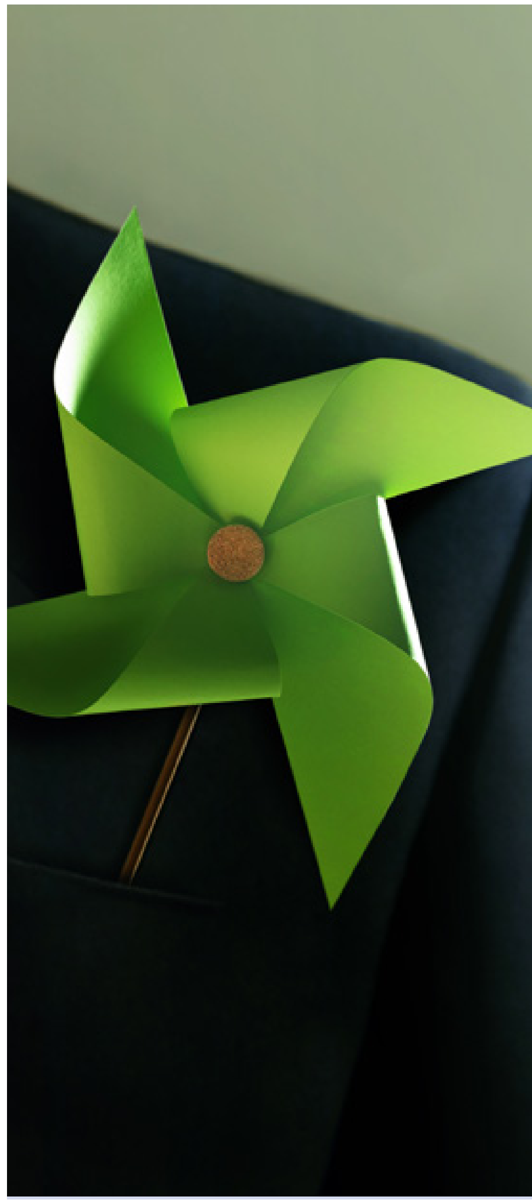


ESG governance

This month's journal reviews the first two sessions of our Institute's new ESG Reporting Certification Course (the Course) that got underway in February this year. As our Chief Executive, Ellie Pang FCG HKFCG(PE), points out in this month's first cover story, ESG talent is scarce and much in demand in Hong Kong as organisations try to get up to speed with the ever-expanding regulatory requirements – not to mention stakeholder expectations – in this area.

The Course will help to fill this competency gap, but in particular it will help organisations develop their in-house expertise in ESG management. While external expertise has a valuable role to play, particularly in helping organisations launch their sustainability journeys, getting ESG and sustainability right is likely to require a substantial rethinking of why and how an organisation operates. For this reason, ultimately, it is not something you can delegate to a team of outside consultants.

The Course offers a comprehensive overview of Hong Kong's ESG regulatory regime. In addition, it is designed to equip attendees with a good understanding of both the high-level issues, such as strategy setting and optimising governance structures, and the many technical issues involved, such as materiality assessments, metrics and targets, data collection and report drafting.

It comprises seven sessions and, given the enthusiastic response to the first intake (445 people have signed up), the Institute intends to offer the Course in two intakes this year. The first, currently underway, concludes in April and the second will start in July. Graduates of the Course, once they have passed both the attendance and assignment requirements, will be accredited for two years. They can use the post-nominal HKCGI Cert: ESG during the accreditation period. The names and post-nominals of those who have successfully obtained the certification will be listed on the Institute's designated webpage for prospective employers and public searches. The Institute is also planning to offer a refresher course every two years for extended accreditation.

This month's first cover story serves as an excellent introduction to the Course. The second cover story features an interview with Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), Past International President and Institute Past President, and Executive Director and Company Secretary of CK Hutchison Holdings Ltd, on the key insights her company has gained in the process of developing its sustainability strategies and processes. Both articles emphasise that good ESG starts with good governance. The board has the ultimate responsibility to address ESG-related risks and opportunities, and governance professionals can play a vital role in ensuring that the board considers and evaluates sustainability-related issues, and that directors have access to the information they need.

The Course is not only targeted at our Institute's members, however. In addition to governance professionals, it will be highly suited to directors, managers and other professional practitioners. This is important since, as I mentioned above, ESG management ultimately cannot be delegated to a single individual or team. It will require buy-in from everyone at every level of the organisation. Indeed, as Hong Kong's ESG regulatory regime looks set to include a requirement for Scope 3 reporting on greenhouse gas emissions, the scope extends upstream and downstream into organisations' customer base and supply chain.

The challenges involved in ESG management should not be underestimated, and I hope that our Institute's new Course will help build not only the technical competencies but also the confidence needed by everyone involved to play their part in achieving sustainable organisations.

Ernest Lee FCG HKFCG(PE)

ESG治理

本月会刊回顾了公会今年2月开始举办的ESG报告证书课程（课程）的前两个单元的课程。正如公会总裁彭京玲女士FCG HKFCG(PE)在本月的第一篇封面故事(Cover Story)中所指出，ESG人才在香港非常稀缺，但也非常急需，因为各组织都在努力满足不断提升的监管要求，而且利益相关者对此也十分关注。

该课程将有助于填补ESG能力缺口，特别是，它将帮助培养提升组织内部的ESG管理能力，虽然外部专家可以发挥重要作用，特别是帮助组织启动可持续发展之路，但要将ESG和可持续发展工作做正确，可能需要对组织运作的目的和方式进行实质性的重新思考。基于此，ESG和可持续发展工作最终不是委托给外部顾问团队就可以做好的事情。

课程全面介绍了香港的环境、社会和治理监管制度。此外，该课程旨在使学员对高层面的一些问题（如战略制定和优化治理结构），和所涉及的许多技术层面的问题（如重要性评估、衡量指标和目标、数据收集、报告起草等）有良好的理解。

该课程由七个单元组成，鉴于第一单元课程的热烈反响（445人报名），公会计划今年提供两期该课程。目前正在进行的第一期课程将于4月结束，第二期课程将于7月至9月进行。该课程的毕业生一旦完成了出勤和作业要求，将获得有效期为两年的认证证书。在认证证书有效期内，他们可以使用 'HKCGI Cert: ESG' 的头衔。成功获得认证者的姓名和头衔将被列于公会的指定网页上，供未来的雇主和公众查询。公会还计划每两年提供一次更新课程，以延长课程的认证证书的有效期。

本月的第一篇封面故事是对该课程的非常好的介绍。第二篇封面故事采访了公会前会长、长江和记实业有限公司执行董事兼公司秘书施熙德律师，介绍了她的公司在制定可持续发展战略和程序的过程中所获得的关键启示。两篇文章都强调，良好的ESG始于良好的治理。董事会对解决与ESG相关的风险和机会负有最终责任，而治理专家可以在确保董事会考虑和评估与可持续性相关的问题，以及为董事提供他们所需的信息方面发挥重要作用。

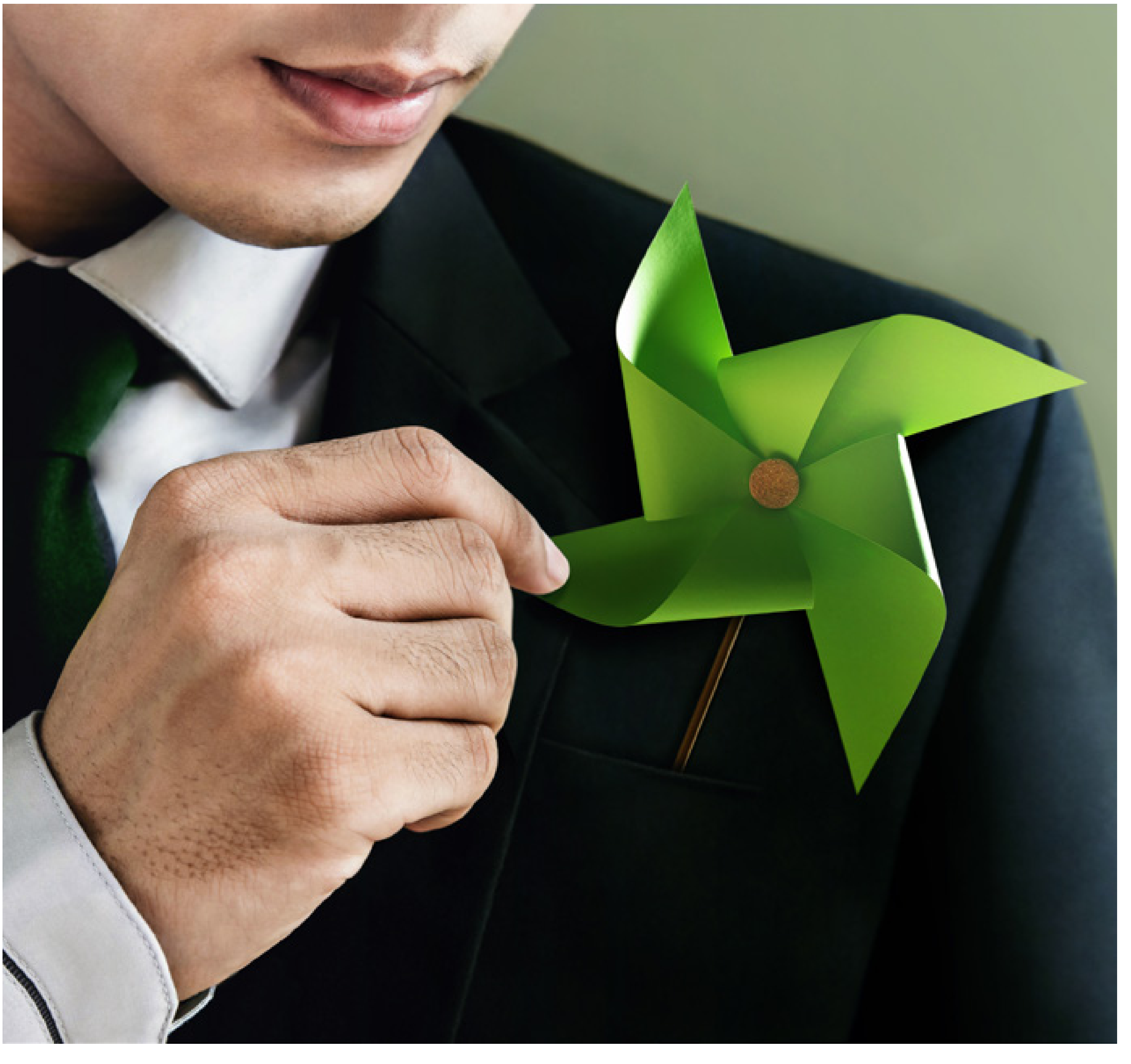
不过，该课程不仅适用于公会会员，除了治理方面的专业人士外，该课程也十分适用于董事、高级管理人员和其他专业从业人员。这一点很重要，因为正如以上所提及，ESG管理最终不能仅委托给一个人或一个团队，它将需要组织的各个层面的每个人的支持。事实上，由于香港的ESG监管制度欲将温室气体排放范围3的报告要求纳入，其范围将延伸到组织的上游和下游的客户群和供应链。

我们不应低估环境、社会和治理方面的挑战，本人希望公会的新课程不仅能培养大家的技能，而且也有助于提升每个人在实现组织的可持续发展中发挥自己的作用所需的信心。

李俊豪先生 FCG HKFCG(PE)

Skills for sustainability – part 1

CGj reviews a new certification course run by the Institute designed to upskill governance professionals in the fast-evolving ESG and sustainability areas of practice.



The stark headline in the 26 January 2023 edition of the South China Morning Post was self-explanatory – 'Climate Change: Hong Kong to pay 30 per cent more for ESG jobs as companies fight for talent to meet sustainability targets'. The article is a clear indication of a trend that has become increasingly noticeable in Hong Kong – the dearth of in-house expertise relating to ESG and sustainability.

'ESG talent is scarce,' said Ellie Pang FCG HKFCG(PE), Institute Chief Executive, in interview with *CGj*. She emphasised that many of the benefits of a good ESG reporting programme are lost where the management of these areas is outsourced. 'The process drives performance and you are more likely to get stakeholders to buy into ESG if the process is handled internally,' she said.

Recognising that governance professionals can play a crucial role in helping companies upgrade their ESG reporting programmes, the Institute launched its ESG Reporting Certification Course (the Course) in February this year. The aim of the Course is capacity building. It will make tackling ESG and sustainability issues more accessible to governance professionals, and will address the plethora of standards and increasingly complex regulations relating to this area of practice. The Course comprises seven sessions and will run two intakes in 2023. The first is already underway and concludes in April. The second will start in July 2023.

The business case for ESG

The first two sessions of the Course, held in February this year, made it clear that expectations relating to ESG and sustainability have risen rapidly.

Governments and regulators – Hong Kong's ESG regulatory regime has been evolving at an impressive pace in recent years. Moreover, higher international standards are expected to be brought into the local regime from as early as next year (see 'Evolution of regulatory requirements' below). Meanwhile, the goal of the Hong Kong government is to halve carbon emissions by 2035 and be carbon neutral by 2050. This will require organisations and their suppliers to have a viable transition plan to net carbon zero.

Investors – In her Course presentation, Pat Dwyer, Founder and Director of the Purpose Business, emphasised that companies without good ESG credentials will find it more difficult to draw investors in and raise capital. Global sustainability funds are growing and are estimated to have surpassed US$1.5 trillion in 2022. 'Investors look to where ESG data is aggregated in surveys, rankings etc, because traditional core roles of finance are changing and determining the true value of ESG is at the heart of business strategy,' she said.

Employees – Rebecca Donnellan, Group Senior Sustainability Manager, CK Hutchison Group, another Course presenter, pointed out that various studies show that the companies with a greater focus on sustainability can oftentimes have better morale and productivity and low turnover. Ms Donnellan pointed out that the society of today expects the companies people work for, buy products and services from, and invest in, to care about ESG.

Consumers – a recent Edelman barometer indicates that 63% of consumers will only advocate for, or buy from, brands based on their beliefs and values.

In addition to the above, ESG has become an integral part of risk management. ESG risks are among the most serious facing businesses today and can have a long-term impact on the profitability of companies. Take for example, Volkswagen's emissions scandal, which cost the company €31.3 billion in its product recall alone.

Ms Donnellan emphasised that in the world of today, sustainability is a significant business opportunity and source of value creation. Sustainability

Highlights

- ESG risks are among the most serious facing businesses today and can have a long-term impact on the profitability of companies
- governance professionals are excellently placed at the heart of the board to make the case that organisations need to get beyond compliance and fully integrate ESG in their strategy and operations
- the Course offers governance professionals a roadmap to go beyond their traditional focus areas and advise the board on fast-evolving ESG issues

> “it isn’t just because of the pressure, or that it is the right thing to do, but it is also because it makes good business sense”

Gillian Meller FCG HKFCG(PE), Institute Past President, and Legal and Governance Director, MTR Corporation Ltd

can be used as a lens for new product development and innovation (citing Tesla and Nike’s flyknit as examples).

Ultimately, as Course presenter Gillian Meller FCG HKFCG(PE), Institute Past President, and Legal and Governance Director, MTR Corporation Ltd, pointed out, ‘It isn’t just because of the pressure, or that it is the right thing to do, but it is also because it makes good business sense.’

Evolution of regulatory requirements

ESG reporting has been required in Hong Kong since 2016. Under Appendix 27 of the Listing Rules for the Main Board, a company is required to report, among other things, on the board’s overall responsibility for ESG strategy and reporting. The Appendix 27 requirements include elements of the Task Force on Climate-related Financial Disclosure (TCFD) approach, which was intended to help investors appropriately assess climate-related risks and opportunities. Mandatory disclosure requirements are set out in Clause 13 of Appendix 27 and include a disclosure of the board’s oversight of ESG issues, the board’s ESG management approach and strategy, and how the board reviews progress made against ESG-related goals and targets with an explanation of how they relate to the issuer’s businesses.

Last year, the International Sustainability Standards Board (ISSB), released draft sustainability standards that, if adopted in Hong Kong, would significantly raise expectations – particularly in areas such as reporting on Scope 3 greenhouse gas (GHG) emissions and the use of scenario analysis. When ISSB launches its finalised standards (expected at the end of Q2 this year), Hong Kong Exchanges and Clearing Ltd will launch a consultation in Hong Kong on how to implement these standards.

Ms Meller, in her Course presentation, addressed the key areas where Hong Kong companies will need to raise their game in preparation for Hong Kong’s upgraded ESG regulatory regime. The ISSB approach is focused on the implications of climate change on enterprise value and putting dollars against these impacts, she pointed out, could be a challenge for many companies.

Perhaps the toughest technical challenge, however, will be getting the data relevant to assessing Scope 3 emissions. Companies will need to start quantifying not only their own direct GHG (Scope 1 and 2) emissions, but those of their customers and suppliers.

‘Supply chains are intricate webs’, said Course presenter Sebastien Pivet, Chief Sustainability Officer and QA Director of AS Watson Group. ‘The further down the value chain we go, the lower our influence as a retailer.’

He pointed out the inherent complications involved in monitoring supply chains – companies often do not deal directly with the suppliers of the raw materials used by the manufacturers the company contracts with. It is important, nevertheless, to understand the sustainability maturity level of such suppliers. Mr Pivet recommended putting together an appropriate action plan to address each level of maturity, ranging from simple data collection to education or training for the those falling behind, perhaps with the assistance of external experts.

The governance challenge

It will be clear from the foregoing that the bar for ESG reporting has, and will, get much higher. Many Course presenters emphasised that becoming a sustainable organisation will require going back to your governance structures. ‘When you try to understand ESG and what it means for your company, you have to start with governance,' Ms Meller said.

Often, pointed out Ms Donnellan, there are a lack of internal processes or metrics, as well as limited board diversity or knowledge on ESG matters. Inflexible organisational structures with executive compensation tied to short-term performance could also be stumbling blocks. Ms Dwyer added that though boards are now asking more questions about fair compensation and representation of women at executive and board levels, 'they should also be asking about diversity in board backgrounds and board insights on ESG, among other issues'.

Boards and management need to be made aware that compliance and regulations aside, it makes good business sense to take into account ESG considerations in evaluating long-term strategy. However transforming the governance structure of a company will require tact and diplomacy. A lack of commitment by the board can be a challenging barrier.

It is crucial that a sustainability governance structure starts at the top and filters down across the business. At CK Hutchison Holding Ltd, Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), Executive Director and Company Secretary, emphasises that all listed group companies have board level sustainability committees, which are supported by sustainability working groups, chaired by C-suite management. It is also as important, she says, to resource these working groups with sustainability professionals, to drive the programmes.

The role of governance professionals

The governance professional will have a significant role to play integrating ESG into key governance processes and enhancing oversight. Governance professionals already have a role in preparing sustainability reports, and the story around the data, but their role can and needs to extend beyond this. They are best placed to play a crucial role in challenging the company's governance framework, and to advise the board not only what the regulations are but to get them to question whether their governance framework is appropriate in a world where companies have to take into account environmental and social impacts.

The Course offers governance professionals a roadmap to go beyond their traditional focus areas and advise the board on fast-evolving ESG issues. The underlying theme is that governance professionals need to have a good understanding and awareness of ESG issues in their board advisory role. They are excellently placed at the heart of the board to make the case that organisations need to get beyond compliance and fully integrate ESG in their strategy and operations.

'Boards are not there just to ensure compliance', said Ms Dwyer. 'They set the tone on governance and in doing so provide direction, oversight and accountability. They are custodians of the company's vision and should be asking about ESG relevant to long-term risks and opportunities that the company is facing, the way they are managed and how the company is preparing for them.'

ESG and sustainability regulations will continue to evolve in the years ahead. The Course reviewed in this article brings governance professionals to the current state of play. It also highlights the need to expand and evolve their roles, particularly in advising the board. This advice should go beyond compliance, Course presenters emphasised, getting directors to question the company's governance framework in this fast-evolving space, and thereby acting as the company's conscience and a catalyst for change.

Anchoring ESG in the purpose of the company

A major theme to emerge from the Course is that getting ESG and sustainability right is never going to be just about changing some corporate practices here and there. In her Course presentation, for example, Ms Dwyer illustrated the need to shift from a short- to a long-term focus and to transition to a more purpose-driven business model. 'To be a purpose-driven organisation is to reflect on how your organisation's purpose not only delivers profit, but more importantly, does so in a manner that contributes to the well-being of people and planet,' she said

Course presenters from CK Hutchison Holdings also highlighted the need to listen to younger members of the organisation in this discussion. Apart from anything else, the company is aware that ESG is very important to its younger customers and that it is increasingly being factored into their buying decision process.

CK Hutchison's Next Gen Committee was set up to involve

> **to be a purpose-driven organisation is to reflect on how your organisation's purpose not only delivers profit, but more importantly, does so in a manner that contributes to the well-being of people and planet**

Pat Dwyer, Founder and Director of the Purpose Business

the younger generations in the company's sustainability structure. The committee has helped the company access a wider diversity of perspectives in formulating materiality assessments. 'It strengthens our engagement in reducing our business environmental impact and support communities at large,' Mr Pivet said.

Technical issues

In addition to addressing the strategic aspects of ESG and sustainability, the Course also provides advice on the key technical issues involved.

Determining materiality

When it comes to ESG reporting, one of the toughest technical issues to grapple with is how to determine which environmental and social issues are material to stakeholders. The Course addressed the much-discussed issue of whether companies should take a single or double materiality approach to climate change. While the single materiality approach focuses on the impacts of climate change on companies, the double materiality approach requires companies to also disclose their impacts on climate change (and the environment more generally).

These two things are intertwined, however, as a company's impacts on climate change and the environment will generally impact its own enterprise value. 'If a company understands its most material ESG issues and its negative impacts on natural and human resources, it is expected that this company would not only seek to mitigate the impacts but aim to reduce if not eliminate them, as they are a threat to business growth, resilience and performance,' Ms Dwyer said.

The role of internal audit in ESG monitoring

Another technical aspect of ESG relates to the role of the ESG audit. Course presenter James Lai, General Manager, Group Management Services of CK Hutchison Holdings, elaborated on the assurance role of internal audit in the sustainability journey. 'Sustainability is a journey with lots of moving parts; while the board has the oversight role on sustainability governance and management, sets strategy and designs a roadmap to achieve the targets, it is internal audit's independent assurance role to make it robust,' he said.

In this regard, internal audit would need to support sustainability integration in the company's overall enterprise risk management (ERM) framework, to sense-check ESG data for the annual sustainability reporting, and to provide audit assurance on sustainability reporting and other sustainability-related controls. Notwithstanding these, internal audit should also make recommendations for improvement and help ensure that policies and procedures are aligned with prevailing and new regulatory requirements.

In conclusion – telling your story

It will be clear from the above that ESG reporting is not something that organisations can afford to neglect. Indeed, Ms Dwyer made the point that, in addition to the benefits of addressing various tactical and risk management issues – including, crucially, meeting the increasing threshold of the reporting standards – good ESG and sustainability reporting allows organisations to frame their own narrative.

'If you do not tell your own story, someone else will,' she pointed out. 'Staying silent ultimately penalises the company. If investors cannot find anything publicly available about your management, an uninformed audience may end up making sweeping generalisations.'

Sharan Gill
Associate Editor, CGj

More details relating to the Course reviewed in this article are available on the Institute's website: www.hkcgi.org.hk. The second intake of the Course starts in July this year.

Skills for sustainability – part 2

CGj interviews 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, on the key insights her company has gained in the process of developing its sustainability strategies and processes.

CK Hutchison is a conglomerate with multiple divisions – how do you adapt ESG practices so they are suitable for different business sectors or industries? Also, what do you see as core practices that apply across all sectors and what are the ESG factors that need to be considered sector by sector?

'We have four very different core businesses, and how each business interacts with society and the environment is different. Our ports tend to be hazardous places with machinery and types of work that require working from heights, for example. Occupational health and safety is therefore crucial for employees working in port environments.

While health and safety is still important for our employees working in our retail stores, their work is not what you would define as hazardous. Retail is incredibly focused on plastics reduction since retailers generally consume large amount of plastics – ports on the other hand will not need to be similarly focused on plastics reduction.

So you can see, what the businesses focus their time on will be different. At head office we first need to make sure these businesses are conducting a materiality assessment and stakeholder engagement to ensure they are focusing on the sustainability topics that matter most to their industries, and second we also need to ensure we are supporting them with the resources they need to effectively manage these material impacts.

There are, however, topics that matter to all of our businesses, no matter the industry – for example action on climate change or the importance of creating inclusive and diverse workplaces. Where we identify these cross-cutting topics, we are creating Group-level action plans. Take action on climate change: two years ago we asked our businesses to set science-based targets, assess the pathway to net zero and calculate Scope 3 greenhouse gas emissions. These are what we see as fundamental to taking leading practice approaches no matter the industry and I am pleased to say we have made significant progress across all of these actions.'

Related to this, how do you create the governance structures for ESG reporting across sectors in a multi-business, multi-segment conglomerate? How does one ensure that particular business segments are starting the journey on ESG reporting in the right way, in particular ensuring that the right reporting principles filter or cascade down?

'Despite the differences in the types of businesses we are in, we have created a rigorous governance structure that is reflected across all businesses. Starting at head office, our tone from the top is set by the board-level sustainability committee, which is supported by a sustainability working group comprising executives from across our core departments, such as finance, treasury, corporate affairs, HR, legal and investor relations.

Similarly all listed group companies also have a board-level sustainability committee, of which I am a member for four and a chair for three. Every core business also has sustainability working groups that are chaired by C-suite management that direct their sustainability strategies. To ensure the businesses are supported with the day-to-day implementation of our sustainability strategies, these businesses are resourced with sustainability professionals with the necessary expertise needed to drive forward their programmes.

To ensure high standards of data collection and reporting, we have a Group-wide reporting process where all businesses must report into head office on the same performance metrics and in the same way. We used to use Excel spreadsheets for this activity, but we have now transitioned to using an online data management

Highlights

- the tone from the top is set by the board-level sustainability committee, which is supported by a sustainability working group comprising executives from across core departments
- high ESG standards reduce the cost of capital as investors are placing an increasing focus on sustainability in their investment decision-making
- high ESG standards also help with employee attraction and retention as current and prospective employees want to work for companies that make a positive difference to the world

> **materiality assessments and stakeholder engagement that is refreshed on an ongoing basis ensures the Group is focusing on the topics that matter the most**

system that will enable us to do this more effectively. To further provide rigour to our approaches, our internal audit team receives all data and conducts internal audit checks to ensure consistency and accuracy.'

A challenge, even for smaller companies, is how do you make sure that the board is getting the right and relevant information from management?

'Materiality assessments and stakeholder engagement that is refreshed on an ongoing basis ensures the Group is focusing on the topics that matter the most. Our sustainability strategies are directly built upon these assessments and the sustainability committee first needs to approve these strategies and goals, and it is also their responsibility to monitor progress towards these strategies.'

Could you give real life examples or anecdotes of where ESG practices have made a difference to the business?

'Sustainability for us is about value creation and there are many ways in which it creates value for us. There are many examples with reference to our businesses I could mention, but the three below are particularly important.

1. Cost of capital. We know our investors are placing an increasing focus on sustainability in their investment decision-making, both on the debt and equity side. If we do not focus enough, and we do not tell our story well enough, then we may find in the future our cost of capital goes up. Sustainability is becoming increasingly financially material from this standpoint.

2. New product development and customer attraction. By using sustainability as a lens for new product development we are ensuring we keep pace with new emerging trends and what our customers want from us. We recognise our customers are setting net zero goals and we need to ensure we are their preferred partners to achieve their ambitions. Take the Ports division – increasingly we are hearing from shipping liners and port authorities that they care about emissions reduction. This is also incredibly important to our infrastructure division where we operate a vast amount of infrastructure services in countries that have committed to net zero. It is therefore important to set emissions reduction targets and have a net zero transition plan in order to stay competitive.

3. Employee attraction and retention. We are increasingly aware that current and prospective employees want to work for companies that make a positive difference to the world. Particularly in Europe, we know that younger employees are factoring how sustainable a company is into their decision-making about where to work.' CGj

Ms Shih was a presenter, alongside five other senior managers from CK Hutchison Holdings Ltd, at the second session of the Institute's new ESG Reporting Certification Course held on 15 February 2023. She was interviewed by Sharan Gill, Associate Editor, CGj.

Director training – a focus on INEDs

Session 2, part 1 – the risks and rewards

The second session of the new director training series launched by the Institute, in collaboration with Hong Kong Exchanges and Clearing Ltd (HKEX), highlighted the risks and rewards of the independent non-executive director (INED) role.

As members of the board who are independent from the executive, INEDs are expected to constructively challenge management and provide an independent view on the issues considered by the board. Despite their necessary distance from the executive, they share the same duty of care and fiduciary duties, and the same liability in cases of fraud or malpractice, as executive directors.

The second session of the Institute's new director training series (Director training – a focus on INEDs) offered participants a sobering perspective of the 'natural hazards' that INEDs are exposed to. In his presentation, David Gordon Eldon GBS CBE JP, Deputy Chairman, The Hongkong and Shanghai Banking Corporation Ltd, gave an entertaining, but highly effective, warning about the risk exposures INEDs should consider before they accept a board appointment. In particular, he focused on the ways that INEDs sometimes rely on false assumptions about the role they are taking on.

Five false assumptions to avoid

1. History never repeats itself

Mr Eldon started his presentation by quoting a description of climbing a frozen waterfall written a century ago by scientist and mountaineer Norman Collie. The description, he said, is a perfect summary of what it's like serving on a board as an INED and he went on to outline some of the 'dangerous slippery slopes' that would-be INEDs should be aware of. The first of which is the naïve assumption that massive corporate collapses, such as that of the energy company Enron in 2001, are a thing of the past.

Sadly, Mr Eldon pointed out, the Enron scenario – huge financial losses, criminal investigations, directors going to jail – is repeated on a regular basis. Indeed, within a year of Enron's collapse, the demise of Worldcom took over at the top of the list of the largest bankruptcies in the US. Then in 2008, the fall of Lehman Brothers set a new record in terms of assets held prior to going bankrupt. Moreover, in the case of Lehman, significantly higher levels of blame were directed at the directors for their ineffective oversight and absence of financial expertise. 'In the words of one former Lehman executive,' Mr Eldon said, 'the board was both a joke and a disgrace.'

Since Lehman, there have been a steady flow of corporate scandals – Boeing, Theranos, FTX and Evergrande among them – where the board has come under scrutiny for falling short of expected standards.

2. How hard can it really be?

A second slippery slope, Mr Eldon pointed out, is underestimating the difficulty of carrying out the INED role. 'You just have to attend some meetings, collect your compensation, right? Wrong. Gone are the days when members of a board could sit back and claim they just didn't know what was going on,' he said.

Going forward, boards collectively and directors individually are going to face increased shareholder scrutiny, as well as higher market expectations. In many jurisdictions, INEDs can also expect tougher consequences for their actions, or inaction, as the case may be.

'The reality is that all directors, executive and non-executive alike, are going to face far more pressure as we go forward, to devote more time to meeting evolving regulatory demands, to monitoring and managing potential

Highlights

- all directors, executive and non-executive alike, are facing increasing scrutiny and liability for their decisions
- not all boards are the same and INEDs should do their due diligence on prospective boards – looking at factors such as board diversity, board culture and the board's relationship with management
- the approach taken by the board chair is key in setting the right culture of constructive challenge at board meetings

> gone are the days when members of a board could sit back and claim they just didn't know what was going on

David Gordon Eldon GBS CBE JP, Deputy Chairman, The Hongkong and Shanghai Banking Corporation Ltd

risks and to future-proofing their companies,' he said.

He added that, in the era of social media, directors can also find themselves in the crosshairs of anyone with an axe to grind about an issue. Even when they are eventually proven incorrect, accusations published on social media can result in short-term damage to shareholder value and director reputations.

3. All boards are basically the same
Recognising good boards from bad, Mr Eldon stressed, is a skill INEDs need to develop. 'You are lending your name and reputation to a company when you accept a directorship and, as we say in the world of banking, be always sure to lend wisely,' he said.

He cited a number of factors that will help determine the quality of a board looking to appoint an INED – the first being board diversity. Good boards bring together a diverse group of individuals, he said, and diverse not only in terms of directors' backgrounds and gender but also age.

'I find it disappointing that decisions are being made by directors of a certain age that will impact the next generation when that generation has had no say in the decision. I'm not saying that you need to have a board that's filled with very young people, but at least listen to what the next generation has to say,' he added.

Good boards also regularly seek input and expertise from outside parties and have a constructive dialogue with shareholders. 'Bad boards tend to treat their shareholders as an annoyance that they have to put up with,' he said.

The biggest red flag, however, is where a board is little more than a rubber stamp for management decisions. This point was taken up in the Q&A session at the end of the session (see 'The importance of constructive challenge'). Mr Eldon shared an anecdote relating to joining a new board where, at the end of the first board meeting, the pre-printed minutes reflecting the just-completed discussions and decisions were passed around for approval immediately after the meeting adjourned. 'I was only involved with this particular board for a very short time. I hope for obvious reasons,' he said.

4. How time consuming can it really be?
Another slippery slope INEDs need to be aware of is the danger of thinking that they can serve on more boards than they actually have the time or energy to properly serve. He conceded that the question of how many directorships are too many is difficult to answer, and will largely depend on the capability and capacity of the particular individual involved, but he urged directors to be wary of overboarding.

This question also depends on the regulatory requirements of the company's jurisdiction of incorporation, he added. In some jurisdictions – the UK for example – not all board seats are treated equally when calculating whether an individual is overboarded or not. A non-executive seat counts as one board mandate, but if you're serving as a non-executive chair of a board that counts as two mandates. No consideration is given to how many board committees you sit on, however, despite the fact that participating in board committee meetings will clearly increase the time commitment involved. 'As others have noted, there are considerable shades of grey in all of this, but the point is don't spread yourself too thin,' he added.

5. There is safety in numbers
For his fifth false assumption INEDs should avoid, Mr Eldon left behind the 'dangerous slippery slopes' to use an analogy from another, even more dangerous, extreme sport – underwater cave diving.

Cave diving is considered to be one of the world's most hazardous activities – can it really be compared to the level of risk that INEDs are exposed to? 'This last bit of advice is without a doubt, the most important learning that I can share with you based on my own experiences around boardroom tables,' Mr Eldon said.

The underwater cave diving metaphor has several lessons for potential INEDs, he explained. As in cave diving, there will be times when you lack visibility of a company's various goings on, and you also cannot rely on the approach and skills you may have acquired as an executive director on a company board. Cave diving requires entirely different skills from open-water diving.

Most important of all, however, while cave divers sometimes dive together, when they do so they still dive solo. 'If you depend on a buddy in a cave, you will end up with a double drowning, because each person is falsely relying on the other,' Mr Eldon said.

Similarly, INEDs should not have a false sense of security and trust because they are surrounded by other directors. The reality is that they need to rely on their own abilities, their own critical thinking, their own ability to speak up and ask tough questions. 'If you remember only one piece of my advice today, remember that as an INED you are diving solo. Even when sitting around a boardroom table with other directors, you are still diving solo, just together.'

In conclusion – companies need you

Mr Eldon concluded his presentation by adding that, despite the dangers alluded to above, there is so much to be gained from taking on an INED role. 'Companies need you and I wish you all the best of luck when it comes to navigating the natural hazards of serving as an INED,' he concluded. CGj

The first session of the training series reviewed in this article was reviewed in the March edition of this journal. More information is available on the Institute's website: www.hkcgi.org.hk. Look out for the CGj review of the third and final session in this series in a future edition.

The importance of constructive challenge

The second session of the Institute's new director training series generated a lively discussion on the dangers of joining a board that is little more than a rubber stamp for executive decisions. In the Q&A at the end of the session, speakers and panellists agreed that the approach taken by the board chair is key in setting the right culture of constructive challenge at board meetings.

Panellist John Williamson, Independent Non-Executive Director, London Metal Exchange and Pacific Basin Shipping Ltd, and Chairman, UK Tote Group, emphasised that the approach taken by the board chair to how meetings are conducted is the single most influential factor in creating an open and transparent board culture. 'For me, it typically stops with the chair. If you have a chair who is sufficiently knowledgeable, experienced and respected, you're halfway there already,' he said.

There are, of course, other factors and Mr Williamson highlighted the importance of the relationship the directors have with management. 'If you don't have a management team that is properly engaged with the board and ensuring the requisite level of transparency, it's very difficult for the board to be effective in any shape or form. I also think it's important to get the balance right between the responsibilities of the board and what's delegated to management.'

In addition, there needs to be a willingness among the directors themselves to speak up and ask hard questions. 'Directors need to be prepared, for want of a better expression, to occasionally stick their heads above the parapet,' Mr Williamson said. They also need to be able to listen to the sometimes divergent views of their colleagues on the board – putting their egos to one side to work collectively for the betterment of the company.

Another panellist, Frank Yuen FCG HKFCG, Group General Counsel and Head of Compliance, CK Hutchison Holdings Ltd, emphasised that asking even the basic questions can result in huge value to the organisation. The fact that managers know that questions will be asked at the board level about business decisions and corporate transactions means that they will be held accountable for the decisions they make.

'When board members, in particular the outside directors, ask questions and press for an answer, they help to shape the culture because management knows that they can't escape from their responsibilities in their day-to-day management decisions,' he said.

Director training – a focus on INEDs

Session 2, part 2 – lessons from monitoring compliance

Directors have a unique role to play in promoting a culture of compliance in the companies they work for. At the second session of the Institute's new directors' training series, speakers from Hong Kong Exchanges and Clearing Ltd (HKEX) highlighted the regulator's view of what such a culture should look like.

The Institute's new training series, Director training – a focus on INEDs, offers practitioners the chance to hear from regulators, experienced directors and governance professionals on how directors, in particular independent non-executive directors (INEDs), can enhance their contribution to good corporate governance.

At the second session of the training series, held on 17 February 2023, two HKEX speakers – Christine Kan, Managing Director, Head of Listed Issuer Regulation, Listing Division, and Joe Fan, Vice-President, Listed Issuer Regulation, Listing Division – reminded participants that the Listing Rules set clear standards relating to directors' responsibilities. In particular:

1. directors are expected to act honestly, in good faith, in the interests of the company as a whole and in a proper purpose
2. directors have to safeguard the interests of the shareholders and the company as a whole, and avoid any actual or perceived conflict of interest, and
3. directors have to apply a sufficient degree of skill, due care and diligence at all times.

Directors' responsibilities in corporate transactions

Both HKEX and the Securities and Futures Commission (SFC) have been focusing their educational and enforcement work on promoting a better understanding of directors' duties to exercise independent judgement when evaluating the fairness of corporate transactions. In particular, they need to look at whether proposed corporate transactions have commercial merit, and whether the terms are fair and reasonable to shareholders.

The HKEX speakers urged directors to be alert to 'red flags', such as where the company is buying a target company at a very high consideration that appears unreasonable. Other red flags include:

- where the consideration is based on a profit guarantee that is not supported by the historical track record of the target company
- where the target is newly set up, has a track record of losses, very few customers and a revenue that appears to be inflated and unsustainable, and
- where there are unusual terms in the transaction, such as a significant deferral in the delivery of an asset with no adequate explanation.

INEDs, with their outside perspective, can play a beneficial role ensuring that corporate transactions are in the interest of the company and the shareholders as a whole. They are expected to look at whether there is a clear commercial rationale for the transaction and whether it is consistent with the issuer's business strategy.

The HKEX speakers emphasised that INEDs also need to review due diligence performed on any counterparties involved in proposed corporate transactions. They should also take reasonable steps to verify the accuracy and reasonableness of the information presented to them by management that would likely affect the valuation of any assets to be acquired. This includes looking at any financial forecasts and assumptions presented to them and getting a reliable valuation.

'You should not rely on forecasts provided by the counterparties without performing any due diligence,' Ms Kan said. 'If you feel that the information given is not sufficient, by all means ask management for more information and consider engaging a professional valuer or an advisor if you need expert advice.'

Engaging a valuer does not discharge directors from their duties, however, and they are still expected to exercise independent judgement. They are also expected to engage a valuer

Highlights

- directors should verify the accuracy and reasonableness of the information presented to them by management
- INEDs, with their outside perspective, can play a beneficial role by taking all reasonable steps to verify that corporate transactions are in the interest of the company and the shareholders as a whole
- HKEX's relationship mapping tool has helped the regulator identify patterns in transactions inside relationship networks

that is appropriately qualified, independent from the company and the counterparties, and has the expertise and resources to perform the valuation.

The role of INEDs on the audit committee

The training session also addressed the important role that INEDs on the audit committee should play in the financial reporting process, in particular overseeing the effectiveness of audit processes.

'I cannot overemphasise the importance of planning and maintaining oversight of the audit process,' Ms Kan said. 'This should involve, for example, maintaining a dialogue with auditors to discuss the nature and scope of the audit, and, during the audit itself, to fully understand its progress and if necessary facilitate timely resolution of any issues.'

1. Financial reporting

Financial reports are the key documents that communicate to shareholders the position of the company and the audit process gives investors confidence in the financial information they receive. Ms Kan pointed to a number of common failings relating to the financial reporting and audit processes of listed companies in Hong Kong. In fact, last year 80% of trading suspensions of listed companies were the result of financial reporting issues, including delays in the publication of results, accounting irregularities identified by auditors, or disclaimers of audit opinions on the financial statements.

Ms Kan highlighted some of the common failings identified by HKEX in its latest review of listed issuers' audited financial results. These include problems with the valuation of assets and assessing asset impairment, and maintaining proper books and records.

2. Auditor selection and remuneration

INEDs on the audit committee also have a crucial role in making recommendations on the appointment, reappointment, removal and remuneration of auditors.

The Accounting and Financial Reporting Council (AFRC) has noted that in announcements relating to a change of auditor in Hong Kong, the reasons given for auditor resignations tend be quite generic, with about 70% of companies giving 'audit fees' as the reason for a change of auditor. 'The audit committee should discuss with the outgoing auditors the reasons for the resignations and any unresolved audit issues. This should be discussed in the announcements,' Ms Kan said.

The AFRC also found that a majority of listed companies paid lower or the same audit fees after a change in auditors. While companies may argue that auditor fee arrangements are a commercial decision, Ms Kan pointed out that the fee level may reflect the quality of the audit. 'Audit committees should ensure that the audit fees are commensurate with the extent of audit work required,' she pointed out.

This issue resurfaced in the Q&A. Panellist Melissa Fung, Risk Advisory Southern Region Lead Partner, Deloitte China, pointed out that, while the fee quotation will naturally be an important part of deciding which is the successful bid in a tendering process, listed issuers should not blindly adopt the lowest fee quote approach.

This approach has led to audit firms facing severe fee competition in the market and may lead to audits being underresourced. She also pointed out that there are other more important criteria for the audit committee to consider in the tendering process, such as the qualifications and reputation of the audit firm and its industry experience. 'As an INED, I hope that you can ensure that the audit firm has a robust quality assurance process because this will protect your company's interests,' she said.

She added that a high-quality audit is not only a matter of meeting regulatory requirements – it can be highly useful in decision support. 'As auditors, we always try to provide more value than just auditing the financials. Through the audit process, we can also provide some recommendations to management and the board to improve their decision-making,' she said.

3. Separating non-audit work from the financial audit

Another important issue for the audit committee to consider is the need to preserve the independence of the financial audit. The independence of the auditors undertaking this work is an essential part of making the work trustworthy. The practice of getting the same professional firm to provide your internal and 'external' audit services is therefore not acceptable.

This will definitely affect the independence of the firm doing your audit work, Ms Fung pointed out, and effectively turns the financial audit into

> **we have been using technology to do desktop investigations based on public documents and you would be quite surprised by the amount of information in the public domain**

Christine Kan, Managing Director, Head of Listed Issuer Regulation, Listing Division, HKEX

a self-review. She also noted that some professional service providers package this type of arrangement as a 'staff loan' service where they 'loan' staff to the listed company to perform the internal audit. 'This is independence in appearance only,' she said.

The impact of technology

1. The regtech factor

The impact of technology was another major theme of the training session. Mr Fan and Ms Kan spoke about the ways that regtech has increased the efficiency and also the effectiveness of investigation and enforcement work carried out by regulators in Hong Kong. HKEX, for example, are using tech tools to enhance their monitoring of corporate transactions.

This is particularly relevant to INEDs since they are responsible for taking the lead in situations of potential conflicts of interest. Tech tools have been invaluable in helping HKEX to enhance their monitoring of the network of relationships linking counterparties to listed issuers.

'HKEX has been using technology to do desktop investigations based on public documents and you would be quite surprised by the amount of information in the public domain,' Ms Kan said. For example, HKEX's relationship mapping tool searches announcements relating to earlier transactions and maps the relationships between the counterparties to corporate transactions. The tool connects seemingly separate transactions and identifies patterns in transactions inside relationship networks.

Tech tools have also helped HKEX to review public filings to identify technical non-compliances. For example, they screen DI reports close to inside information publication dates to identify potential breaches such as insider dealing. Meanwhile, the HKEX internal case management system helps build a repository of regulatory data that has helped the regulator in applying a risk-based approach to regulating issuers, for example, by building issuer risk profiles.

'Technology can help us improve regulatory efficiency, reduce compliance costs for issuers and promote compliance by making the information available to the public,' Ms Kan said.

2. How far can you automate governance?

Tech tools have also vastly extended the potential sampling coverage of financial audits, increasing the chance of spotting anomalies, but will such tools eventually remove the need for humans to be involved at all?

'Technology cannot fully replace human efforts in the audit,' Ms Fung said. 'Some of the documents are still paper-based and we therefore need to look at the actual documents to validate their authenticity. We also still need human judgement, particularly for valuation estimates.'

This point was supported by Ms Kan. She cited the way the artificial intelligence (AI) tools used by HKEX help identify where companies have failed to disclose required information, but they cannot, as yet, identify problems in the quality of disclosure.

Asked by the Panel Chair David Simmonds FCG HKFCG, Institute Vice-President and Chief Strategy, Sustainability & Governance Officer, CLP Holdings Ltd, whether AI will eventually replace the role of directors in companies, speakers and panellists agreed that there will always be a need for human beings on boards.

'The numbers in your system can be wrong,' Ms Fung said, 'and AI will not always detect those errors. In the end, we still need to rely on human experience and judgement to identify abnormalities.' CG

Does better governance lead to a better future for organisations?

Corporate Governance Paper Competition 2022 – Best Paper

In this second and final extract from the Best Paper of the Institute's latest Corporate Governance Paper Competition, the authors consider how better governance can lead to a better future and how tensions within that process can be resolved.

The Institute's annual Corporate Governance Paper Competition and Presentation Awards has been held since 2006 to promote awareness of corporate governance among local undergraduates. In 2022, the theme of the paper required students to discuss whether better governance leads to a better future for organisations.

Better corporate governance and a better future

Better risk management and reduced risks

It is generally believed that the risk management of an organisation can 'create shareholders' value by mitigating and managing financial and operating imperfections and enhancing its opportunities'.

Reducing governance risks. Role ambiguity and role conflicts can lead to weak management of organisations. To counteract this requires the efforts of directors to keep themselves up to date with their legal duties and to understand shareholders' expectations through internal discussions. In addition, incentives have to be created for managers, since the separation of ownership and management can easily lead to their pursuit of personal interests, instead of the company's interests as a whole. Corporate governance mechanisms – including the protection of shareholders' rights through the legal system and performance-based compensation for managers, such as a share option plan or a share award scheme – can motivate managers to focus on the company's interests with which their personal interests are aligned.

In addition, the presence of an effective board of directors provides strategic guidance for managers, as well as supervision of management as a whole, minimising their role ambiguity and conflicts to construct and maintain good management practices in the long run.

Reducing financial risks. An effective board of directors oversees management of the organisation, including its cash flow management, minimising its risk of cash flow deficit. In addition to this, the board can prevent financial statement fraud and embezzlement. According to HKEX's Corporate Governance Guide for Boards and Directors, the core committees of the board should include an audit committee, which is responsible for supervising the integrity of financial reporting and for monitoring internal auditors. Another responsibility of the audit committee is to manage the independent external auditors, who serve as the second line of defence against financial statement fraud, embezzlement, money laundering and other financial crimes in an organisation by reviewing the financial reports. For non-profit organisations, the presence of effective board management, independent audits and an audit committee is proved to be associated with its fund-raising abilities, because donors and grant-makers would have fewer concerns about misuse of the financial resources.

Reducing operational risks. In an era of rapid technological advancement, cyber threat is a major risk faced

Highlights

- to create trust and drive organisational success, corporations should understand the focus of key stakeholders, both external and internal, and address their concerns
- the failure to meet increasing governance expectations due to limited resources can expose organisations to greater risk and deteriorating public confidence, while corporations also face tensions between short-term financial objectives and long-term sustainability goals
- through prudent risk management, strong trust reinforcement and efficient resource allocation, organisations can navigate their way towards success in a sustainable manner, ensuring corporate resilience, reputation and long-term overall profitability

> “corporate governance is one of the most important determinants facilitating innovation, including product, service and technological innovation”

by organisations, while corporate governance practices are becoming more important in managing cyber risks. The board of directors, ideally with cybersecurity experts incorporated, can put cyber risk management up for discussion during regular board meetings to improve the organisation’s capabilities and employee competencies in handling cyber risks. When cybersecurity is valued and prioritised in the organisational culture, managers and workers would be more aware of it, and related policies can be executed more smoothly.

Better resource allocation and improved sustainability

Innovation. Corporate governance is one of the most important determinants facilitating innovation, including product, service and technological innovation. Innovation requires a large amount of capital and human resources, and is a risky long-term investment since R&D takes a long time but does not guarantee success. Therefore, the firm, and thus directors and managers, have to be incentivised to take risks. The composition of the board of directors can also enhance resource allocation for innovation.

Environmental protection. Innovation creates competitive advantages and enhances profitability in the long run, bringing sustainability to the organisation. However, this argument is only tenable when environmental protection is achieved, which relies on good corporate governance practices. Organisational culture that prioritises environmental protection would lay the foundation for directors and managers to take pollution, climate change, resource overexploitation and other environmental issues into account during resource allocation. More firms are going one step further by adopting ‘environmental management systems’, which require an audit evaluating the firm’s current environmental performance, a plan with objectives and targets, and an action plan for the execution of policies.

Better stakeholder engagement and increased trust

Good corporate governance ensures value creation for key stakeholders in the long run, fostering enduring relationships with them. Corporations should understand the focus of key stakeholders and address their concerns. This is important as mutually valued outcomes create trust and incentivise key stakeholders to continue to partner with the organisation, sustaining value creation in the future and driving organisational success. In order to enhance an organisation’s stakeholder management capacity, defining and analysing key stakeholders is essential. Good governance will acknowledge stakeholder interests and their contribution to the long-term success of organisations.

External stakeholder engagement. Corporate governance provides mechanisms that ensure stakeholder voices are heard and their rights are not overshadowed by powerful organisations, and that corporate accountability is maintained. External stakeholders offer diverse perspectives on a more efficient and sustainable manner of operating, strengthening future organisational sustainability.

A longer-term horizon increases corporate capacity to combat future changes and risks, thereby ensuring the viability of organisations in the long term. Additionally, there are rising expectations of consumers and the local communities for organisations to exercise corporate social responsibility. External pressure has proven to have shaped organisational commitment to sustainable growth and a more inclusive society.

Internal stakeholder engagement. Employees are critical to the fulfilment of productive goals and the development of viable purposes and strategic intentions for organisations. Corporate governance encourages mechanisms that actively involve employees. Employee representation on boards enables inclusion of employee voices in decision-making and promotes board effectiveness by lessening the risk of groupthink. Having a safe-harbour regime for employee complaints also helps reassure employees that they are being treated ethically and that their right to complain is protected, thus gaining employee trust and minimising any detrimental effects of reputational damage due to unethical practices. Internal stakeholder engagement that promotes and prioritises employee well-being, and which safeguards organisational reputation, is shown to be strongly associated with talent retention.

Strategic stakeholder communication. As corporate governance and environmental, social and governance (ESG) matters have become the centre of attention in sustainable businesses, effective stakeholder communication is a vital ingredient in building and securing trust and reputation. Increasing transparency and disclosure of information on good governance practices facilitates ongoing dialogue between organisations and their stakeholders, enabling public understanding and evaluation of organisations. A proactive approach to consistent communication between an organisation and its stakeholders, as well as demonstrating impressive ESG practices, is important for building trust and relationships over time.

Metrics measuring a better future for organisations – long-term value creation for all key stakeholders

Organisations' long-term success would manifest itself through the following performance and ESG metrics.

Key performance indicators

Key performance indicators (KPIs) provide organisations with criteria that enable the comparison between the actual results and set goals, gauging the organisation's long-term performance. Linked to organisational strategic objectives, KPIs can be viewed as markers of the overall achievements and success of an organisation in various aspects, such as internal process quality and consumer satisfaction. The choice of KPIs varies between different organisations, depending on their characteristics and strategic direction. KPIs that quantify effective governance and sustainability efforts will help identify areas for improvement and determine future strategies. Continuously balancing and improving organisational performance in the three dimensions – social, environmental and economic dimensions – are indications of an organisation's capacity to generate long-term value for all key stakeholders.

Issuance of green, social and sustainability bonds

Sustainable and green finance investment products secure an organisation's capacity to create value in the long term and reduce market volatility related to corporate performance. The rapid growth in green and 'labelled' bonds markets is evident in the recent decade. These bonds enable capital-raising for projects committed to environmental and social benefits. Issuing labelled bonds provides 'sustainability ambitions' in corporate strategies, leading to more investment in innovative sustainable practices of the organisation.

Tensions between corporate governance and a better future

Limited resources

Corporate governance confronts organisations with the reallocation of limited resources and prioritisation of strategic options. Fundamentally altering current business patterns, governance practices require organisations to allocate additional human resources and capital investment. When organisations envisage achieving sustainability and long-term growth, they have to

> good governance will acknowledge stakeholder interests and their contribution to the long-term success of organisations

shift focus from short-term decision-making to the consideration of the long-term implications of current behaviours. The longer-term horizons will require supporting techniques such as scenario analysis, which will increase operational costs. Additionally, disclosure guidelines and requirements in corporate governance sometimes complicate operational procedures, thereby increasing disclosure costs. Despite the additional resources required to uphold good governance, many corporations still strive to comply with the dominant institutionalised expectations to secure trust and legitimacy. Failing to meet increasing governance expectations due to resource constraints not only exposes organisations to more risks, but also further deteriorates public confidence, which is a vital determinant of sustainable financing. Organisations with a narrow resource base, particularly small-scale corporations and non-profit organisations, therefore face challenges to strengthen corporate governance, adversely affecting their long-term resilience and viability.

Strategy: technological innovation. Moving towards a digitised world, organisations should seek to utilise technology tools as a technical solution to reduce transition costs. With the utilisation of technological innovation, transition costs can be reduced when human capital is employed effectively and business processes become more efficient. Technology tools not only help save costs, but can also improve governance through empowering executives to better communicate with their board and leverage their expertise. An online board portal is one of the communication and collaboration tools supporting internal processes and enhancing the quality of governance. A board portal enables easy access to board papers, agenda creation for board meetings and more, thereby streamlining workflows and fostering board communication. It also provides functionality with integrating ESG considerations into corporate strategy and leadership behaviour, and aligning board culture and leadership with evolving governance expectations and requirements. Effectively improving communication at board level and ushering in paradigm shifts in organisational priorities for sustainability are integral to good corporate governance. The adoption of technology tools provides a cost-effective channel for better governance practices.

Intertemporal choice problems

Being criticised for their short-termism, which can further induce financial instability, corporations are expected to integrate longer-term considerations into their business models. A long-term orientation for environmental protection and social equity in corporate governance creates a tension with short-term financial targets ordinarily set in corporate decision-making. Companies face intertemporal choice problems, which refers to decisions in which 'the course of action that is best in the short term is not the same course of action that is best over the long run'. Creating a more sustainable business will require investment in social and environmental projects that may not bring immediate short-term benefits. Investors, however, may focus on more immediate short-term returns. To justify their longer planning horizon and investment for sustainable development goals, corporations have to use various qualitative tools to safeguard investor trust in their sustained performance. A longer planning horizon also involves more stakeholders in the decision-making process, requiring more time to materialise the solutions and leading to slower responses. Some corporate governance confusion may even be created. For example, institutional investors are found to desire – simultaneously and contradictorily – instant short-term returns, sustained performance and corporate social responsibility. Managers may be confronted with difficult choices and make decisions that deviate from good corporate governance practices.

Strategy: sustainable bonuses. Organisational practices combining both short- and long-term outcomes can induce managers to consider long-term objectives. An example of such practices is the implementation of financial bonus systems based on short-term and long-term targets, with an emphasis on non-financial objectives. Traditional corporate bonus systems could have encouraged excessive risk-taking and cost-cutting, creating an irresistible force for short-term egotistic practices and governance failure. To avoid short-term egotistic practices that often go against sustainable societal goals, corporations should reconsider corporate incentives. A number of multinational corporations have recently added long-term social and environmental dimensions to their bonus systems. Incentive plans and compensation packages with a stronger focus on non-financial objectives will still consider short-term earnings important, but will add complexity to managerial objectives by highlighting the need to meet demands from stakeholders. Despite the inherent contradictions between short-term financial objectives and long-term sustainability goals, managers are persuaded to acknowledge the need to complement short-term financial outcomes with long-term sustainable goals.

Strategy: alternative corporate governance structures. Organisations can implement corporate governance structures with a greater tolerance for not meeting short-term financial objectives. Corporate governance structures, resulting from company characteristics and identity, play a role in creating an enabling environment to pursue short-term and long-term objectives. For instance, hybrid organisations that blur for-profit and non-profit boundaries can better balance short- and long-term objectives. The distribution of rights among different stakeholders, the formal procedures involved in decision-making and the positions of stakeholders in the governance system will all influence corporate policies, final decisions and, eventually,

“ultimately, the corporation’s long-term success would manifest itself in KPIs and green bond issuance”

corporate ability to effect positive environmental and social change. To safeguard their long-term mission, organisations can try to attract stakeholders that support and work for their long-term horizons. For example, corporations can use internal promotions for key managerial positions and hire employees with little work experience so as to ingrain the long-term objectives into them through training. Regular training can help raise the awareness of the leadership to the importance of balancing short- and long-term objectives, and can build their capacity to create governance structures that commit to the long-term objectives of the organisation.

Conclusion

The role of corporate governance in future organisational success has been increasingly emphasised of late. Through prudent risk management, strong trust reinforcement and efficient resource allocation, executives can navigate their way towards success in a sustainable manner. These measures increase the corporation’s organisational resilience, reputation and overall profitability in the long term. Checks and balances are also in place to monitor executive performance and compensation, as well as to ensure that different stakeholder interests are

taken into consideration accordingly. It is imperative to do so as stakeholders may have conflicting interests, thus there is a need for prudent management to resolve tensions between different voices. Ultimately, the corporation’s long-term success would manifest itself in KPIs and green bond issuance. As a result, there is empirical evidence that shows that corporate governance affects the entire corporation deeply, from top to bottom, as well as from present to future.

Winona Lau and Yvonne Lau

The Chinese University of Hong Kong and The University of Hong Kong

This two-part article is a summary of the winning paper of the Institute’s annual Corporate Governance Paper Competition for 2022, entitled ‘Corporate governance – an indispensable element for organisational future triumph’, under the theme ‘Do you think better governance leads to a better future for organisations?’ More information on the competition and the full version of the Best Paper, including case studies cited, along with those from the First Runner-up and Second Runner-up, are available under the Studentship section of the Institute’s website: www.hkics.org.hk.

The Mainland releases new rules on overseas issuances and listing activities

In this second and final part of their article on the Mainland's new Overseas Listing Regime, Benran Huang, Managing Associate, Moge Chen, Associate, and Alex Guo, Associate, Zhao Sheng Law Firm (Linklaters' joint operation partner in the Mainland), discuss the listability of VIE structures, the impact of corporate governance changes and various disclosure requirements, transitional arrangements and the formal communication procedure with CSRC.

A clearer stance on VIE structures?

Variable interest entity (VIE) structures are widely used by China Based Enterprises who operate business that are foreign investment prohibited or restricted. The use of VIE structures has never been formally endorsed by any Mainland regulator.

In the context of initial public offerings (IPOs), there have been concerns raised in the market in recent years over whether Mainland regulators will take a drastic approach toward overseas IPOs involving VIE structures.

The Overseas Listing Regime now provides a clearer stance – the listability of VIE structures in principle is not ruled out. According to the China Securities Regulatory Commission (CSRC), 'CSRC will seek opinions from competent regulator(s) and complete filings for overseas listings by enterprises with VIE structures in place that satisfy compliance requirements, and will support enterprises in taking advantage of both markets and resources to develop and grow.'

Regulatory Guideline No 2 provides that, where an issuer with a VIE structure files with CSRC for an overseas IPO, the following specific disclosures on the VIE structure must be included in its application report:

- reasons for the set-up of the VIE structure and the specific arrangements
- risks associated with control, counterparty default and tax issues, and
- risk mitigants.

In addition, Regulatory Guideline No 2 also requires the issuer's Mainland counsel to verify and provide statements on:

- foreign investors' participation in the operation and management of the issuer (for example, the appointment of directors)
- whether any Mainland law, regulation or other rule expressly prohibiting contractual control over business, permits or qualifications would be applicable to the issuer, and
- whether the VIE entity falls under national security review, or is involved in foreign investment prohibited or restricted business.

CSRC is believed to have formulated the above disclosure requirements by reference to the earlier negative list jointly issued by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM). (See 'NDRC and MOFCOM approach'.) Whilst as a general principle VIE structures are listable, we expect that the overseas IPOs involving VIE structures could be subject to heightened scrutiny under certain circumstances.

- ***Significant participation by foreign investors in operation and management.*** We consider that significant participation by foreign investors in the operation and management of an issuer may become a substantial hurdle to the issuer's overseas IPO, albeit the boundary remains to be tested, including (1) whether the extent of veto rights available to foreign investors matters, (2) whether the right to appoint one or more director(s) alone by foreign investors (without the ability for foreign investors to control the board or determine or veto the appointment of senior management personnel) would cause an issue, and (3) whether corporate governance rights by foreign investors pre-IPO that would lapse upon an IPO would be acceptable to CSRC.

Highlights

- the Overseas Listing Regime now provides a clearer stance on the listability of VIE structures, but these will be subject to a number of specified disclosure requirements
- future H share listed companies may be impacted by various updates to Mainland corporate governance practice, as well as by changes to special voting rights arrangements and the obligation to disclose the ultimate beneficial owners of all major shareholders
- a formal procedure for issuers to communicate with CSRC to seek clarification on the new regime has been established, which can be made either prior to or during a filing

> “we expect that the Hong Kong Stock Exchange will revisit its Listing Rules in light of the Overseas Listing Regime”

CSRC's view towards these issues may have an impact on how foreign investors negotiate corporate governance terms during a pre-IPO financing of an issuer with a VIE structure in place and even the investment strategy of foreign investors towards the issuer.

- ***Operation in a sector with express prohibition over contractual control.*** The overseas IPO by an issuer that operates in a sector with express prohibition over contractual control (for example, private education and online gaming) may be subject to heightened scrutiny, in particular if the prohibition is provided by an applicable law or regulation promulgated by the State Council, as compared to any rule promulgated at a lower hierarchy.

- ***Operation in a foreign prohibited sector as compared to a foreign restricted sector.*** In light of the approach taken by NDRC and MOFCOM in the negative list, it remains to be tested whether CSRC will take a similar approach and view VIE structures in a foreign prohibited sector more cautiously as compared to VIE structures in a foreign restricted sector.

The Overseas Listing Regime does not contain provisions directly affecting any already listed issuers that have VIE structures in place. We therefore expect that the Overseas Listing Regime will not have a direct impact on their listing status, but could have an impact on their subsequent overseas listing activities.

We also expect that the Hong Kong Stock Exchange, having previously issued listing decision HKEX-LD43-3 on VIE structures, will be revisiting its practice towards VIE structures in light of the Overseas Listing Regime.

Transitional arrangements

For issuers that are carrying out but have not completed their overseas IPOs before the Effective Date, Table 1 summarises the transitional arrangements that apply with respect to their proposed overseas IPOs.

Other highlights

Corporate governance changes to future H share listed companies

- ***Mandatory Provisions abolished.*** The Overseas Listing Regime provides that the Mandatory Provisions for Articles of Association of Companies Listing Overseas (the Mandatory Provisions) issued in 1994 shall expire on the Effective Date. Going forward, in the case of a direct listing, the issuer shall prepare its articles of association by reference to the Guidelines on the Articles of Association of Listed Companies (2022 Revision) (the AOA Guidelines). The abolition of the Mandatory Provisions is a long-awaited step, as they are too outdated to reflect the latest and more modernised corporate governance practice in the Mainland.

  However, it is worth noting that the Hong Kong Listing Rules nevertheless explicitly require that the articles of association of issuers incorporated in the Mainland must include the Mandatory Provisions. We expect that the Hong Kong Stock Exchange will revisit its Listing Rules in light of the Overseas Listing Regime, but before the two regimes are fully reconciled, listing applicants in the Hong Kong market will technically still need to include the Mandatory Provisions in their articles of association, or otherwise consult or seek exemption from the Hong Kong Stock Exchange.

- ***Special voting rights may become viable for H share listed companies.*** Regulatory Guideline No 2 provides that an issuer shall disclose any special voting rights arrangements in its application document. Such arrangements, which are not uncommon for non–Mainland incorporated enterprises, have never historically been adopted by H share listed companies.

  This provision seems to imply that such arrangements may become acceptable to CSRC for H share listed companies.

  Considering that the Company Law of the People's Republic of China is also being reformed, and that the earlier draft for public consultation for the first time provides that a Mainland incorporated joint stock company can issue different classes of shares with different rights, we expect that special voting rights

Table 1: Transitional arrangements

Listing route*	Status as of Effective Date	Filing requirement	What if an issuer is carrying out a Subsequent Financing?
Indirect listing†	Valid approval obtained from competent overseas regulator/ stock exchange (eg, the passing of hearing in HK or effectiveness of registration in the US).	A six-month grace period (expires on 30 September 2023) is granted for the issuer to proceed to list without the need to file with CSRC.	Such a scenario is not contemplated by CSRC. In the absence of further clarification by CSRC, we expect that the grace period may not be applicable to a Subsequent Financing that remains uncompleted as of the Effective Date, ie, the issuer has to file with CSRC after the Effective Date and within three working days from the completion of issuance of the Subsequent Financing.
	Listing application submitted to competent overseas regulator/ stock exchange, but approval not yet obtained.	The issuer has to file with CSRC after the Effective Date and before the consummation of its overseas IPO.	The issuer has to file with CSRC after the Effective Date and within three working days from the completion of issuance of the Subsequent Financing.
	Listing application not yet submitted to competent overseas regulator/stock exchange.	The issuer has to file with CSRC after the Effective Date and within three working days from listing application.	
Direct listing	Valid approval obtained from CSRC.	The issuer may proceed to list before such approval expires without the need to file with CSRC.	The issuer may proceed to carry out the Subsequent Financing before such approval expires without the need to file with CSRC.
	Listing application submitted to CSRC, but approval not yet obtained.	The issuer has to file with CSRC in place of the prior listing application after the Effective Date and before the consummation of its overseas IPO.	The issuer has to file with CSRC after the Effective Date and within three working days from the completion of issuance of the Subsequent Financing.
	Listing application not yet submitted to CSRC.	The issuer has to file with CSRC after the Effective Date and within three working days from listing application.	

* For GDR issuers, special transitional arrangements may be further promulgated by CSRC.

† We have only considered indirect listing involving a small red chip structure here, given the reality around big red chip structures.

arrangements for H share listed companies may become possible in the near future.

Potential impact on the structuring of ESOPs

Regulatory Guideline No 2 requires an issuer's Mainland counsel to state in its legal opinion certain detailed arrangements relating to any employee stock ownership plan (ESOP) adopted by the issuer, including the composition of grantees, fairness of pricing, the applicable decision-making procedure and the ESOP's compliance with laws and regulations. Regulatory Guideline No 2 also specifically requires that all shares subject to an ESOP shall, in principle, be for the benefit of the issuer's own employees and, if there is any non-employee grantee, the issuer's Mainland counsel is required to verify the rationale and other details of such an arrangement.

Separately, Regulatory Guideline No 2 also requires an issuer's Mainland counsel to verify and opine on any nominee shareholding arrangement involving the issuer.

These requirements may have implications for the structuring of an ESOP of a non–Mainland incorporated China Based Enterprise, as the practice with respect to ESOPs by non–Mainland incorporated China Based Enterprises is currently fairly relaxed. For pre-IPO investors of such an enterprise, extra due diligence on its ESOP arrangement from an Overseas Listing Regime compliance perspective may be worth considering.

'Look-through' of ultimate beneficial owners

Regulatory Guideline No 2 requires the issuer to disclose the ultimate beneficial owners of all major shareholders (that is, any shareholder holding 5% or above of the shares or voting rights), which requirement broadly mimics the look-through principle adopted by CSRC in regulating A share IPOs.

As an exception, the look-through does not apply to a foreign private equity fund if (i) it is not a holding entity or platform set up merely for the purpose of holding shares, and (ii) its investment price in the issuer is not manifestly abnormal, provided that the issuer is nevertheless required to disclose any Mainland persons behind the fund. The exception is drafted in relatively vague terms. Also, according to Regulatory Guideline No 2, the look-through will stop at sovereign wealth funds, pension plans and publicly offered asset management products, etc. To understand the look-through principle and the exception, it is worth noting that one of the primary reasons for the look-through by CSRC is to assess whether any person (in particular any Mainland governmental officer) has unlawfully benefited from the financing activities of an issuer. The above requirements on ESOPs serve a similar purpose to some extent.

Such obligation to disclose the ultimate beneficial owners is, generally speaking, more onerous than the compatible obligations imposed by regulators in Hong Kong and the US. Certain investors (for example, private equity funds) may find it difficult to provide information on their ultimate beneficial owners to the issuer, either because they are subject to contractual restrictions from disclosing the identities of their ultimate beneficial

NDRC and MOFCOM approach

On 27 December 2021, NDRC and MOFCOM jointly issued a substantially shortened negative list applicable to foreign investment in the Mainland. The negative list provides that a China Based Enterprise that operates in a foreign investment prohibited sector may conduct an overseas listing provided that (1) the listing is approved by competent sector regulator(s), (2) foreign investors do not participate in its operation and management, and (3) the shareholding percentage limits on foreign investors (that is, 10% individually and 30% in the aggregate) are not crossed.

There was discussion in the market whether this means that overseas IPOs involving VIE structures in foreign investment prohibited sectors must, amongst others, always obtain prior approval from competent sector regulator(s), with the concern that if so, there would be a much higher risk of such overseas IPOs becoming unfeasible. Although a spokesman of NDRC subsequently clarified that these requirements are only applicable to direct listing activities, and that CSRC would separately determine the approach towards indirect listing activities, there was still speculation in the market that CSRC might take a similar approach towards indirect listing activities.

> the abolition of the Mandatory Provisions is a long-awaited step, as they are too outdated to reflect the latest and more modernised corporate governance practice in the Mainland

owners or they simply do not have the requested information.

In A shares IPOs, investors and issuers often face the same difficulty and challenge. In practice, issuers collect and report such information to CSRC on a 'best effort' basis. Material omission of the required information could have a negative impact on an issuer's listability. We expect that market players will apply a similar approach in overseas listings.

More than just a regulation over issuers
The Overseas Listing Regime is a comprehensive regulatory regime that not only regulates China Based Enterprises as issuers, but also purports to oversee and monitor overseas listings in the market through gatekeepers, including securities companies and law firms.

The Overseas Listing Regime imposes filing and reporting obligations on securities companies and sets out detailed requirements on the contents to be included in Mainland legal opinions. In the case of any violation of the Overseas Listing Regime, penalties may be imposed on these gatekeepers and their directly responsible personnel, in addition to the issuers. (See 'Filing and reporting obligations on securities companies'.)

Formal communication procedure with CSRC

The Overseas Listing Regime establishes a formal procedure for issuers to communicate with CSRC to seek clarification on the regime, and such communication may be (and is not required to be) made either prior to or during a filing:

- prior to a filing, an issuer can seek clarification from CSRC on matters such as sector regulation policy, capital structure and whether the filing requirement is applicable to the issuer, and
- during a filing, an issuer can seek clarification from CSRC on matters such as CSRC's supplemental document requests and new matters or changes emerging during the filing process that may affect the overseas listing.

The Overseas Listing Regime also permits different methods of communication, including written communication, telephone, videoconference or face-to-face meeting.

Issuers can (and other stakeholders can via issuers) make use of this communication mechanism to guide their financing activities both before and during their overseas IPOs. However, the Overseas Listing Regime expressly provides that CSRC's responses given during any such communication shall not be used as a basis for assessing whether a proposed overseas listing is in compliance with applicable laws. An issuer should exercise special caution before sharing the results of any such communication with any overseas regulator or stock exchange to facilitate its proposed overseas listing.

Benran Huang, Managing Associate, Moge Chen, Associate, and Alex Guo, Associate
Zhao Sheng Law Firm (a member of the Linklaters global network)

Filing and reporting obligations on securities companies

If a foreign securities company engages in an overseas listing as a sponsor or lead underwriter, it shall file with CSRC within 10 working days from the date of signing of the initial business agreement and shall submit to the CSRC a report describing last year's business operations related to overseas listing before 31 January of each year.

A foreign securities company that has already entered into a business agreement prior to the Effective Date, and is acting as a sponsor or lead underwriter for an overseas listing, shall file with CSRC within 30 working days from the Effective Date.

Professional Development

Seminars: February 2023

10 February

Company secretarial practical training series: continuing obligations of listed companies – practice and application

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

16 February

New share scheme regime

Chair: Wendy Ho FCG HKFCG(PE), Institute Council member, Professional Development Committee Chairman and Professional Services Panel member, Mainland China Technical Consultation Panel member and AML/CFT Work Group member, and Executive Director, Corporate Services, Tricor Services Ltd

Speakers: Carmen So FCG HKFCG, Director of Corporate Services, Tricor Services Ltd; and Felix Kung, Business Development Director, Global Shares

21 February

New requirements for economic substance in Hong Kong: implications for company secretaries

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

Speakers: Yan Yeung, Partner, Tax Services, and Ivy Chow FCG HKFCG, Director, Corporate Services, PwC Hong Kong

22 February

CSP training series: how to serve the board better (session two: board dynamics at meetings)

Chair: Susan Lo FCG HKFCG

Speaker: Patricia Hui FCG HKFCG

28 February

How to manage name change exercises for PRC incorporated entities

Speakers: Shirley Sung ACG HKACG, Director, Corporate Services, Tricor Mainland China; and Ella Wong FCG HKFCG, Director, Corporate Services, Tricor Services Ltd

ECPD Videos on Demand

Some of the Institute's previous ECPD seminars 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: (852) 2830 6011, or email: cpd@hkcgi.org.hk.

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
18 April 2023	3.00pm–5.00pm	Sanctions: practical overview governance professionals should know	2
21 April 2023	4.00pm–5.30pm	Corporate crisis management: practical guidance for handling related governance and compliance issues	1.5
28 April 2023	6.45pm–8.45pm	Company secretarial practical training series: notifiable transactions – practice and application	2
12 May 2023	4.00pm–5.30pm	Startups in Hong Kong & challenges of governance enhancement	1.5

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

Membership

Application for concessionary subscription rate for 2023/2024

As a professional body established by members and for members, the Institute continues to offer concessionary subscription rates to members who fall into the criteria listed below.

1. Retired rate

This applies to members who:

- are fully retired from employment and will not be returning to gainful employment (neither full-time nor part-time), and
- are not receiving an income derived directly from labour or skill, and
    - o have reached the age of 55 and have been members of The Chartered Governance Institute/HKCGI for at least 25 years on or before the beginning of the financial year (1 July), or
    - o have reached the age of 60 on or before the beginning of the financial year (1 July).

Once approved, the retired rate will be granted from the following year and onwards. No reapplication is required.

2. Reduced rate

This is defined as a temporary relief for members or graduates, and applies to those who:

- have been unemployed for a minimum of six months prior to application or the beginning of the following financial year (1 July)
- have ceased to receive income and/or remuneration due to health conditions (with substantial and sufficient supporting document(s) provided) for a minimum of three months prior to application or the beginning of the following financial year (1 July), or
- have encountered circumstances which, in the consideration of the Membership Committee, warrant the reduced rate.

Reduced rate applications are approved on an annual basis.

From the year 2019/2020 onwards, members and/or graduates are only eligible for the reduced rate for a maximum of five years. Reduced rates granted on or before the year 2018/2019 will not be counted towards this five-year limit.

Should members and/or graduates wish to continue to apply for the reduced rate for longer than a total of five years, adequate explanation and/or documentary proof must be provided to the Membership Committee for consideration.

Membership (continued)

3. Hardship rate

This applies to members/graduates who:

- have ceased to receive income and/or remuneration due to medical conditions for at least two years prior to application (with substantial and sufficient supporting document(s) provided), or
- other circumstances which, in the consideration of the Membership Committee, warrant the hardship rate.

Hardship rate applications are approved on an annual basis.

4. Senior rate

This applies to members who have reached the age of 70 or above before the beginning of the financial year (1 July). The senior rate is granted to eligible members automatically without prior application.

Important notes:

- For the above 1) retired rate, 2) reduced rate and 3) hardship rate, applications must be submitted to the Secretariat on or before Friday 30 June 2023. All applications are subject to the approval of the Membership Committee, the decision of which is final.
- A retired/reduced/hardship rate member who has i) returned to gainful employment (whether full-time or part-time), and/or ii) received income derived directly from labour or skills should pay the subscription at the full rate for the current financial year.

Members and graduates can submit their applications online via their user account. Application forms can also be downloaded from the Resources section of the Institute's website: hkcgi.org.hk.

For enquiries, please contact Rose Yeung: (852) 2830 6051 or Vicky Lui: (852) 2830 6088, or email: member@hkcgi.org.hk.

New Fellows

The Institute would like to congratulate the following Fellows elected in January 2023.

Srijit Shankaran Kutty Nambiar FCG HKFCG

Mr Nambiar is the Chief Financial Officer of Creative China Creations Ltd. As well as the finance and internal control functions, he plays an advisory role to the management for investment decisions, risk assessment, taxation and developing e-commerce for smooth operations. Mr Nambiar holds a master's degree in corporate governance & compliance from Hong Kong Baptist University and a master of commerce degree from the University of Mumbai. He is also a fellow member of the Institute of Public Accountants, Australia, and the Institute of Certified Management Accountants, Australia.

Chui Wai Hoi, Matthias FCG HKFCG

Company Secretary, Welab Bank Ltd

Ng Ho FCG HKFCG

Company Secretary, China Merchants Land Ltd (Stock Code: 978)

Xian Fang FCG HKFCG

Company Secretarial Manager, Alibaba Group

Yip Lai Ching FCG HKFCG

Director, Day For Night Workshop Ltd

New graduates

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

Chan Kai Kwong	Guan Muyi	Lee Yan Yin	Tsang Kwok Chun, Alan
Chan Lok Yee, Joyce	Ip Wing Lam	Leung Wing Sze	Tsang Lok Yue
Chan Yin Kwan	Kwok Ying Kit	Li Shun	Wong Chi Kong
Cheng Anthony Kwok Bo	Lai Mei Kuen	Li Sining	Wong Ching Wa
Cheng Ka Lee, Cary	Lai Siu Man	Li Tian	Wong Keith Shing Cheung
Cheung Hok Shing	Lai Yin Kwan, Debby	Lo Tsz Yuk	Wong Tat
Cheung Hon Fai	Lam Chin Hei	Lung Yi	Yang Na
Cheung Ling, Giselle	Lam Ka Man	Mak Kit Yee	Yau Man Ka
Cheung Long Ching, Terry	Lam Lap Sing	Mak Wing Mui	Yeung Suet Ying
Chun Wai Yin	Lau Pui Sheung	Ng Ka Wing	Yip Man Wai
Fan Oi Ling	Lee Cheuk Lam, Victor	Ng Wai Yu	Yip Nga Sze
Fan Shuk Man	Lee Ka Man	Sze Hau Ling	Yu Chi Kit
Fung Ching Kwan	Lee Wai Shan	Tang Ka Long	Zhang Si

Forthcoming membership activities

Date	Time	Event
13 May 2023	2.00pm–5.00pm	Adult cardio pulmonary resuscitation certificate course (ACPR) (成人心肺復蘇法證書課程)

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

Membership activities: February 2023

4 February
Dip pen calligraphy and agate key chain workshops

25 February
Moving-sand art workshop

25 February
Mosaic candleholder workshop

Advocacy

Congratulations!

The Institute is delighted to announce that Natalia KM Seng FCG HKFCG, Council Member and Institute Past President, and Ivy SL Chua FCG HKFCG, Institute Fellow, have been appointed by the Financial Secretary as panel members of the Securities and Futures Appeals Tribunal (SFAT) for two years from 1 April 2023 to 31 March 2025.

The SFAT is a statutory tribunal established under the Securities and Futures Ordinance, which provides an effective safeguard to ensure that the relevant regulatory decisions are reasonable and fair, and enhances the accountability of the regulatory bodies concerned.

City University of Hong Kong – Master of Science in Professional Accounting and Corporate Governance Outstanding Students Recognition Reception

On 2 March 2023, Institute Council member and Education Committee Chairman CK Low FCG HKFCG, Institute Education Committee Vice-Chairman Matthew Young FCG HKFCG(PE) and Institute Registrar Louisa Lau FCG HKFCG(PE) attended City University of Hong Kong (CityU)'s Master of Science in Professional Accounting and Corporate Governance (MScPACG) Outstanding Students Recognition Reception. This was attended by 19 MScPACG outstanding graduates/students who received either a University Grants Committee (UGC) Targeted Taught Postgraduate Fellowships Scheme (TPgFS), CityU Departmental Academic Excellence Scholarship, Departmental Entrance Scholarship or HKCGI Foundation Scholarship.

MScPACG is one of the eligible programmes of the TPgFS, launched by UGC to attract meritorious local students to pursue further studies in priority areas conducive to the development of Hong Kong, and to encourage universities to establish more innovative and multidisciplinary programmes that are beneficial to society.

Schedule of the Institute's Mainland seminars for 2023

时间 Time	地点/方式 Venue and mode	讲座/主题 Seminar/theme
3月2–3日 2–3 March	网络 Online	第六十八期公司治理专业人士强化持续专业发展（ECPD）讲座暨内地赴香港上市企业辅导课程 (2天，15学时) 主题：香港上市要求、程序及筹备（阶段一 递交上市申请之前） The 68th Governance Professionals (GP) ECPD seminars and training for companies planning to list in Hong Kong (2 days, 15 ECPD hours) Theme: Hong Kong listing requirements, procedure and preparation (phase I – prior to the submission of listing application)
5月17–19日 17–19 May	丽江 Lijiang	第六十九期公司治理专业人士ECPD讲座（董秘/董事/财务总监联合培训） (2.5天，16学时) 主题：并购与风险管理 The 69th GP ECPD seminars (for board secretaries, directors, CFOs) (2.5 days, 16 ECPD hours) Theme: M&A & risk management
6月8–9日 8–9 June	网络 Online	第七十期公司治理专业人士ECPD讲座（董事监事专场培训） (2天，15学时) 主题：董事/监事的持续责任及其监管处罚 The 70th GP ECPD seminars (for directors and supervisors) (2 days, 15 ECPD hours) Theme: Directors/supervisors' continuous liabilities and regulatory sanctions
7月19–21日 19–21 July	青岛/大连 Qingdao/Dalian	A+H股董事会秘书与独立董事联合培训暨第七十一期公司治理专业人士ECPD讲座 (2.5天，16学时) 主题：信息披露与治理合规 Joint training for board secretaries and independent directors of A+H share companies and the 71st GP ECPD seminars (2.5 days, 16 ECPD hours) Theme: Information disclosure and governance compliance
8月10–11日 10–11 August	北京 Beijing	第七十二期公司治理专业人士ECPD讲座暨内地赴香港上市企业辅导课程 (2天，15时) 主题：香港上市要求、程序及筹备（阶段二 递交上市申请之后） The 72nd GP ECPD seminars and training for companies planning to list in Hong Kong (2 days, 15 ECPD hours) Theme: Hong Kong listing requirements, procedure and preparation (phase II – after submission of listing application)

Advocacy (continued)

9月13–15日 13–15 September	南京/西宁 Nanjing/Xining	A+H股财务总监/董秘联合培训暨 第七十三期公司治理专业人士强化持续专业发展讲座 (3天，16学时) 主题：ESG报告与价值管理 Joint training for CFOs and board secretaries of A+H share companies and the 73rd GP ECPD seminars (3 days, 16 ECPD hours) Theme: ESG report and value-based management
10月24–27日 24–27 October	香港 Hong Kong	香港中国企业规管高级研修班2023 (4天，22学时) Advanced corporate regulatory seminars for Mainland enterprises listed in Hong Kong (4 days, 22 ECPD hours)
11月15–17日 15–17 November	成都/福州 Chengdu/Fuzhou	第七十四期公司治理专业人士ECPD讲座（董秘/财务总监联合培训） (2.5天，16学时) 主题：年度财务审计与业绩报告 The 74th GP ECPD seminars (for board secretaries and CFOs) (2.5 days, 16 ECPD hours) Theme: Annual financial audit and annual report
12月7–8日 7–8 December	网络 Online	中国在港上市企业董事与财务总监高级研修班暨 第七十五期公司治理专业人士ECPD讲座 (2天，15学时) 主题：财务监控与风险管理 Advanced seminars for directors and CFOs of Mainland companies listed in Hong Kong and the 75th GP ECPD seminars (2 days, 15 ECPD hours) Theme: Financial monitoring and risk management

注：以上讲座计划仅供参考，香港公司治理公会保留根据情况变化调整/取消以上（网络）讲座安排之权利。

Note: The above schedule is for reference only. The Institute reserves the right to adjust or cancel any of the above seminars as circumstances dictate.

5 Years Plus Caring Organisation Logo

The Institute is delighted to announce that it has been awarded the 5 Years Plus Caring Organisation Logo in the Caring Company Scheme 2023/2024 of The Hong Kong Council of Social Service.

The award, received for the sixth consecutive year, recognises the Institute's contribution to corporate social responsibility through caring for the community, its employees and the environment.

Chartered Governance Qualifying Programme (CGQP)

June 2023 examination diet

Key dates	Description
2 May	Pre-released case studies for the Part 2 modules: Risk Management, Strategic Management and Boardroom Dynamics
18 May	Release of examination admission slips
5–15 June	Examination period
6 July	Closing date for examination postponement applications
Mid-August	Release of examination results
Mid-August	Release of examination papers, mark schemes and examiners' reports
Late August	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 the Education and Examinations Section: (852) 2830 6010, or email: exam@hkcgi.org.hk.

Learning support

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
Late March to early April	• Workshops: part one • Release of mock examination papers
18 April	Submission deadline for mock examination papers
Late April	Workshops: part two

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.

For enquiries, please contact the Education and Examinations Section: (852) 2830 6010, or email: exam@hkcgi.org.hk.

Chartered Governance Qualifying Programme (CGQP) (continued)

Studentship activities: March 2023

15 March

Student Gathering (2nd session): sharing from outstanding students in the CGQP examinations

20 March

Student Gathering (3rd session): preparing for and passing professional examinations – with flying colours!

Forthcoming studentship activities

Date	Time	Event
27 April 2023	2.30pm–4.00pm	Student Ambassadors Programme 2022/2023: a visit to Hong Kong Business Ethics Development Centre, ICAC
11 May 2023	1.00pm–2.00pm	Governance Professionals Information Session (Cantonese session)

Professional talk: the influences of ESG implementation on business development in Hong Kong

The Institute organised a webinar for the Institute's students, student ambassadors, postgraduates and undergraduates from various local higher education institutions on 2 March 2023.

In this session, Ellie Pang FCG HKFCG(PE), Institute Chief Executive, conducted a professional talk on how environmental, social and governance (ESG) implementation, especially climate change, has influenced business operations and governance in Hong Kong.

Ellen Suen ACG HKACG, Institute Senior Manager, Education and Examinations, then shared details about the dual qualification of Chartered Secretary and Chartered Governance Professional, and discussed a number of related career prospects.

Career talks and fairs at local universities and educational institutions

The Institute continues to liaise closely with local universities and educational institutions to promote the dual qualification of Chartered Secretary and Chartered Governance Professional, as well as related career opportunities, to undergraduates. The Institute arranged with local universities and educational institutions to hold the following career talks or fairs for their respective students in February and March 2023.

Date	Time
21 February	The Hang Seng University of Hong Kong
28 February	Hong Kong Shue Yan University
1 March	Lingnan University
13 March	Lingnan University

Notice

Featured job openings

Company name	Position
Conyers Dill & Pearman	Corporate Administrative Assistant
Conyers Dill & Pearman	General Clerk
Conyers Dill & Pearman	Supervisor
Haitong International Securities Group Ltd	Graduate Trainee Program 2023
Mei Services Limited	Company Secretarial Officer
NagaCorp Ltd	Assistant Company Secretarial Manager
Sit, Fung, Kwong & Shum Solicitors	Company Secretarial Assistant/Officer
Sun Hing Holdings Limited	Company Secretarial Officer (Admiralty)

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

Paperless listing – new proposals

Hong Kong Exchanges and Clearing Ltd (HKEX) has proposed ways to further streamline its paperless listing regime, introduced in 2020. In December 2022, HKEX published a consultation on proposals to further simplify its administrative procedures and reduce the use of paper. The key proposals of the Consultation Paper to Expand Paperless Listing Regime and Other Rule Amendments are set out below.

Proposal 1

This proposal would streamline the document submission process and mandate submission by electronic means. The proposal to reduce the number of submission documents will be effected by the means set out below.

- Removal of submission documents that simply reiterate parties' obligations already set out in the Listing Rules or Guidance Materials, overlap with other submission or disclosure requirements or have become unnecessary for other reasons.
- Codification of obligations contained in various undertakings (for example the directors' undertaking (DU) Form), listing agreements and other standalone confirmations or declarations into the Listing Rules, and to remove documents that become duplicative as a result.
- Codification of an issuer's obligations to obtain necessary authorisation and consents for its actions into the Listing Rules and to no longer require submission of the underlying authorisation documents.
- Consolidation of certain requirements into existing forms.

In respect of submission documents that currently require signature or certification under the Listing Rules, HKEX proposes to remove the signature and certification requirements only if they:

- evidence the sponsors' approval of the contents, or
- certify that the submissions are true copies of their originals.

HKEX proposes to mandate electronic-only submission for all documents currently required to be submitted in hard copy form unless otherwise stated in the Listing Rules or required by The Stock Exchange of Hong Kong. In this connection, it will establish a new online platform as a designated channel for two-way communication between the Listing Division and new applicants/listed issuers for this purpose.

HKEX is also exploring with the Companies Registry the feasibility of digitalising the prospectus authorisation and registration processes.

Proposal 2

HKEX proposes to mandate electronic dissemination of corporate communications to securities holders by listed issuers after listing. A listed issuer is required to distribute corporate communications to holders of its securities in paper form unless:

- the holders have been asked for consent, and
- express or deemed consent to electronic communications has been obtained from the holders.

Where a listed issuer makes use of the 'deemed consent mechanism' (publication of corporate communications by means of a website without sending hard copy communications to securities holders), the listed issuer is still required to notify its holders in paper form whenever new corporate communications are published on its website.

HKEX proposes to amend the Listing Rules to:

(a) mandate that listed issuers must disseminate corporate communications to their securities holders electronically to the extent permitted by the laws and regulations that are applicable to them and their constitutional documents, and

(b) enable listed issuers to choose their own consent mechanism for disseminating corporate communications electronically to the extent that the chosen mechanism is permissible under the laws and regulations applicable to them and their constitutional documents.

Proposal 3

HKEX proposes to restructure the Appendices to the Listing Rules. To streamline and enhance online experience of the Listing Rules users, it proposes to restructure the current Appendices to the Listing Rules by:

- moving fee-related Appendices and certain forms to new sections on the HKEX's website while specifying in that new location that they still form part of the Listing Rules
- repealing Appendices that are administrative in nature (for example Headline Categories) and separately displaying their contents on our website outside the Listing Rules section
- deleting the Appendices that have already been repealed or are unnecessary to be set out in the Listing Rules, and
- reorganising the remaining Appendices by theme.

The Institute's view

The Institute has expressed its support for the new proposal. Its submission to the consultation, published in February 2023, supports both the current paperless listing proposals and those made in 2020, on the basis that they will bring convenience to the investment public, enhance transparency of disclosures and access to information, and reduce unnecessary administrative burdens in company administration.

In addition to these benefits, the Institute points out in its submission that expanding Hong Kong's paperless listing regime will help Hong Kong's efforts to 'go green' and to boost its reputation as a technological hub and international financial centre.

The Institute's submission sets out its agreement with all of the proposals, but makes a couple of practical points for the consideration of HKEX.

The consultation proposes, for example, that where a listed issuer does not have functional electronic contact details of a securities holder, an 'actionable corporate communication' should be sent to the holder in hard copy form, including a request for the security holder's electronic contact details to facilitate electronic dissemination of actionable corporate communications in future. Regarding this proposal, the Institute suggests that, as a 'green' initiative, there should be a shared responsibility by shareholders.

'As long as it is permissible, at law, to serve electronic notice, that should be sufficient. We see it more as an issue of education. When there is an actionable corporate communication posted on the listed issuer's website, it could be prominently noted that where shareholders desire to be notified in future, they need to register an electronic address with the listed issuer. They can download a form from the issuer's website and send it back to the listed issuer,' the submission states.

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

New specialist technology company listing rules

On 31 March, Hong Kong Exchanges and Clearing Ltd (HKEX), expanded Hong Kong's listing framework for the listings of 'specialist technology companies'. HKEX defines 'specialist technology companies' as companies primarily engaged in the research and development of, and the commercialisation and/or sales of, products and/or services that apply science and/or technology within an acceptable sector of a 'specialist technology industry'. The list of specialist technology industries and the respective acceptable sectors are set out in a guidance letter that took effect on the same date as the new Listing Rules. HKEX warns, however, that the list is non-exhaustive and will be updated from time to time.

HKEX made some adjustments to the new Listing Rules reflecting market feedback in the consultation process. The minimum market capitalisation requirements, for example, have been lowered. Similarly, the minimum R&D expenditure ratio (calculated as the total amount of an applicant's expenditure on the R&D of its specialist technology product(s) incurred for the relevant period, divided by its total operating expenditure for the same period), has been lowered to 30% for 'pre-commercial companies'. HKEX defines 'pre-commercial companies' as those that have not yet met the commercialisation revenue threshold (at least HK$250 million) at the time of listing.

HKEX has also revised the indicative benchmark for the investment from sophisticated independent investors to provide for more flexibility. HKEX has also revised the types of independent investors that will be taken into account for the requirement of minimum allocation of the shares offered in an IPO.

Further information is available on the HKEX website: www.hkex.com.hk. The new chapter relating to specialist technology companies was added to the Main Board Listing Rules on 31 March 2023 and took immediate effect. The Stock Exchange of Hong Kong welcomes applications to list under the new chapter.

HKEX's latest Enforcement Bulletin

The March 2023 edition of HKEX's Enforcement Bulletin (the Bulletin) is now avialable on the HKEX website. This edition of the Bulletin focuses on good disclosures. 'Accurate and meaningful disclosures are an essential part of providing investors with the information they need, and ensuring a high-quality, fair and orderly market,' the Bulletin points out.

Listing Rule 2.13 sets out the expectations of The Stock Exchange of Hong Kong on the presentation of information. This states that information must be clearly presented and in plain language. The information provided must be accurate, complete in all material respects and not be misleading or deceptive.

The latest edition of the Bulletin, in particular, looks at 'partial truth' disclosures that omit, bury or downplay material facts of an unfavourable nature, or present favourable possibilities as more probable than they really are. Such disclosures might not be necessarily false, but the omission of relevant information means that the disclosure gives a misleading picture to investors. 'Directors should not content themselves with a "partial truth" announcement. If the announcement is misleading as a result of omission of material information, then disciplinary action may follow against those responsible,' the Bulletin warns.

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