



January 2023

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

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About The Hong Kong Chartered Governance Institute

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

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

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

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

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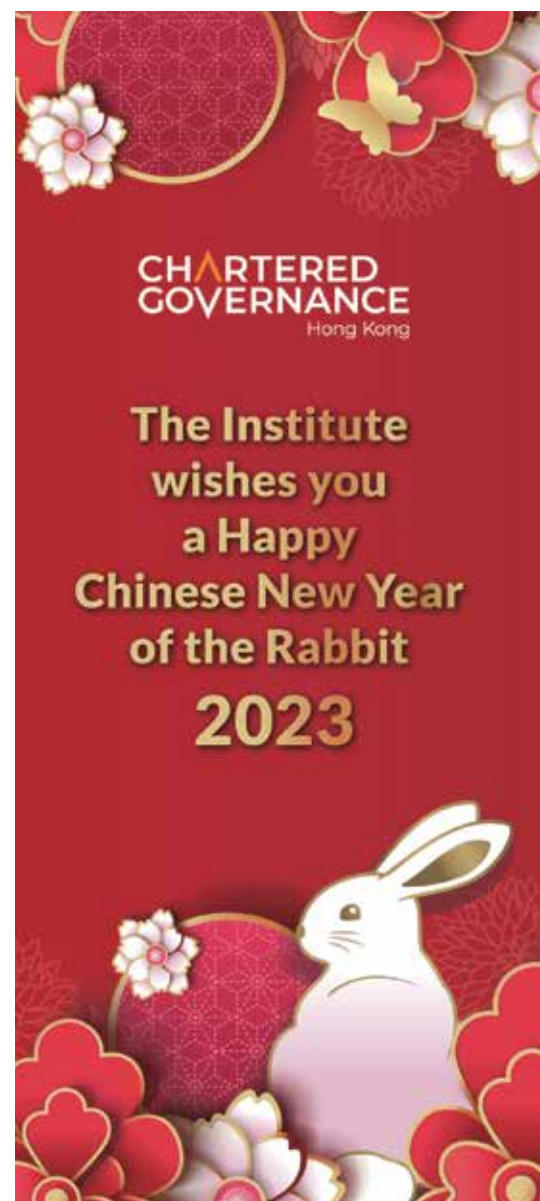
Roderick Lai, Mark Hughes and Katrina Shum of Eversheds Sutherland, examine a recent UK Supreme Court judgment, which confirms the test for when directors owe a duty to consider creditors' interests. This test is likely to apply to directors of Hong Kong companies.

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I would like to thank everyone who participated in our hybrid Annual General Meeting (AGM) on 15 December 2022. It is my great honour to have been elected your President for another term, and I am also delighted to be working with an excellent team of other Honorary Officers and Council members elected/re-elected at the AGM. David Fu FCG HKFCG(PE), who served as Institute President for two terms in 2018 and 2019, and as an ex-officio member of Council for the last three years, retires from Council this month. I would like to take this opportunity to warmly thank him for his contributions.

As the new year gets underway, our journal continues to focus on the work ahead of us as governance professionals. One theme I am sure we will be hearing a lot about in 2023 is the ever-increasing regulatory expectations regarding anti-money laundering and counter-financing of terrorism (AML/CFT). This month's journal reviews our annual forum updating practitioners on all the latest developments in this space. The 3rd AML/CFT Conference, held on 25 November 2022, was the ideal opportunity for our members to stay in touch with evolving trends such as the impact of new regulation and technologies on AML/CFT best practice.

Agenda 2023

Regarding the regulatory trend, only last month Hong Kong passed an amendment to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), launching a licencing regime for virtual asset service providers and a registration regime for dealers in precious metals and stones. The law has also been amended to bring in a broader definition of 'beneficial owner' in the context of trusts and to include politically exposed persons (PEPs) from the Mainland in the definition of PEPs in the AMLO.

In addition to keeping up with Hong Kong's expanding regulatory regime, governance professionals have also had to adapt to the ways in which new technologies have increased the opportunities both for malpractice and the efficiency with which trust and company service providers (TCSPs) can assist in the fight to combat malpractice. Our cover stories this month update us, among other things, on the new tools available to upgrade our AML/CFT due diligence controls.

Since its launch in 2020, our annual AML/CFT forum has grown in popularity, but it is only the latest in a series of Institute initiatives to promote AML/CFT best practice among TCSPs in Hong Kong. As early as 2008, the Institute produced its first checklist to help practitioners upgrade their AML/CFT controls. This was followed in 2016 by a set of voluntary standards for adoption by the TCSP sector and, in that same

year, the launch of our AML/CFT Charter, which continues to provide a badge of quality for HKCGI AML/CFT Organisations.

This aspect of the Institute's work has received a major vote of confidence from the HKSAR Government. Its Money Laundering and Terrorist Financing Risk Assessment Report 2022, submitted to the Financial Action Task Force as part of Hong Kong's mutual evaluation process, highlights the professionalism of the Institute's members in the senior management of TCSPs.

Rest assured, our Institute will continue to maintain the momentum in this and other areas of governance practice, and I am looking forward in my second term as President to taking forward the Institute's work in 2023 and beyond. It only remains for me to wish you all the best for the Year of the Rabbit!

Kung Hei Fat Choy!

Ernest Lee FCG HKFCG(PE)

2023年展望

本人在此衷心感谢参加公会本年度会员大会的所有人，此次大会于2022年12月15日以线上与线下结合的方式举行。本人非常荣幸再次当选公会会长，也很高兴能够与在会员年度大会上当选/连任的其他执事和理事所组成的优秀团队合作。傅溢鸿先生FCG HKFCG(PE)曾在2018年和2019年两度担任公会会长，并在过去三年担任理事会当然成员，他本月从理事会退休。本人在此衷心感谢傅先生对公会的贡献。

新年伊始，本会刊将继续关注我们作为治理专业人士所需处理的相关工作。关于打击洗钱及恐怖分子资金筹集的监管要求持续提升，相信这将在2023年我们将频繁听到的一个主题。本月会刊回顾了公会的年度研讨会，向从业人员介绍了治理领域的最新发展。2022年11月25日，公会举办了第三届打击洗钱及恐怖分子资金筹集研讨会，确保会员们及时了解不断变化的趋势（如新法规和技术对打击洗钱及恐怖分子资金筹集最佳实践的影响）。

在监管趋势方面，香港在上个月才通过了《打击洗钱及恐怖分子资金筹集条例》修正案，推出了虚拟资产服务提供商的许可制度和贵金属和宝石交易商的注册制度。同时也修订法律在

信托方面引入了更广泛的“受益人”的定义，并将因担任公职可能涉及贿赂和腐败风险的内地人士纳入《打击洗钱及恐怖分子资金筹集条例》的政要定义中。

除了要及时了解香港不断扩展的监管体系，治理专业人士还须适应新技术使不当行为增加，同时也使信托及公司服务提供商(TCSP)协助打击不当行为的效率提升这一现状。本月的封面故事为我们提供了最新信息，其中包括可用于提升打击洗钱及恐怖分子资金筹集尽职调查控制的新工具。

自2020年开始举办以来，公会的年度打击洗钱及恐怖分子资金筹集研讨会越来越受欢迎，但这只是公会为在TCSP中推广打击洗钱及恐怖分子资金筹集最佳实践而采取的一系列举措中的最新一项。早在2008年，公会就编制了第一份核对表，以帮助从业人员提升其打击洗钱及恐怖分子资金筹集的控制措施。随后，公会在2016年制定了一套自愿性标准，供TCSP行业采用，并在同年推出了“打击洗钱及恐怖分子资金筹集宪章”，持续颁授“香港公司治理公会打击洗钱及恐怖分子资金筹集组织”资质标识。

公会在此方面的工作赢得了香港特区政府的重要信任票。作为香港相互评估过程的一部分，公会提交给香港金融行动特别工作组的《2022年洗钱和恐怖主义融资风险评估报告》，突显了公会会员在TCSP高级管理方面的专业性。

公会确信将继续保持在此领域和其他治理实践领域的良好势头，本人期待在2023年本人的第二个会长任期内，以及在2023年以后继续推进公会的工作。在此，衷心祝愿大家新年快乐，兔年万事顺意！



李俊豪先生 FCG HKFCG(PE)

AML/CFT: staying ahead of the game

CGj highlights the key takeaways from the Institute’s annual forum updating practitioners on all the latest developments in anti-money laundering and counter-financing of terrorism (AML/CFT).



There have been many significant developments, both local and international, in the AML/CFT sector over the last 12 months.

As you might expect, the regulatory regime relevant to AML/CFT continues to grow in complexity. Here in Hong Kong, the Anti-Money Laundering and Counter-Terrorist Financing Amendment Bill 2022 (AMLO Amendment Bill), passed on 7 December 2022, has brought in a licencing regime for virtual asset service providers (VASPs) and a registration regime for dealers in precious metals and stones (DPMS).

In addition, changes are also coming externally from the Financial Action Task Force (FATF), the international standard setter, and from the United Nations (UN) and governments around the world imposing new sanctions compliance requirements relevant to trust and company service providers (TCSPs).

Meanwhile, technological developments continue to impact the AML/CFT space. The increased use of virtual assets and digital financial technologies, for example, has led to new opportunities for money laundering (ML) and terrorist financing (TF). On the other hand, technology has also been improving the tools available to TCSPs to upgrade their due diligence controls.

In this context, the Institute held its 3rd AML/CFT Conference on 25 November 2022. Under the title AML/CFT Regulations, Topical Issues and Practical Sharing, the conference was another valuable opportunity for practitioners to share expertise and knowledge about fast-moving AML/CFT developments.

Enhancing Hong Kong's legal framework

The Guest of Honour at the conference, Joseph Chan JP, Under Secretary for Financial Services and the Treasury, the HKSAR Government, focused his presentation on the latest government initiatives to keep Hong Kong's AML/CFT defences up to date.

He started by pointing out that the effectiveness of Hong Kong's AML/CFT regime has been recognised by FATF, thereby strengthening Hong Kong's reputation as an international financial centre. The FATF mutual evaluation process, which assesses jurisdictions worldwide, has found Hong Kong's AML/CFT system to be compliant and effective overall, making the HKSAR the first jurisdiction in the Asia Pacific region to achieve such a result.

'Of course, there is no room for complacency,' Mr Chan added. 'Notwithstanding the satisfactory results achieved during the FATF mutual evaluation regular review of our AML/CFT regime, it is very important to safeguard the robustness of our system.'

The government has sought to focus on a number of priority areas highlighted in the latest FATF mutual evaluation review. Accordingly, the

AMLO Amendment Bill has introduced a licencing regime for VASPs and subjects them to a fit and proper test, bringing them into line with other financial sectors.

The Bill requires VASPs to register with the Securities and Futures Commission (SFC). A licence will be granted subject to the satisfaction of a fit and proper test. Licenced VASPs will be required to observe the AML/CFT requirements of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), as well as other regulatory requirements designed to ensure the protection of market integrity and investor interests.

The Bill also introduces a registration regime for DPMS and subjects registrants engaging in cash transactions at or above HK\$120,000 to the AML/CFT obligations stipulated in the AMLO.

'We are not complacent and we will continue to review and upgrade our AML/CFT regime to match the latest developments of the financial markets,' Mr Chan said.

The AMLO Amendment Bill

The first speaker in the Panel One session of the conference,

Highlights

- the regulatory regime relevant to AML/CFT continues to grow in complexity
- proliferation financing is an aspect of AML/CFT that looks set to gain a higher profile in Hong Kong in the coming years
- tech tools, such as digital identification technologies and data analytics, have become an increasingly essential part of TCSP work

“ fortunately, we have seen some banks offering a remote onboarding option for clients unable to come from overseas to Hong Kong to attend the account opening interview



Teresa Lau ACG HKACG, Director and Head of Corporate Secretarial Services, BDO Ltd

Michael Lintern-Smith FCG HKFCG, Roll of Honour, Solicitor and Consultant, Robertsons, went into greater detail about the changes brought in by the AMLO Amendment Bill.

He described the introduction of a licencing regime for VASPs and a registration regime for DPMS as a 'logical progression'. It has been difficult to effectively impose AML/CFT best practice in these sectors, since they are not supervised by a dedicated regulatory body. They also pose potentially significant AML/CFT risks as transactions in these sectors can involve the transfer of illicit funds below the regulatory radar.

While much attention has focused on these new regimes, Mr Lintern-Smith emphasised that many of the 'technical' issues identified in the FATF's Mutual Evaluation on Hong Kong 2019, and now addressed by the AMLO Amendment Bill, will be just as significant. For example, the AMLO Amendment Bill proposes a change to the definition of 'beneficial owner' in the context of trusts. In the past, the definition was limited to an individual who is entitled to a vested interest in more than 25% of the capital. That

definition has been broadened to include trustees and any beneficiary or class of beneficiaries entitled to a vested interest in the trust. This broader definition will place a greater obligation upon lawyers, courts and TCSP practitioners when identifying the beneficial owners of trusts.

The proposed change to the definition of Politically Exposed Person (PEP) in the AMLO Amendment Bill to include PEPs from the Mainland is another significant development. Mr Lintern-Smith, a former President of the Law Society, emphasised that inclusion of PEPs from the Mainland will now be consistent with the Law Society's definition of PEP incorporated in the Practice Direction P (PDP) (solicitors AML/CFT guide) back in 2018. Flexibility will also be given to treatment of former PEPs by allowing the exemption of enhanced due diligence requirements in low risk cases, subject to the risk-based approach.

Mr Lintern-Smith also discussed proliferation financing and the risk of evasion of targeted financial sanctions. The potential AML/CFT implications of these issues look set to gain a higher profile in Hong Kong in the coming

years. Proliferation financing refers to the provision of funds or financial services for activities related to nuclear, chemical or biological weapons. The government's second Hong Kong ML and TF Risk Assessment Report, published in July 2022, tackles this issue for the first time.

Mr Lintern-Smith explained that the Law Society is in the process of enhancing the PDP with new provisions to combat proliferation financing and to align with corresponding requirements contained in Hong Kong's Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap 526) and the United Nations Sanctions Ordinance (Cap 537).

Tech tools for TCSPs

As mentioned in the introduction to this article, technology has been improving the tools available to TCSPs to upgrade their AML/CFT controls. Daniel Wong FCG HKFCG, Associate Director – Compliance and Risk Management, SWCS Corporate Services Group (Hong Kong) Ltd, focused his presentation on the tech tools currently available to assist TCSPs with a wide range of due diligence issues.

Since the advent of the Covid-19 pandemic, TCSPs have had to rely increasingly on remote customer onboarding processes. Mr Wong highlighted the various digital identification technologies, in particular biometrics and facial recognition, that are now commonly in use to assist with customer identification.

He added that TCSPs should bear in mind that customer due diligence (CDD) is an ongoing process and technology can help greatly to ensure that, once you

have completed the onboarding, you can continue to keep up as data relating to the client goes on changing.

He highlighted the uses of data analytics and distributed ledger (blockchain) technology to assist with transaction monitoring. Data analytics helps with the analysis of large quantities of data collected from various sources to identify links and patterns relevant to AML/CFT risks. The use of distributed ledger technology is relevant to the authentication of customer identities and transaction tracing.

‘Good features like automatic alerts can give TCSPs more confidence to take on clients because they will be able to maintain an ongoing monitoring of the risks involved,’ Mr Wong said.

Mr Wong also discussed the use of artificial intelligence (AI) to help with the risk profiling of customers and generating alerts where high risk or suspicious transactions are identified. AI is increasingly used in crime pattern analysis and crime trend prediction. It can also be useful to alert TCSPs to transactions involving non-FATF jurisdictions or geographical areas identified by FATF as high risk.

Finally, he looked at the uses of encryption technologies – such as Transparent Database Encryption (TDE) or Secure Sockets Layer (SSL) – to ensure safe record-keeping for AML/CFT data.

Identifying red flags

The third speaker in Panel One, Samuel Lung, Partner, Financial Services Business Consulting, Greater China Financial Crime Compliance Leader, Ernst & Young, focused his presentation on three

overseas cases to help TCSPs identify red flags in their CDD processes.

He started by pointing out that red flags can take many different forms and TCSPs need to remain vigilant to the specific circumstances of the cases they handle. ‘There is never a hard and fast rule or an absolute formula for you to avoid ML/TF or sanctions activities. Practitioners should take a common sense approach to CDD,’ he said.

1. Complex corporate structures

The first case cited by Mr Lung involved the use of seven international business companies incorporated in Anguilla by a foreign national using a TCSP. The companies were used to open bank accounts in Anguilla that facilitated the laundering of funds derived from an investment wire fraud scheme.

While complex corporate structures are not illegal, TCSPs should be vigilant where such structures disguise the identity of the ultimate beneficiaries, Mr Lung said. Effective know your customer (KYC) and CDD policies and procedures are all the more essential in such cases to avoid the TCSP’s services being used for the purposes of ML or TF.

2. Trust the evidence

The second case cited by Mr Lung involved eight trusts that were clients of a TCSP in Ireland. In most cases, the beneficiaries of the trust were described as ‘family members of the settlor’ and there was no record of CDD on file for them. The beneficiaries of one of the trusts were listed as ‘various charities’. When Ireland’s Anti-Money Laundering Compliance Unit (AMLCU) followed up on this, it was found that the beneficiaries were actually family

members and business friends and associates of the settlor.

Mr Lung pointed out that this case presented clear red flags of malpractice. ‘TCSPs must have a very good understanding of their customers, their businesses and, most importantly, the risks associated with them. No matter how plausible they look to you, the most important thing is the evidence,’ he said.

One crucial piece of evidence when dealing with trusts is whether the individuals connected with the trust are mentioned in court or regulatory judgments. In this case, a settlor of one of the trusts had been referred to in a case before the UK High Court in 2013. This individual had not been referenced, however, in any of the CDD documentation provided to the AMLCU.

Good CDD should always involve the ‘name screening’ of clients, Mr Lung added. This process will help alert TCSPs where clients have potentially been involved in malpractice, or whether they have previously been prohibited from holding a directorship role in a company or from operating a trust.

3. Sanctions violations

The third case related to another case investigated by the AMLCU. A TCSP incorporated in Ireland was found to have been used to evade EU and US sanctions by a subsidiary of a large Russian oil company. Mr Lung pointed out that this case demonstrates another good reason for effective KYC and CDD – to avoid getting involved in sanctions violations. He urged TCSPs in Hong Kong to ask more questions where a client is engaged in an activity that may be subject to sanctions.

“ There is never a hard and fast rule or an absolute formula for you to avoid ML/TF or sanctions activities. Practitioners should take a common sense approach to CDD.”

”

Samuel Lung, Partner, Financial Services Business Consulting, Greater China Financial Crime Compliance Leader, Ernst & Young

‘Hong Kong is an international financial centre and TCSPs may have all sorts of customers. It is not uncommon to see companies incorporated offshore seeking TCSP services. You need to look closely at whether your clients are involved in activities sanctioned or prohibited by other jurisdictions,’ he said.

Practical issues

In keeping with the remit for the Institute’s ECPD programme, the conference had a practical focus. The Panel One Q&A session was an opportunity for the panellists to share their practical advice about the issues TCSPs have been facing in the year since the last conference.

The Panel One Chair, Edmond Chiu FCG HKFCG(PE), Institute Council member, and Head of Corporate & Fund Services, Vistra Corporate Services (HK) Ltd, launched the Q&A with a question about whether TCSPs were still encountering difficulties when trying to open bank accounts for clients.

This issue was discussed extensively in the 2021 conference. The progressive tightening of international standards in combating ML and TF had led

banks to impose stricter screening criteria for new bank account opening applications. As a result, TCSPs were finding it difficult to open bank accounts for their clients.

Panellist Teresa Lau ACG HKACG, Director and Head of Corporate Secretarial Services, BDO Ltd, said that this situation has improved somewhat, although banks are still under substantial pressure to maintain strict controls on bank account opening procedures.

‘Banks are now adopting a risk-based approach,’ she said. This has favoured relatively straightforward cases deemed as low risk by the bank, but the travel restrictions brought in because of the Covid-19 pandemic have complicated matters.

‘Fortunately, we have seen some banks offering a remote onboarding option for clients unable to come from overseas to Hong Kong to attend the account opening interview,’ said Ms Lau. ‘I have had cases where the client has been able to open a bank account after attending an online video conference with the bank. So we have seen improvements and we hope this will continue.’

Panellist Alberta Sie FCG HKFCG(PE), Director and Company Secretary, Reanda EFA Secretarial Ltd, also discussed this increased reliance on remote client onboarding. She pointed out that, due to the Covid-19 risks, clients are sometimes reluctant to come to the service provider’s office even when they are in Hong Kong.

Moreover, while technology has provided an alternative to face-to-face onboarding, Ms Sie pointed out that practitioners have had to become a lot more tech savvy as this technology, as well as the other tech tools highlighted in Daniel Wong’s presentation, have become an increasingly essential part of TCSP work.

‘In addition to client onboarding, we have also had to upgrade our databases. I think it has been quite challenging for ordinary practitioners to learn how to handle the new technologies. TCSP licensees have also had to invest more in these technologies and in providing sufficient training for staff. I would like to see the universities, as well as our Institute, provide more training to help us with this.’

The Q&A also addressed questions relating to the conflicts that can arise between the sales and the compliance side of TCSPs. The panellists agreed that there is now better awareness, both within TCSPs and among clients, of why CDD controls are necessary.

‘In the past, clients wouldn’t always understand why the controls were necessary,’ said Ms Sie. ‘But now they have to face the same requests and requirements from all of the other professional firms (including the CPA and law firms) and the banks. So nowadays, clients are more cooperative.’ [CGI](#)



ESG Reporting Certification Course 2023 (ESG Certification Course)

Overview

The Institute is a recognised thought leader in governance reporting. Obtaining the Institute's ESG Reporting Certification means you stand apart from your peers by having comprehensive ESG reporting understanding and competencies.

Attend the Institute's 'ESG Reporting Certification Course' to gain knowledge from ESG experts including accounting and reporting professionals.

7 sessions, two hours each, with recorded sessions available for each participant after the live seminar. Multiple-choice tests after each session with unlimited attempts within a stipulated deadline.

A Certificate that Matters

Attendees of the 'ESG Certification Course' who successfully passed a final assessment consisting of multiple-choice questions will be accredited for two years, and will also be:

- Permitted to 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

There will be a maximum of two intakes per year and a refresher course every two years for extended accreditation. The 'ESG Certification Course' counts toward ECPD hours for Institute members.

Topics covered

In line with Listing Rules requirements, the 'ESG Certification Course' will cover:

- Introduction to HKEX's ESG Reporting Guide
- Directors' duties in ESG & climate reporting
- Governance structure for ESG and climate-related disclosures
- Setting strategy, materiality assessment, and identifying risks and opportunities
- Setting metrics and targets
- ESG and climate-related disclosures
- Data collection, report drafting, timeline
- Workshops – ESG materiality assessment, SDGs mapping, sector specific KPIs and alignment with international standards

Entry Requirements

Members, graduates and students of the Institute are welcome to enrol. Other interested individuals should hold a bachelor's degree awarded by a recognised university

Please contact the Institute's Professional Development Section at 2881 6177 or email: cpd@hkcgi.org.hk. For details, please visit the Institute's website: www.hkcgi.org.hk.

Register Now



AML/CFT: current and future trends

The Institute's 3rd AML/CFT Conference updated practitioners on the trends to watch in AML/CFT compliance.



The Institute's 3rd AML/CFT Conference, held on 25 November 2022, provided expertise and practical sharing on the impact of current and future trends on trust and company service providers (TCSPs) in Hong Kong. This second part of our review of the conference highlights the key trends discussed in the forum.

Rising expectations

The first speaker in the Panel Two session of the conference, Amanda Diep, Director, Regional Head of Compliance, North Asia, Vistra, looked at the global AML/CFT trends impacting Hong Kong.

'Global developments give a good indication to TCSP practitioners in Hong Kong of the driving forces behind the current regulatory and stakeholder expectations,' she said.

A good example of this, she pointed out, is the way that investigative journalism has shone a spotlight on the role played by TCSPs in offshore financial abuses. The Panama Papers in 2016, followed by the Paradise Papers in 2017 and more recently the Pandora Papers in 2021, have led to mounting pressure on TCSPs to enhance their integrity, transparency and effectiveness with regards to addressing money laundering (ML) and terrorist financing (TF).

Ms Diep updated participants on the global trend for tougher requirements to support international efforts to combat the misuse of legal vehicles for ML and TF. These requirements have focused on the need for competent authorities to access information on the ultimate

beneficial owners of the companies and trusts set up by TCSPs.

In Hong Kong, this has led to the current regulatory and supervisory regime for TCSPs. In short, TCSPs are included within the ambit of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), and are subject to a licensing regime overseen by the Companies Registry and are required to keep significant controllers registers.

Ms Diep pointed out, however, that the rising expectations on TCSPs will not stop there. The pressure to improve transparency and the need to seek clarifications from clients, and, where necessary, report suspicious activity to competent authorities, will continue to shape Hong Kong's evolving AML/CFT regime.

'We will need to be even more astute in terms of identifying and reporting suspicious activity,' she said. 'There's also going to be greater scrutiny when practitioners are asked to be nominee shareholders or directors. Simply offering a signature for sale would not meet the standards going forward

because you really should know the client's business activities.'

Going forward, the TCSP industry can also expect more aggressive enforcement actions and the assumption of greater criminal liability by practitioners, Ms Diep added. New EU regulation already focuses on the role of 'professional enablers' in ML/TF activities.

Moreover, all of the above will inevitably increase the cost of managing ML and TF risks for TCSPs. As a result, Ms Diep expects to see the same trend towards 'de-risking' that has been seen in the financial industry since the AMLO was first enacted in 2012.

Sanctions risks

The two other speakers in the Panel Two session of the conference addressed the very timely topic of sanctions risks. The invasion of Ukraine by the Russian Federation in February 2022, and the subsequent sanctions imposed by various jurisdictions on Russian individuals and entities, has given an extra relevance and importance to this aspect of AML/CFT compliance.

Highlights

- the TCSP industry can expect tougher compliance requirements and more aggressive enforcement actions in the years ahead
- TCSP practitioners stand to gain, however, from the tougher AML/CFT regime as compliance is increasingly seen as just as important as profit-making
- practitioners need to take every opportunity they have for experience sharing and professional training to stay up to date with the changing rules and regulations and market developments



“
 global developments give a good
 indication to TCSP practitioners
 in Hong Kong of the driving forces
 behind the current regulatory and
 stakeholder expectations
 ”

Amanda Diep, Director, Regional Head of Compliance,
 North Asia, Vistra

Can TCSPs serve Russian clients?

The second speaker in the Panel Two session of the conference, Michael Shue, Managing Director – Trust Services, Tricor Services Ltd, pointed out that there are currently no United Nations (UN) sanctions against Russian individuals and entities. This is because the Russian Federation is one of the five permanent members of the UN Security Council and therefore has the power to veto any motion put forward to impose sanctions.

Moreover, there is no legal obligation for TCSPs and financial institutions in Hong Kong to observe the unilateral sanctions that have been imposed on Russian individuals and entities by individual jurisdictions such as the US, UK, EU and Australia. This was confirmed when the super yacht owned by the Russian oligarch, Alexei

Mordashov, sailed into Hong Kong waters in October 2022. Mr Mordashov is subject to sanctions imposed by a number of jurisdictions, but, because there are no UN sanctions against him, the Hong Kong government declined to take any action.

While it would therefore be legally possible for TCSPs to serve Russian clients, there are many factors that drastically restrict their ability to do so. Mr Shue pointed out that the client’s assets, for example, would need to be outside Russia or any of the countries imposing the current sanctions. So while the provision of services may be relatively safe within Hong Kong and the Mainland, TCSPs would not be able to offer wide-ranging services.

Moreover, it will be difficult to open a bank account for a Russian

individual or entity since the major international banks have offices around the world and are subject to the existing sanctions. HSBC has announced, for example, that it will not retain or accept Russian clients unless they are nationals of the EU or an EU member state.

Furthermore, the British Virgin Islands (BVI) recognises the sanctions imposed by the UK, and the Cayman Islands recognises those imposed by the UK government and the EU. This will further restrict the ability of TCSPs to provide services to Russians since these are the most commonly used jurisdictions for offshore corporate and trust structures.

Sanctions risk assessments

The third speaker in Panel Two, Ivan So, Manager, Risk Advisory

Services, BDO Ltd, gave further details relating to the sanctions risk assessments TCSPs should consider making in view of the current sanctions imposed on Russian individuals and entities, and the enhanced due diligence (EDD) measures that may be necessary in view of the higher ML, TF and proliferation financing risks.

He pointed out that the Financial Action Task Force (FATF) has already warned jurisdictions around the world to be vigilant about the higher risks to international financial systems since the invasion of Ukraine by the Russian Federation. It has also taken action to limit Russia's role within FATF. Russia is now barred from holding any leadership or advisory roles within FATF and cannot take part in decision-making on standard settings, the peer review process, governance and membership matters. Russia is also barred from providing assessors, reviewers or other experts for FATF peer-review processes.

Mr So pointed out that these developments have significant implications both for Hong Kong and for TCSPs based here. He warned that Hong Kong's international standing might suffer if it becomes a haven for individuals and entities seeking to evade sanctions. He also urged TCSPs to be extra vigilant about new and existing clients connected to Russia.

'If the source of funds, the country of incorporation, the major business activities, the beneficial owner or the trading activities are connected

to Russia, the customer risk should be assessed as high,' he said. In such cases, he added, TCSPs should apply EDD measures.

TCSPs should also impose a stricter ongoing monitoring process for such clients, he suggested. This should involve more frequent screenings to identify any unusual transactions and remittances connected to Russia. TCSPs should also consider more frequent news tracking and onsite visits in order to understand more about the business background and operations of the client.

Advice for practitioners

The Institute's CPD events have a remit to not only provide insights on the issues under discussion, but also to offer practical advice that practitioners can use in their work. The Q&A of the Panel Two session focused on providing such advice to practitioners working in the TCSP sector in view of the trends discussed above.

Adapting to rising expectations

The Panel Two Chair, Wendy Ho FCG HKFCG(PE), Institute Council member, and Executive Director, Corporate Services, Tricor Services Ltd, asked the panellists for their advice to practitioners in terms of how they can adapt to the tougher AML/CFT compliance requirements and the tougher enforcement of those requirements that we have seen in recent years.

Panellist Jenny Choi FCG HKFCG(PE), Partner, Ernst & Young Company Secretarial Services Ltd, said that TCSPs need to recognise that the

Companies Registry (CR) takes its role as the regulator and supervisor of TCSP licensees very seriously.

'The CR has been closely monitoring TCSP licensees,' Ms Choi said. TCSPs have to renew their licence every three years and are required to provide updated information about their AML/CFT policies, customer due diligence (CDD) procedures and record-keeping arrangements.

CR staff sometimes also visit TCSP offices to conduct an inspection. The CR is empowered to make inquiries regarding particular business transactions and can make copies of relevant documents. These inspections often involve very detailed enquiries about the licensee's AML system and CDD procedures – they may want to know for example, the percentage of clients that the TCSP has been able to meet in person.

'The CR once requested some of our directors to visit them to confirm their identity and to confirm that they are being fit and proper persons as required by the AMLO,' Ms Choi said.

The panellists agreed, however, that there is a positive side to the tougher requirements and enforcement TCSPs are subject to. Ms Diep pointed out, for example, that over time this would result in the TCSP industry becoming more uniform globally.

'Not all countries are regulating TCSPs in the same way and this has meant that criminals can pick and choose which jurisdictions and which service providers they go to. Hopefully, as standards become more

“
in the past, business always
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now it's the other way around –
compliance needs to come
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reputational risks for companies
”

Michael Shue, Managing Director – Trust Services,
Tricor Services Ltd



uniform, this will no longer be the case,' Ms Diep said.

Mr Shue added that another benefit of the rising expectations has been that the value of 'compliance' is being more widely recognised within TCSPs.

'In the past, business always came first and compliance was seen as a back office matter, tucked away and not a priority. I think now it's the other way around – compliance needs to come first because of the potential reputational risks for companies,' he said.

Staying up to date

The main message of the Panel Two Q&A discussion was that experience sharing and training should continue to be a crucial part of TCSPs' professional development.

Panellist Dr Maurice Ngai FCG HKFCG(PE), Institute Past President and Director and Group CEO, SWCS Corporate Services Group (Hong Kong) Ltd, pointed out that there are still many areas of AML/CFT compliance that can be confusing for practitioners.

The issue of how far TCSPs need to observe country-based sanctions, for example, is still uncertain. This issue was discussed extensively in the conference, but the answer is clearly not as simple as sticking to the legal requirement to observe only the UN sanctions.

Similarly, the definition of politically exposed persons (PEPs) is still subject to some doubt. In particular, the question of how long individuals remain a PEP has no definitive answer. Do they cease to be PEPs once they step down from the office that earned

them that status? This is clearly a crucial issue for TCSPs in determining whether such individuals should still be subject to EDD measures.

In the context of the evolving nature of the laws and regulations relevant to AML/CFT, Mr Ngai advised practitioners to take every opportunity they have for experience sharing and professional training.

Ms Ho concluded the panel session by urging practitioners to 'stay tuned' to the Institute's ECPD programme. She reminded participants that the Institute is going to launch a new AML/CFT certificate course to help practitioners cope with the changes discussed at the conference. 'So stay tuned with us to stay up to date with the changing rules and regulations and market developments,' she said. [CGI](#)

Director training – a focus on INEDs

Session Two – Tackling Current Governance and Regulatory Issues

Date 17 February 2023

Time 4.00pm – 6.00pm

Directors cannot be expected to be an expert in all matters but they need to have a thorough understanding of the issues being discussed at board meetings. Whilst entitled to information from management, they must not solely rely on what is volunteered by the management. They are expected to perform due diligence, exercise independent judgment and where further information or support is required, seek help from company secretaries.

In Session Two of the Director Training series, senior regulators, an experienced INED and former regulator, an in-house lawyer and a practitioner will advise you on how to tackle the most common regulatory and governance issues.

(In order of appearance)

<p>Opening Address (10 mins)</p>		<p>Mr David Simmonds FCG HKFCG <i>Vice President and Chairman, Membership Committee, HKCGI; Chief Strategy, Sustainability & Governance Officer, CLP Holdings Ltd</i></p>
<p>Keynote Address Regulatory issues and policy trends (20 mins)</p>		<p>Ms Christine Kan <i>Managing Director, Head of Listed Issuer Regulation, Listing Division, HKEX</i></p>
<p>A Chairman's perspective - Traversing slippery slopes near you (15 mins)</p>		<p>Mr David Gordon Eldon GBS CBE JP <i>Deputy Chairman, The Hongkong and Shanghai Banking Corporation Ltd</i></p>
<p>Relevant Listing Rules (15 mins)</p>		<p>Mr Joe Fan <i>Vice President, Listed Issuer Regulation, Listing Division, HKEX</i></p>
<p>Panel Discussion and Q & A (60 mins) Moderator Panellists</p>	     	<p>Mr David Simmonds FCG HKFCG Ms Christine Kan Mr David Gordon Eldon GBS CBE JP Mr Frank Yuen FCG HKFCG <i>Group General Counsel and Head of Compliance, CK Hutchison Holdings Ltd</i> Mr John MM Williamson FHKSI <i>Independent Non-Executive Director, London Metal Exchange and Pacific Basin Shipping Limited; Chairman, UK Tote Group</i> Ms Melissa Fung <i>Risk Advisory Southern Region Lead Partner, Deloitte China</i></p>

CPD Accreditation:

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

For enquiries, please contact the Institute's Professional Development Section: 2881 6177, or email: cpd@hkcg.org.hk. For registration, please visit www.hkcg.org.hk/professional-development/forthcoming-ecpd-seminar.

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



Director training – a focus on INEDs

WHY?

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

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

FORMAT – Hybrid

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

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

CPD ACCREDITATION

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

ENQUIRIES

Please contact the Institute's Professional Development Section: 2881 6177, or email: cpd@hkcg.org.hk.
For details, please visit the Institute's website: www.hkcg.org.hk.

Session One

You will learn:

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

Speakers:

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

(In alphabetical order)



Session Two

You will learn:

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

Speakers:

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

(In alphabetical order)

Session Three

You will learn:

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

Speakers:

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

(In alphabetical order)

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

Embracing innovation, regulation and the future of finance





Julia Leung SBS JP, Chief Executive Officer, Securities and Futures Commission (SFC), gives an update on the SFC's views on the metaverse, non-fungible tokens, Web 3.0 and the future of finance.

Japan's Metabo Law (so called because the law combats 'metabolic syndrome', that is, pre-diabetes) was introduced by the Japanese government in 2008 with the aim of reducing the waistlines of the middle-aged population. Citizens aged 40 to 74 are required to have their waistlines measured every year, and those whose waistlines exceed a certain threshold have to attend mandatory counselling sessions and their employers are fined.

The Metabo Law was not without controversy when it was first introduced. Many in Japan and elsewhere saw this as a private matter and considered the law to be paternalistic, if not downright intrusive. But that misses a wider point – the law aimed to reduce the rates of diabetes and cardiovascular diseases, and in turn ease the burden on the country's public healthcare system. Today, Japan enjoys the lowest level of obesity and the highest life expectancy among developed countries.

You may ask – what does this have to do with my theme today? The crypto community has long believed that regulation inhibits innovation, limiting fintech development and thus investor choice. But this belief was shaken by the collapse of Luna and Terra in May, followed by the bankruptcy of Three Arrows and suspended withdrawals by crypto lending platforms. Just like obesity, the excesses of certain crypto firms threaten not just their own well-being, but also that of investors and the entire crypto ecosystem. The market capitalisation of crypto assets has now shrunk to about US\$1 trillion, from a peak of US\$3 trillion a year ago.

Up to now, many jurisdictions have adopted a light-touch approach to regulating crypto-asset service providers. But the crypto winter has strengthened the resolve of global financial regulators to regulate crypto-asset service providers. In a statement issued in July, the Financial Stability Board (FSB) said 'the recent

Highlights

- the SFC is supportive of innovative technologies and welcomes the growth of the fintech community in Hong Kong
- the SFC has in place a regulatory framework for a range of virtual asset activities, including a newly introduced regime for authorising virtual asset futures exchange-traded funds for public offering in Hong Kong
- robust regulation is good for the sustainable development of the crypto ecosystem as it helps build trust

turmoil in crypto-asset markets highlights their intrinsic volatility, structural vulnerabilities and increasing interconnectedness with the traditional financial system... An effective regulatory framework must ensure that crypto-asset activities posing risks similar to traditional financial activities are subject to the same regulatory outcomes, while taking account of the novel features of crypto assets and harnessing their benefits.'

When innovation meets regulation

The SFC was an early adopter of the approach the FSB is now advocating. Compared to those jurisdictions that regulate crypto-asset service providers from an anti-money laundering (AML) perspective, our approach to virtual asset trading platforms since 2018 has been a comprehensive one, providing for investor protection and market integrity, in addition to AML. It is based on the principle of 'same business, same risks, same rules'. Centralised virtual asset exchanges operate in ways similar to stock exchanges and broker-dealers, and those we license under our securities regulatory regime are subject to similar standards that we have adapted to address the specific risks posed by virtual assets.

We also regulate the provision of virtual asset-related services by intermediaries. Licensed fund managers who manage virtual asset funds are subject to detailed requirements comparable to the Fund Manager Code of Conduct, but again we have incorporated additional measures to address virtual asset risks.

Our January Joint Circular with the Hong Kong Monetary Authority (Joint Circular on Intermediaries' Virtual Asset-Related Activities, published on 28 January 2022) gave the green light to securities brokers and banks to offer their clients dealing services in virtual assets, provided that they partner with an SFC-licensed exchange and comply with other regulatory requirements. We also clarified the requirements that apply to the distribution of virtual asset-related products.

At a time when the global regulatory landscape is uncertain, our regulatory framework has provided clarity and consistency. It seeks to capture all the dimensions of the public's interface with virtual assets so that investors are protected and also to address the prudential risks to financial institutions. To date, we have already granted approvals to eight virtual asset fund managers and one virtual asset exchange, with another one approved in principle, as well as to two brokers to trade virtual assets for their clients under omnibus account arrangements.

Let me be clear – by adopting this approach, we are supportive of the underlying innovative technology, distributed ledger technology (DLT); we also welcome the growth of the fintech community in Hong Kong. Non-fungible tokens (NFTs), the metaverse and Web 3.0 are beginning to reshape our lives. In particular, NFTs are now accepted as a new way to authenticate ownership and facilitate the transfer of artwork, music, videos and photographs. Meanwhile, GameFi, which typically refers to blockchain games that incentivise players with



tokens, is another area that is growing exponentially. All this innovation has spawned new economic activities in art, culture, gaming and more. This is clearly something Hong Kong should support.

There are many useful applications of DLT in global finance and many financial institutions are now exploring how to tokenise financial assets, or develop their own tokens on private blockchains, in order to drive efficiency, provide transparency and resolve some decades-old frictions in clearing, settlement and payments. In the decentralised finance (DeFi) space, we see traditional financial products being replicated, but many of these activities are largely outside any regulatory system. IOSCO's recent report on DeFi (IOSCO Decentralized Finance Report, published in March 2022) puts the total value of related transactions



“ Investor confidence... is undermined by the spillover of the excessive risks taken on by a few firms. Bringing crypto-asset service providers into the regulatory fold is the only pathway to embrace innovation. ”

at more than US\$250 billion, up from US\$19 billion a year before.

The crypto winter shows that tapping these opportunities is far from straightforward, and in fact they are fraught with risks, with a lot of harm to investors. Investor confidence in this space is undermined by the spillover of the excessive risks taken on by a few firms. Bringing crypto-asset service providers into the regulatory fold is the only pathway to embrace innovation.

Guardrails for retail access to virtual asset products

Let me address the elephant in the room – the ‘professional investor only’ requirement for crypto-asset customers. These include clients of SFC-licensed trading platforms, securities token offerings and virtual asset funds.

When the SFC first introduced its regulatory framework for virtual assets in 2018, the crypto market was still relatively new. Given the novelty of our framework and the high volatility of crypto assets, we believed it was prudent to impose an overarching ‘professional investor’ restriction, at least at the initial stage, even though there are robust guardrails designed for investor protection.

Four years have now passed. While crypto assets remain volatile, their global market capitalisation has increased exponentially. From our own product survey, we note that investors bought HK\$10 billion in virtual asset funds via overseas platforms in 2021, up from HK\$8 million a year earlier. Investors now have a better understanding of the risks of trading these assets.

In these four years, the crypto-asset ecosystem has also made substantial advances. More global financial institutions and service providers such as traditional custodians are entering this space and building institutional-grade infrastructure. Their entry has driven the growth of the digital ecosystem, making it more sophisticated in providing services that are comparable to mainstream finance. We have also gained experience in regulating virtual asset trading platforms and fund managers.

Given these developments, it is now an opportune time to review the ‘professional investor only’ requirement. In fact, our Joint Circular issued earlier this year already allowed the retail distribution of a limited suite of virtual asset-related derivative products traded on conventional exchanges.

“
 [our approach to virtual assets] is based on the principle of ‘same business, same risks, same rules’
 ”



Guidance on virtual asset futures exchange-traded funds

The SFC has been actively looking to set up a regime to authorise exchange-traded funds ETFs that provide exposure to mainstream virtual assets with appropriate investor guardrails.

We have come to believe that some initial concerns about virtual asset futures ETFs have become manageable and can be addressed with proper safeguards. Apart from the existing requirements for ETFs, virtual asset futures ETFs will also be subject to additional requirements related to their management company, investment strategy, disclosure and investor education.

At the initial stage, we expect the underlying assets to be confined to Bitcoin futures and Ether futures traded on the Chicago Mercantile Exchange.

More information is available in our latest circular on the authorisation of virtual asset futures ETFs for public offering in Hong Kong (Circular on Virtual Asset Futures Exchange Traded Funds, published in October 2022).

Guidance on security token offerings

The SFC sees potential benefits in the use of DLT in security issuance and trading, which may bring efficiency, transparency and lower costs to traditional finance. In 2019, we issued a high-level statement to clarify how our regulatory requirements apply to parties engaging in security token offerings (STOs), including offerings only to professional investors.

The landscape has evolved considerably since then. STOs are gaining traction among traditional financial institutions. And many of them are keen to tokenize traditional

financial instruments like debt securities or investment fund units. We are prepared to adjust our regulatory response and allow retail access if proper safeguards are put in place.

Our preliminary view is that tokenised securities, as digital representations of traditional securities on a blockchain, should be treated in a similar way to existing financial instruments. In substance, they have similar terms, features and risks as traditional securities, so it does not seem appropriate to classify them as ‘complex products’ merely because they are issued or traded on a blockchain.

Under this approach, a tokenised plain-vanilla bond would be classified as a ‘non-complex product’, and therefore the firms distributing it would be subject only to the existing requirements for the distribution of

conventional securities, consistent with our 'same business, same risk, same rules' approach.

However, the position may be different when a token's features are more novel and complicated, and it does not have the legal wrapper of a financial instrument. Examples are fractionalised asset-backed tokens or tokens representing an income stream from projects. Depending on their terms and features, they will probably be classified as a 'complex product' and the licensed firms distributing them would need to ensure suitability and provide minimum information and warning statements. They will also be subject to the overarching 'professional investor only' restriction.

As an additional measure for all security tokens, we expect licensed firms to perform reasonable due diligence and conduct smart contract audits before the tokens are distributed to clients. Consequently, we will also revisit the requirements for listing security tokens on licensed virtual asset exchanges and see if any modifications should be made.

With these proposals in mind, we are working on a circular to set out the modified security token regime in detail and will publish it when ready.

Hong Kong's new VASP regime

My last update relates to Hong Kong's new virtual asset service provider (VASP) regime. The Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill, passed by the Legislative Council on 7 December 2022, makes it mandatory for centralised virtual asset exchanges

offering services in Hong Kong to be licensed by the SFC. The SFC will consult the public on the more detailed requirements.

During the Bills Committee stage, a lot of feedback was received from LegCo members and the public on whether access to SFC-licensed VASP should be restricted to professional investors only, even though this is not hardwired into the Bill. Those arguing for the professional investor requirement said any relaxation would 'legitimise' crypto assets. Those in favour of retail access to SFC-licensed platforms claimed that denying access would push retail investors to trade on online virtual asset trading platforms located overseas that are subject to little or no regulation. In fact, some are downright frauds.

In light of the feedback, the SFC is minded to consult the public on whether the professional investor only requirement could be relaxed, and if so, what should be the governance procedures and listing criteria for the VASP to admit tokens for secondary market trading by retail investors. The SFC's fintech unit is now intensively soft consulting the industry and stakeholders on this and other issues before finalising the proposals.

Future of finance

In closing, I would like to say we could be on the cusp of the future of finance, if we get it right. And that's a big if.

In this future vision, the underlying technology is so potent that traditional finance as we know it today could be reshaped. More efficient clearing and settlement of transactions would be enabled by DLT.

Investors would be offered a whole suite of financial products leveraging DLT and smart contracts. But whether that vision could be realised depends on a lot of things. First and foremost of them is trust.

As we all know, traditional finance is built on trust. It is founded on a well-balanced regulatory system that revolves around intermediaries, brokers, fund managers and the like, and is also focused on investor protection and orderly, fair and transparent markets. But the selling point of the DeFi ecosystem is its 'peer-to-peer' nature, which aims at disintermediating Tradfi institutions by a series of smart contracts and digital protocols. Some DeFi operators are intentionally elusive to minimise liability, regulatory scrutiny or both.

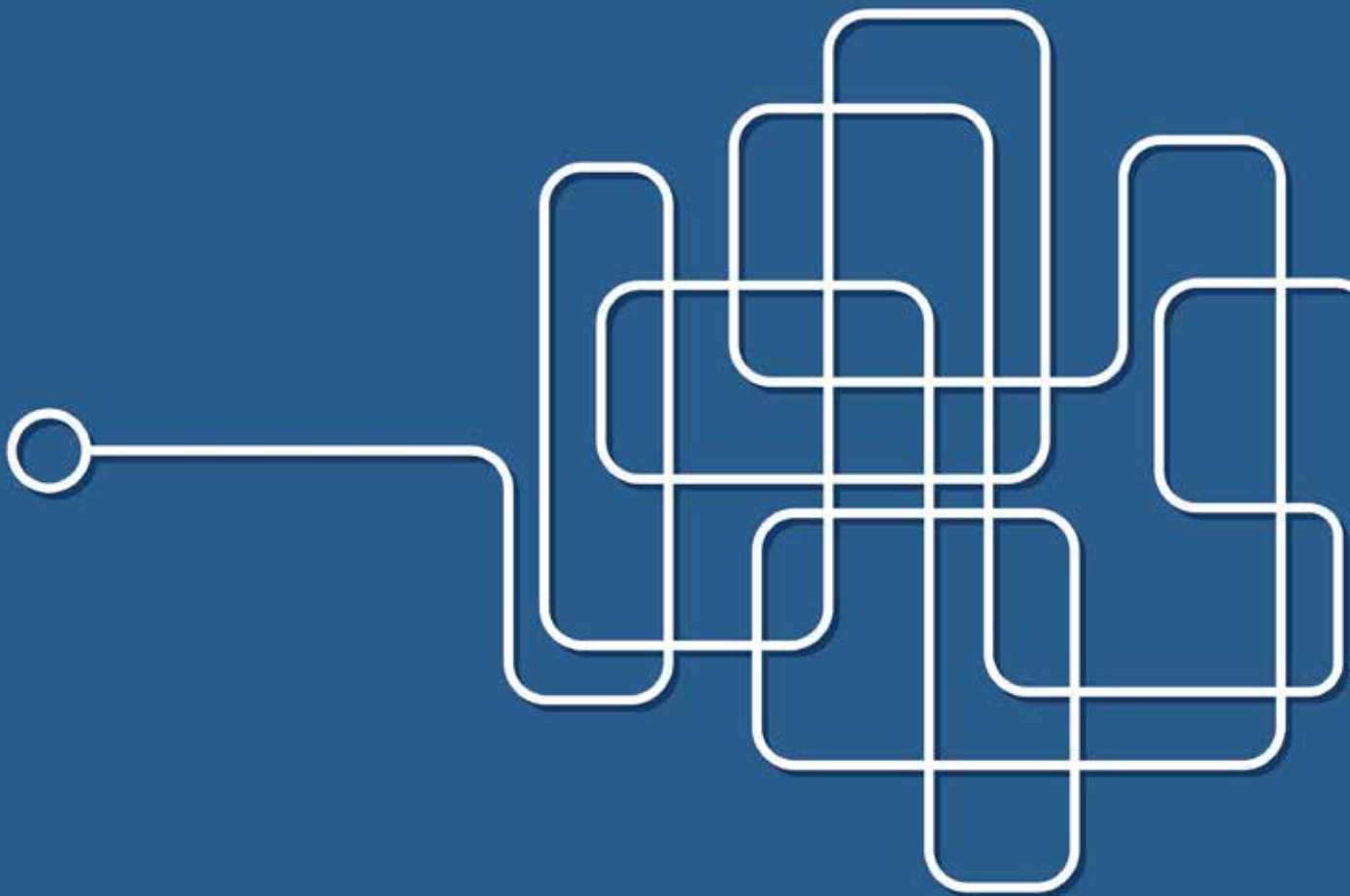
Following the lead of the FSB, regulators worldwide will be relentless in pursuing a regulatory solution to DeFi and other parts of the crypto ecosystem to protect investors and market integrity. Just like the Metabo Law, robust regulation is good for your health, it is good for the sustainable development of the crypto ecosystem and it helps build trust among the public and counterparties in Tradfi. So, my final message for you is to embrace innovation and regulation as the pathway to the future of finance.

Julia Leung SBS JP, Chief Executive Officer

Securities and Futures Commission

This article is based on Ms Leung's keynote address delivered on 31 October 2022 at the Hong Kong FinTech Week 2022.

A short guide to civil litigation procedure in Hong Kong



In the first of this two-part article, Evelyn Chan, Partner, and Adriel Wong, Associate of Gall, provide a general overview of Hong Kong's civil litigation process.

When a dispute over rights and obligations between two parties arises, the parties may

commence civil litigation. At the end of the litigation, the court will determine whether and to what extent a party's rights have been infringed, and the appropriate remedies or compensation that the party is entitled to. Commencing civil litigation may not be as straightforward as one would think though, and the road from commencement to judgment can be lengthy and complex. This two-part article provides a short guide to the civil litigation procedure in Hong Kong so that prospective litigants may be more informed before commencing litigation.

1. Which are the various courts in Hong Kong that preside over civil disputes?

It will depend upon the nature of the claim, as well as its value. There are a number of tribunals in Hong Kong, including:

- the Small Claims Tribunal, which handles civil claims up to HK\$75,000 for contract, quasi-contract and tort claims

- the Labour Tribunal, which has jurisdiction over claims arising under the Employment Ordinance
- the Lands Tribunal, which has jurisdiction over various claims relating to land and building management, and
- the Market Misconduct Tribunal, which deals with matters relating to market misconduct (for example, insider dealing, false trading and price rigging).

The Civil courts in Hong Kong consist of:

- The District Court.
- The High Court (the Court of First Instance and the Court of Appeal).
- The Court of Final Appeal.

The District Court

The District Court has limited jurisdiction over civil matters (as well as criminal matters). The types of civil claims that it hears are set out below:

Highlights

- the road from commencement to judgment can be long and complicated
- where an action involves an element of fraud or concealment, the calculation of the time limit within which a claim must be made starts from when the plaintiff discovers the fraud, concealment or mistake
- if a party unreasonably refuses to attempt mediation, the court may make an adverse costs order against that party

- contract, quasi-contract and/or tort claims with a value in excess of HK\$75,000, but not more than HK\$3 million
- claims for possession of land or premises, where the annual rateable value does not exceed HK\$320,000
- recovery of less than 12 months of rental arrears only (known as 'distress')
- claims in equity (for example, specific performance, dissolution of a partnership and relief against fraud or mistakes). Where proceedings do not relate to land, the maximum value involved shall not exceed HK\$3 million. Where proceedings do relate to land, the maximum value involved shall not exceed HK\$7 million (and if the proceedings relate to the recovery of land or title to land, the rateable value of the land must not exceed HK\$320,000), and
- matrimonial cases, including divorce, maintenance, custody, and the adoption of children.

The High Court

The High Court comprises of two divisions – the Court of First Instance and the Court of Appeal.

The Court of First Instance has unlimited jurisdiction over all civil claims. It is the only court in Hong Kong where cases are tried by a judge with a jury. Common types of civil proceedings in the Court of First Instance include:

- monetary claims for HK\$3 million or above
- all other claims falling outside the District Court's jurisdiction
- claims that are exclusively commenced in the Court of First Instance, including judicial review, company winding-up and bankruptcy, and
- appeals from the Labour Tribunal and the Small Claims Tribunal (on a point of law).

The Court of Appeal hears civil (and criminal) appeals from the District Court and the Court of First Instance, as well as appeals from certain statutory bodies such as the Lands Tribunal.

The Court of Final Appeal

The Court of Final Appeal is the highest and final appellate court in Hong Kong. It hears appeals at the discretion of the Court of Appeal or the Court of Final Appeal in any civil matter. Leave to appeal is required. The appeal is determined and heard by the Chief Justice, three permanent Hong Kong judge or one judge from another common law jurisdiction.

2. Are there any deadlines for bringing a claim?

Limitation periods stipulated under the Limitation Ordinance (Cap 347) apply. The actual limitation period depends upon the nature of the claim.

- For contract claims (other than under seal): six years from the date of breach of contract.

- For contract under seal claims: 12 years from the date of breach of contract.

- For personal injury claims: generally three years from the date of the accident or the date of knowledge of the injury by the plaintiff, whichever is the later. If the injury occurred in the course of an employee's employment and an application should be made under the Employee's Compensation Ordinance (Cap 282), the time limit shall be two years from the date of the accident.

- For fatal accident claims: three years from the date of death or the date of knowledge of the death by the deceased's dependent, whichever is the later. If the fatal accident occurred in the course of an employee's employment and an application should be made under the Employee's Compensation Ordinance, the time limit shall be two years from the date of death, or prior to the determination made by the Commissioner for Labour as to the payable compensation in respect of the death.

- For actions to recover possession of land: 12 years from the date on which the right of action accrued to the plaintiff or to a person through whom the plaintiff claims. The right of action is deemed to have accrued on the date the plaintiff is dispossessed of his land or has his possession discontinued.

- For other tort claims: six years from the date of the tort.

“ commencing civil litigation may not be as straightforward as one would think ”

Under exceptional circumstances, the above limitation periods may be extended. For instance, time does not begin to run for a disabled claimant until he or she ceases to be under a disability or has died. Similarly, where the action involves an element of fraud or concealment, time does not begin to run until the plaintiff has discovered the fraud, concealment or mistake, as the case may be.

3. How are civil court claims commenced?

There are four prescribed modes to commence proceedings: (1) writ of summons, (2) originating summons, (3) originating motion, and (4) petition. Originating motions are appropriate for certain types of action such as appeals, whereas petitions are for applications for the winding-up of a company, a bankruptcy order, the questioning of an election or certain matrimonial-related issues. The vast majority of actions are commenced by way of writ of summons or originating summons.

Originating summons are used when there is little to no dispute of facts, but rather the focus is on issues of law. Conversely, a writ of summons is more commonly used when there is a substantial dispute of facts.

Where the action is commenced by a writ, a Statement of Claim, setting out the details of the plaintiff's claim and remedy, can be served together with the writ or alternatively at a later date (after the defendant acknowledges service of the writ and disputes the claim). If the plaintiff decides to file and serve the Statement of Claim at a later date, the writ must be endorsed with an Endorsement of Claim. It is important to note that the Statement of Claim, like all pleadings, must be verified with a statement of truth, which may be filed at a later date but as soon as possible.

4. What are the next steps after the issuance of the writ or the originating summons?

Once the writ/originating summons has been issued, it must be served on the defendant within 12 months, unless a time extension has been obtained from the court. The writ of summons should be accompanied by three copies of the acknowledgment of service form. Service on a Hong Kong defendant who is an individual may be effected by personal service, by registered mail or by insertion into the defendant's letter box. If the defendant is outside Hong Kong, the plaintiff must obtain the permission of the court before serving the writ of summons.

After the writ (either with or without an accompanying Statement of Claim) or originating summons has been served, the defendant has 14 days (or 28 days if the defendant is outside Hong Kong) (inclusive of the day of service of the writ/originating summons) to file an acknowledgment of service indicating whether he/she intends to defend the claim.

If the writ is served with the Endorsement of Claim, the plaintiff must file and serve the Statement of Claim within 14 days after the date on which the defendant files the acknowledgment of service form indicating an intention to defend the action.

If the writ is served with the Statement of Claim, and the defendant files an acknowledgment of service indicating that he/she intends to contest the claim, then within 28 days following the expiry of the time limit for the defendant to file an acknowledgment of service, the defendant must file and serve on the plaintiff his or her defence to the plaintiff's claim (and a counterclaim, if any).

If the Statement of Claim is served following the filing of the acknowledgement of service, then within 28 days after the date on which the Statement of Claim is served on the defendant, the defendant must file and serve his/her defence on the plaintiff (and his/her counterclaim, if any).

After the defence is served, the plaintiff may file a reply to the defence within 28 days. If the defendant files a counterclaim, and the plaintiff wishes to dispute it, the plaintiff should file a defence to the counterclaim within 28 days after the counterclaim is served.

In the event that (i) the defendant fails to file the acknowledgement of service within the prescribed time period, (ii) the defendant fails to file a defence within the prescribed time period, or (iii) the plaintiff fails to file a defence to the counterclaim within the prescribed time period, the



other party can apply to the court for judgment in default. If the undefended claim is related to a debt or liquidated damages where the amount of the claim is fixed and ascertainable, the claiming party may enter final judgment for the amount claimed together with his/her legal costs. Where the claim is for unliquidated damages, an interlocutory judgment will be entered and the plaintiff will still need to have the court assess the amount of damages.

5. Is it possible to obtain early judgment in any other way?

If the defendant’s defence is not credible (and the matter is relatively straightforward), the plaintiff can apply for summary judgment. The defendant may contest an application for summary judgment. If it is successfully contested, the matter will proceed to trial. However, if the application for summary judgment is successful, the applicant will be awarded judgment in the matter.

6. What happens if there is no early judgment?

After the filing and service of the defence or the reply or defence to counterclaim, the pleadings are

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parties are encouraged to engage in alternative dispute resolution, such as mediation
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deemed to be closed within 28 days. A case management hearing will take place so that the court can give appropriate directions to the parties to prepare for trial. At the hearing, the parties will be directed to file and exchange the lists of relevant documents in their possession, or disclose and exchange witness statements as to facts within a specified period of time. Parties must provide to each other a list of documents describing the documents in their possession, custody or control. Documents that are considered to be privileged (such as legal advice privilege or litigation privilege) should still be listed under the category of privileged documents, although inspection may be refused. The necessity for any experts’ reports will be considered, with directions for them to be filed and exchanged within a specified period of time if applicable. Witness statements may also be filed and exchanged. Once all the directions of the court are complied with, the case may be ready for trial.

7. Is it possible to settle the matter before trial?

Parties are encouraged to engage in alternative dispute resolution,

such as mediation. Mediation is a voluntary process. However, if a party unreasonably refuses to attempt mediation, the court may make an adverse costs order against that party. Even if settlement is not reached during a mediation, parties can still agree to settle at any time up to the conclusion of the trial.

If parties are facing a commercial dispute, such dispute can be resolved through arbitration. However, both parties must agree to resolve the dispute by arbitration and an arbitration clause should have been included in the commercial contract.

8. What is mediation?

Mediation is a voluntary dispute resolution process conducted by a mediator. The mediator is usually legally qualified, and he/she assists and encourages the parties to reach a settlement. He/she cannot compel a settlement, rather the parties retain control of the process and the decisions. The mediation is informal, and the process is confidential. A mediation typically lasts for a half day or a full day, depending upon the complexity of the matter.

9. What is arbitration?

Arbitration is a consensual dispute resolution process conducted by an arbitrator usually appointed by the parties or by the arbitral venue itself. Unlike mediation, arbitral awards are final and can be enforced under the New York Convention.

Evelyn Chan, Partner, and Adriel Wong, Associate

Gall

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When do Hong Kong directors owe a duty to consider creditors' interests?

Roderick Lai, Mark Hughes and Katrina Shum of Eversheds Sutherland, examine a recent UK Supreme Court judgment, which confirms the test for when directors owe a duty to consider creditors' interests. This test is likely to apply to directors of Hong Kong companies.



On 5 October 2022, the UK Supreme Court handed down its long-awaited judgment in *BTI 2014 LLC v Sequana SA and others* [2022] UKSC 25 (*BTI v Sequana*), which confirmed that a director's fiduciary duty to act in the interests of the company in good faith may be modified to require the director to consider or act in the interests of the company's creditors (creditor duty) when the director knows, or ought to know, that an insolvent liquidation or administration of the company is probable.

This is a key decision providing much welcome clarity in respect of directors' duties under English law. Directors of Hong Kong companies, in particular if at any time those companies are facing financial difficulties, should take careful note because it is highly likely that the Hong Kong courts would follow the English decision.

The factual background in *BTI v Sequana*

The facts of *BTI v Sequana* concerned certain dividends paid to Sequana S.A. (Sequana) by its subsidiary at a time when the subsidiary was solvent, but was facing a real risk that it might become insolvent at an uncertain but not imminent date in the future. Almost 10 years after the dividend was distributed, the subsidiary went into insolvent administration.

A claim was brought against Sequana (and others) that the dividends ought not to have been paid to it. The argument was that the payment of the dividends left insufficient funds in the subsidiary to satisfy a contingent liability arising from an indemnity for clean-up costs

in respect of pollution, thereby prejudicing the interests of a creditor, the beneficiary of the indemnity.

Supreme Court confirms existence of creditor duty

The Supreme Court considered whether there is a point in time at which a creditor duty arises and, if so, when. In doing so, the Supreme Court noted that section 172(1) of the UK's Companies Act 2006 (CA 2006) sets out the director's general duty to promote the success of the company for the benefit of its members. This duty is expressly subject to the following qualification contained in section 172(3): 'The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.'

In light of this specific qualification, as well as a long line of case law supporting the existence of a creditor duty, the Supreme Court held that the general duty to act in the interests of the company set out in section 172(1)

of CA 2006 can be modified such that the company's interests are extended to encompass the interests of the general body of creditors, as well as the general body of shareholders.

The duty, as modified, therefore requires the directors to consider the interests of creditors along with those of members. The weight to be given to creditors' interests, insofar as they may conflict with those of the members, will increase as the company's financial problems become increasingly serious. Where insolvent liquidation or administration is inevitable, the interests of the members cease to bear any weight, and the rule consequently requires the company's interests to be treated as equivalent to the interests of its creditors as a whole.

When does the creditor duty arise?

As to the question of when the creditor duty arises, the Supreme Court was, unsurprisingly, unanimous in confirming that the creditor duty arises when the company is insolvent. However, as to when the creditor duty may be triggered before a company

Highlights

- the UK Supreme Court held that a director's fiduciary duty to act in the interests of the company can be extended to encompass the interests of the general body of creditors
- directors therefore need to consider and balance the interests of the company's creditors when an insolvent liquidation of the company is probable but not inevitable, and when they know, or ought to know, that an insolvent liquidation is inevitable, the creditors' interests will take precedence over shareholders' interests
- shareholders cannot ratify acts of directors committed in breach of the creditor duty



becomes insolvent, different opinions were expressed by the members of the Supreme Court.

The majority held that the creditor duty is engaged in the following circumstances:

- when a company is insolvent, bordering on insolvency, or where an insolvent liquidation is probable but not inevitable, directors should be careful to consider and balance the interests of creditors as a whole against the shareholders’ interests, and
- when the directors know, or ought to know, that an insolvent liquidation is inevitable, creditors’ interests will take precedence over shareholders’ interests.

The rationale is that the creditors become the main stakeholders in the company when (but only when) it goes into insolvent liquidation. It is that prospective entitlement that entitles the creditors to have their interests considered. Therefore, for the purpose of triggering the creditor duty, it is not enough to simply show that there is a real risk of insolvency, as even that is too remote to infer that a company will go into insolvent liquidation.

**Does the creditor duty apply to Hong Kong directors?
Lack of codification of fiduciary duties under the Hong Kong Companies Ordinance**

As noted above, in handing down the ruling in *BTI v Sequana*, the Supreme Court recognised that the director’s fiduciary duty to promote the success of the company for the benefit of its

members has been codified in the UK’s CA 2006.

In contrast, only a director’s duties of care, skill and diligence have been codified under the Hong Kong Companies Ordinance. Directors’ other duties remain fiduciary duties as defined in common law, including the duties to act in good faith in the interests of the company, exercise powers for their proper purpose, and avoid conflicts of duty and interest. There is therefore no express provision in Hong Kong statute requiring directors to take into account the interests of creditors in the exercise of their fiduciary (or statutory) duties.

Creditor duty in Hong Kong common law

Notwithstanding the lack of an express legislative carve-in requiring directors to consider or act in the interests of

creditors of a Hong Kong company, the creditor duty identified in *BTI v Sequana* is in fact a modification of an equivalent fiduciary duty long established in Hong Kong. Lord Reed, in his judgment in *BTI v Sequana*, made express reference to a Hong Kong Court of Final Appeal (CFA) case, *Moulin Global Eyecare Holdings Ltd v Lee Sin Mei* [2014] HKCFA 63 (*Moulin Global*), which confirmed the existence of a duty to consider creditor interests in Hong Kong.

The proceedings in *Moulin Global* concerned the acts of a former director of Moulin Global Eyecare Holdings Ltd (*Moulin*), who had caused certain losses of the company through distribution of dividends and payment for early redemption of convertible notes at a time when the company was insolvent, and payment for a share repurchase out of capital. Almost six years after the director ceased to be a director of *Moulin*, *Moulin* sought to recover payments from the director in an Amended Statement of Claim.

The director sought to strike out the Amended Statement of Claim, and one of the issues that the CFA had to resolve in the context of that application was whether a company would have any remedy against a director acting in breach of their fiduciary duty for sums paid away to one creditor at the expense of the other creditors, at a time when the company was already insolvent. The position in the lower courts (that is the Court of Appeal) was that when the company became insolvent, its directors owed a duty to have regard to the interests of creditors – and the CFA accepted that a case framed consistently with this proposition would be reasonably arguable.

Against this backdrop, the decision in *BTI v Sequana* is significant and remains likely to be treated by the Hong Kong courts as highly persuasive towards establishing under Hong Kong law that (i) a creditor duty exists in common law, and (ii) assuming such a duty exists, the creditor duty will arise prior to insolvency itself.

What does this mean for directors and company secretaries of Hong Kong companies?

While we are yet to see further judicial guidance on what exactly would constitute taking creditors' interests into account, directors and company secretaries of Hong Kong businesses (and in particular, potentially distressed businesses) are advised to maintain good corporate governance. This is particularly important, as even shareholders' ratification of a director's decision will not alleviate her/his liability once the creditor duty is engaged. In normal circumstances, the shareholders of a company can by acting unanimously waive or ratify a breach of duty by the directors. However, as pointed out by Lord Briggs's judgment in *BTI v Sequana*, a recognised qualification to this principle is that a transaction must not jeopardise the company's solvency or cause loss to its creditors, and shareholders cannot ratify acts of directors committed in breach of the creditor duty.

In light of the potentially significant consequences for directors in breach of the creditor duty, we recommend directors and company secretaries to:

- carefully consider the rationale and consequences of material

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a Hong Kong Court of Final Appeal case... confirmed the existence of a duty to consider creditor interests in Hong Kong

”

transactions (for example decisions relating to the lawful distribution of dividends, and mergers and acquisitions transactions), and ensure that the decision-making process for all material decisions is properly recorded and documented, and

- consider engaging professional advice when the company faces financial difficulty, which may help the company avoid an insolvency situation, but failing that, since there is statutory relief for directors who have acted honestly and reasonably in the circumstances, evidence of reliance upon independent advice could be an important mitigant for the director in the event of subsequent litigation.

Roderick Lai, Partner, Corporate M&A; Mark Hughes, Partner, Litigation & Dispute Management; Katrina Shum, Legal Manager, Corporate M&A

Eversheds Sutherland

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Professional Development

Seminars: November 2022

3 November Cryptocurrency 101: a practical guide to cryptocurrency investigations for governance professionals



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

Speaker: Henry Chambers, Senior Director, Alvarez & Marsal Disputes and Investigations Asia

14 November How should organisations respond to whistleblowing incidents?



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

Speakers: William Tam ACG HKACG, Partner, Deloitte China; and Bryan Ng, Partner, Baker & McKenzie

15 November New disclosure requirements for Hong Kong and offshore companies owning UK properties: overview and practical sharing



Chair: Edmond Chiu FCG HKFCG(PE), Institute Council member, Professional Services Panel Chairman, Membership Committee Vice-Chairman, AML/CFT Work Group member and Mainland China Focus Group member, and Head of Corporate & Fund Services, Vistra Corporate Services (HK) Ltd

Speakers: Leon Mao, Head of Advisory and Managing Director, and Keri Wong, Associate Director, Corporate Services, Vistra North Asia

17 November Economic substance requirements in Hong Kong: proposed refinements to the foreign source income exemption regime for passive income

Chair: Jerry Tong FCG HKFCG, Institute Assessment Review Panel member, and Financial Controller and Company Secretary, Sing Lee Software (Group) Ltd

Speakers: Ada Ma, Partner, Business Tax Services, and Ka Yan Pau, Director, Business Tax Services, Ernst & Young

29 November Board evaluations – practical implementation of regulatory concerns



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

Speakers: Neil Waters, Senior Partner, Egon Zehnder; Michael Ling FCG HKFCG, Deputy Company Secretary, CLP Holdings Ltd; and Arthur Leung, Consultant, Egon Zehnder

30 November Cross border data transfers – practical sharing and risk mitigation



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

Speakers: Helina Lo, Managing Director, Head of Risk, Data Protection and Compliance, Sia Partners; Shirley Liang, Head of Strategic Business Planning and Digital Transformation of LCS (Legal, Compliance and Secretariat), DBS Bank; Allen Ting, Faculty Member, International Association of Privacy Professionals, United States (IAPP), and Senior Legal Counsel, Legal Affairs Department, Huawei; and Brian Lin, Senior Manager, and Fion Lam, Senior Consultant, Sia Partners

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
16 January 2023	6.45pm–8.15pm	Annual general meeting of Hong Kong private companies	1.5
17 January 2023	2.00pm–3.30pm	The transformative power of diversity: regulatory discussions and practical sharing	1.5
18 January 2023	11.30am–12.30pm	ESG reporting – regulatory guidance on avoiding common mistakes & achieving better reporting	1
17 February 2023	4.00pm–6.00pm	Director training – a focus on INEDs (session two: tackling current governance and regulatory issues)	2

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Lo Yuen Ting	Poon Yi Yan	Wong Ka Wing	Yung Tin Yan
Lok Tin Pui	Pun Chun Sing	Wong Kwun Ling	Yung Yim Hing, Yuly
Loo Wai, Joyce	Shi Yi Jing	Wong Lui Sheung	Zhang Lin
Lu Chanyuan	Shum Chui Man	Wong Mung King	

New graduates

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

Chen Sina
Cheung Gigi Yee Ming
Cheung Ming Yeung
Lam Ming Yi
Lee Wai Yan
Leung Kai Ning
Leung Tsz Ying
Lo Wai Sum
So Hiu Lam
Tam Ho Yee, Queenie
Tang Lik Ping, Hera
Tse Cheuk Pan
Wong Cheuk Yi
Wong Kan Nam
Yao Sum Yuet
Yau Ching Yi
Yim Ruphina Wing Tung

Forthcoming membership activities

Date	Time	Event
4 February 2023	10.30am–1.00pm	Dip pen calligraphy and agate key chain workshop (session A)
4 February 2023	2.00pm–4.30pm	Dip pen calligraphy and agate key chain workshop (session B)
25 February 2023	1.00pm–2.30pm	Moving-sand art workshop
25 February 2023	3.00pm–5.00pm	Mosaic candleholder workshop
11 March 2023	2.00pm–6.00pm	Elementary first aid course

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

Membership activities: November 2022

9 and 16 November
Paint pouring workshop



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Advocacy

Hybrid Annual General Meeting

The Institute held its hybrid Annual General Meeting (AGM) on Thursday 15 December 2022.

At the Council meeting following the AGM, the Honorary Officers for 2023 were elected (see box), with Mr Ernest CH Lee FCG HKFCG(PE) being re-elected as President for the second term. Mr Lee is currently a Technical Partner of Deloitte China.

Mr David YH Fu FCG HKFCG(PE) retired from Council on 1 January 2023 after serving as an ex-officio member for three years. The Institute would like to thank Mr Fu for his contributions.

The Hong Kong Chartered Governance Institute Council for 2023

Honorary Officers:

Mr Ernest CH Lee FCG HKFCG(PE)	President
Mr David J Simmonds FCG HKFCG	Vice-President
Mr Paul A Stafford FCG HKFCG	Vice-President
Dr Gao Wei FCG HKFCG(PE)	Vice-President
Mr Daniel WS Chow FCG HKFCG(PE)	Treasurer (re-elected to Council)

Council Members:

Professor Alan KM Au FCG HKFCG
 Mr Tom SL Chau FCG HKFCG
 Mr Edmond MK Chiu FCG HKFCG(PE) (re-elected to Council)
 Mr Robin B Healy FCG HKFCG (newly elected to Council)
 Ms Wendy WT Ho FCG HKFCG(PE) (re-elected to Council)
 Mr CK Low FCG HKFCG
 Mr Kenny Luo (Luo Nan) FCG HKFCG(PE)
 Mrs Natalia KM Seng FCG HKFCG
 Mr Bill WM Wang FCG HKFCG
 Mr Xie Bing FCG HKFCG

Ex-officio:

Ms Gillian E Meller FCG HKFCG(PE) Past President

Honorary Adviser:

Ms Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE) Past International President & Past President



In addition, the poll results in respect of the resolutions proposed at the AGM held on 15 December 2022 were as follows:

Ordinary Resolutions	Number of Votes (%)	
	For	Against
1. To receive and adopt the Council's Report for the year ended 30 June 2022	145 (100%)	0 (0%)
2. To receive and adopt the Independent Auditor's Report and Audited Consolidated Financial Statements for the year ended 30 June 2022	144 (100%)	0 (0%)
3. To reappoint BDO Ltd as Auditor of the Institute and authorise the Council to fix the Auditor's remuneration	143 (99.31%)	1 (0.69%)
4. To elect Council members (see note iv)	N/A	N/A

Notes:

- i. As the required majority of the votes of members who attended and voted, either in person or by proxy, at the hybrid AGM was obtained, resolutions 1 to 3 were passed as Ordinary Resolutions.
- ii. The percentages of votes on the resolutions were rounded to two decimal places.
- iii. The scrutineer for the poll at the AGM was Tricor Investor Services Ltd.
- iv. The election of Council members was conducted by a postal ballot in accordance with the Articles of Association of the Institute, and the ballot results were published on the Institute's website on 8 December 2022.



Advocacy (continued)

The Hong Kong Financial Forum and the 12th Golden Bauhinia Awards Ceremony

On 20 December 2022, the 12th Golden Bauhinia Awards Ceremony was held at the Hong Kong Convention Centre. The Institute was one of the coorganisers, along with the Hong Kong Ta Kung Wen Wei Media Group Ltd. Ernest Lee FCG HKFCG(PE), Institute President, and Technical Partner, Deloitte China, gave a speech on behalf of the Institute. Ellie Pang FCG HKFCG (PE), Institute Chief Executive, and the following Institute members, also attended as representatives of the Institute (in alphabetical order of surname).

- **Mike Chan FCG HKFCG**, Institute Professional Development Committee member, and Fraud Control Officer & General Manager, Head of Operational Risk Management, CMB Wing Lung Bank Ltd
- **Daniel Chow FCG HKFCG(PE)**, Institute Treasurer, Education Committee member, Professional Development Committee member and Investment Strategy Task Force member, and Senior

Managing Director, Corporate Finance & Restructuring, FTI Consulting (Hong Kong) Ltd

- **David Fu FCG HKFCG(PE)**, Institute Past President and Company Secretaries Panel member, and Group Company Secretary, Hong Kong Exchanges and Clearing Ltd
- **Dr Maurice Ngai FCG HKFCG(PE)**, Institute Past President, Professional Services Panel member, Mainland China Affairs Committee member, Mainland China Focus Group member and Nomination Committee member, and Director and Group CEO, SWCS Corporate Services Group (Hong Kong) Ltd
- **Ivan Tam FCG HKFCG**, Institute Past President, Mainland China Affairs Committee member, Mainland China Focus Group member and Nomination Committee member, and Deputy Managing Director, Chevalier Group
- **May Tsue FCG HKFCG**, Institute Professional Development

Committee member and Company Secretaries Panel member, and Joint Company Secretary/ Company Secretary, CNOOC Ltd/ CNOOC Insurance Ltd

- **Bill Wang FCG HKFCG**, Institute Council member and Professional Development Committee Chairman, Membership Committee Vice-Chairman, Technical Consultation Panel member, TCP – Securities Law and Regulation Interest Group member and Mainland China Focus Group member, and former senior legal and governance executive at ICBC Asia and Standard Chartered Group
- **May Yip ACG HKACG**, Institute Education Committee member and Rebranding Working Group member, and Company Secretarial Officer, CK Hutchison Holdings Ltd, and
- **Matthew Young FCG HKFCG(PE)**, Institute Education Committee member and Assessment Review Panel member, and Head of Corporate Secretarial Department, The Hong Kong Jockey Club.



New listing regime for specialist technology companies

On 5 December 2022, the Institute held a webinar titled New Listing Regime for Specialist Technology Companies. The Institute would like to thank Paul Malam, Senior Vice President of the Listing Division, HKEX; Teresa Ko JP BBS FCG HKFCG, Senior Partner, Hong Kong and China Chairman, Freshfields Bruckhaus Deringer, Co-Vice Chair,



IFRS Foundation; and Edmond Chan, Partner, Hong Kong Capital Market Leader, Capital Market Services Group, PricewaterhouseCoopers, for a



brilliant presentation on the new listing regime. Institute Chief Executive Ellie Pang FCG HKFCG(PE) moderated the panel discussion.

Secretariat holiday celebrations

The Secretariat team in Hong Kong enjoyed a heartwarming holiday season celebration on 20 December 2022, during which lunch was held at the JW Marriott Hotel Hong Kong.

As a caring organisation, the Institute presented each of the Secretariat staff members in Hong Kong and Beijing with a gift to celebrate the end of the year, and in recognition of their dedication, diligence and hard work throughout 2022.



Advocacy (continued)

Advanced regulatory seminars for Chinese companies listed overseas and the 67th Governance Professionals ECPD seminars (online)

The Institute held its advanced regulatory seminars for Chinese companies listed overseas and the 67th Governance Professionals ECPD seminars (online) from 14 to 16 December 2022, under the theme of Financial Monitoring and Risk Management. The virtual seminars attracted over 100 attendees, mainly comprising board secretaries, directors, supervisors, CFOs and other governance-related practitioners from companies listed or to-be-listed in Hong Kong and/or the Mainland.

Institute Chief Executive Ellie Pang FCG HKFCG(PE) delivered the welcome speech and expressed gratitude to the regulatory bodies, namely Hong Kong's Securities and Futures Commission (SFC), Hong Kong Exchanges and Clearing Limited (HKEX) and the Independent Commission Against Corruption (ICAC), event partners, speakers and all attendees for their valued support of the Institute during the pandemic. At this event, speakers from above three regulatory bodies and other senior professionals and practitioners shared their insights on the following topics:

- governance and regulatory focus in the capital market of Hong Kong:
 - SFC's supervision of the acquisitions and mergers of companies listed in Hong Kong
 - SFC's supervisory role on listing matters
- regulatory focus for companies listed in Hong Kong:
 - HKEX's consultation paper on a listing regime for Specialist Technology Companies
 - main review results of financial statements in 2021
 - HKEX's enforcement powers
- update on the latest requirements and amendments of compliance regulations for companies seeking to list in Hong Kong
- the latest ESG reporting information disclosure requirements and practices:
 - HKEX's latest amendments to the ESG Reporting Guide and practices
 - high-level governance and risk management – how to ensure the alignment of the carbon neutral strategy with business development
 - Goldwind's ESG practices and the role of governance professionals
- governance responsibilities for company secretaries and directors
- governance preparation and planning for Mainland companies seeking to list in Hong Kong
- internal control and risk management:
 - financial decision-making and risk control under the new normal
 - due diligence and transaction control of M&A and restructuring
- case study: overseas global operational practices of Yankuang Energy Group Co Ltd, and
- experience sharing: practices of directors of listed companies.

Chartered Governance Qualifying Programme (CGQP)

June 2023 examination diet timetable

The June 2023 examination diet of the CGQP is open for enrolment from 1 February to 27 March 2023. All examination enrolments must be made online via the Login area of the Institute's website.

Week one

Time	5 June Monday	6 June Tuesday	7 June Wednesday	8 June Thursday
9.15am–12.30pm*	Hong Kong Taxation	Hong Kong Company Law	Interpreting Financial and Accounting Information	Corporate Secretaryship and Compliance

Week two

Time	12 June Monday	13 June Tuesday	14 June Wednesday	15 June Thursday
9.15am–12.30pm*	Corporate Governance	Risk Management	Strategic Management	Boardroom Dynamics

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

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

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

Learning support

CGQP examination technique workshops

The examination technique workshops for the CGQP June 2023 examinations will be held online between late March and late April 2023, and the workshops are set in two parts. In part one, students will attend a two-hour online workshop and receive one take-home mock examination paper. In part two, students who have attended and submitted their answers to the mock examination paper will receive feedback and further guidance. The enrolment period is from 1 February to 27 March 2023.

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

HKU SPACE CGQP Examination Preparatory Programme – spring 2023 intake

HKU SPACE has been endorsed by the Institute to organise the CGQP Examination Preparatory Programme, which helps students to prepare for the CGQP examinations. One assignment and one take-home mock examination will be provided to students. There are 36 contact hours for each module, except for Hong Kong Company Law, which has 45 contact hours. The spring 2023 intake will commence on 16 February 2023.

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

Chartered Governance Qualifying Programme (CGQP) (continued)

Key dates for the November 2022 examination diet

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

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

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

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

Studentship activities: December 2022

8 December

Governance Professionals Information Session (Cantonese session)



Forthcoming studentship activities

Date	Time	Event
18 January 2023	1.00pm–2.00pm	Student Gathering (1st session): getting started with the CGQP examinations – from planning to success
15 March 2023	1.00pm–2.00pm	Student Gathering (2nd session): sharing from outstanding students in the CGQP examinations
25 March 2023	10.00am–1.00pm	The Career Paths of a Governance Professional 2023

Student Ambassadors Programme

The Institute's Student Ambassadors Programme (SAP) for the new academic year (2022/2023) has commenced, with 86 undergraduates from 10 local universities having registered. On 3 December 2022, a tea reception was held to kick off the programme and to welcome the student ambassadors and SAP mentors, which was attended by 17 student ambassadors and 17 mentors. Other forthcoming SAP activities include networking activities, visits to regulators, soft skills workshops and internships.

The Institute would like to thank the following SAP mentors for their valuable contribution.

Mentors for SAP 2022/2023 (in alphabetical order of surname)

Alice Chai ACG HKACG	Lilian Lee ACG HKACG
Caroline Chan FCG HKFCG	Simon Lee ACG HKACG
David Chan ACG HKACG	Kelvin Leung ACG HKACG
Eric Chan FCG HKFCG(PE)	Remus Leung ACG HKACG
Jess Chan ACG HKACG	Aster Li ACG HKACG
Mike Chan FCG HKFCG	Thomas Li ACG HKACG
Sherman Chan FCG HKFCG	Ticky Lin ACG HKACG
Willa Chan ACG HKACG	Linda Ling ACG HKACG
Jenny Cheng ACG HKACG	Chris Lui ACG HKACG
Nick Cheung ACG HKACG	Edmund Ng FCG HKFCG
Randolph Cheung ACG HKACG	Emily Ng ACG HKACG
Sally Cheung GradCG	Fin Ng ACG HKACG
Sheryl Cheung ACG HKACG	Philips Ng ACG HKACG
Daniel Chow FCG HKFCG(PE)	Victor Pang ACG HKACG
Simon Chow ACG	Patrick Sung FCG HKFCG
Tony Fong FCG HKFCG	Nathalie Tam GradCG
Donald Fung ACG HKACG	Yan Tam ACG HKACG
Rico Fung FCG HKFCG	Calvin Tang FCG HKFCG
Eddy Ko FCG HKFCG	Jerry Tong FCG HKFCG
Miles Ko FCG HKFCG	Jenny Wong ACG HKACG
Phoebe Kwok ACG HKACG	Patrick Wong FCG HKFCG
Donald Lai ACG HKACG	Polly Wong FCG HKFCG(PE)
Mandy Lai ACG HKACG	Yan Wong ACG HKACG
Ricky Lai FCG HKFCG(PE)	Dr Davy Wu
Carmen Lam FCG HKFCG	Sandy Yan ACG HKACG(PE)
Dilys Lam ACG HKACG	Arthur Yeung ACG HKACG
Michelle Lam ACG HKACG	Ann Young ACG HKACG
Davis Lau FCG HKFCG	Trevor Yu ACG HKACG
Klare Lau ACG HKACG	Austin Zhang ACG HKACG(PE)



Notice

New fee structure for studentship and related fees

The increment in studentship and related fees for registration, reregistration, examinations and exemptions took effect on 1 January 2023.

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

Update of the CGQP syllabus and study materials

The online study materials for the following CGQP modules have been updated:

- Boardroom Dynamics (Hong Kong supplement)
- Corporate Governance (Hong Kong supplement)

- Corporate Secretaryship and Compliance
- Risk Management (Hong Kong supplement)

The syllabus for the following CGQP modules has been updated. With effect from the June 2023 examination diet and onwards, the new syllabus will be incorporated into the following examinations:

- Hong Kong Company Law
- Hong Kong Taxation

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

Featured job openings

Company name	Position
CK Hutchison Holdings Ltd	Company Secretarial Officer
Mazars CPA Ltd	Corporate Secretarial Manager/Assistant Manager

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

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ECPD Videos on Demand

Regulatory Enforcement Series:

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