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September 2023

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

Special technology edition

Cybersecurity governance
AI ethics
Virtual asset regulation

CHARTERED GOVERNANCE
Hong Kong

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Hong Kong

Calling for Nominations of HKCGI Prize 2023

2022
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FCG HKFCG
Past President and Former Chief Executive, HKCGI

2021
April Chan
FCG HKFCG
Past President and Chairman of Technical Consultation Panel, HKCGI

2020
Ada Chung
FCG HKFCG
Privacy Commissioner for Personal Data

2019
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FCG(CS, CGP) HKFCG(CS, CGP)(PE)
Past International President, CGI; Past President, HKCGI; Executive Director and Company Secretary, CK Hutchison Holdings Ltd

2018
Peter Greenwood
FCG HKFCG
Former HKCGI Representative to CGI Council

2017
Natalia Seng
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Past President, HKCGI

2016
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2015
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GBS QC JP FCG HKFCG
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2014
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Past President, HKCGI

2013
Edwin Ing
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2012
John Brewer
Past Chairman, The Association of the Institute of Chartered Secretaries and Administrators in Hong Kong

2011
Duffy Wong
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2010
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The Hong Kong Chartered Governance Institute Prize 2023

The Hong Kong Chartered Governance Institute Prize will be awarded to a member or members who have made significant contributions to the Institute, and the Chartered Secretary and Chartered Governance Profession over a substantial period. Awardees are bestowed with the highest honour – recognition by their professional peers.

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CHARTERED GOVERNANCE
Hong Kong

Good governance comes with membership

About The Hong Kong Chartered Governance Institute

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

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

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

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

Membership and studentship statistics update

As of 31 July 2023, the statistics were as follows:
Students: 2,715 **Graduates**: 359 **Associates**: 6,274 **Fellows**: 847

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Meeting the tech challenge

Readers of this journal may have noticed an increased focus on technology issues in the training and thought leadership services provided by our Institute. This new focus can also be seen in the pages of this journal and this month's edition of *CGj* is a special technology edition that will be useful to members in keeping up to date with many frontier issues in tech governance.

Our first cover story this month addresses an issue that needs to be high on the agenda of boards in the current operating environment – cybersecurity. Given the high probability of cyberattacks facing organisations of every kind, the role of the board and members of our profession in building effective cybersecurity governance frameworks has come under increased scrutiny.

Do cybersecurity risks and opportunities get sufficient attention from the board? Should boards be looking to increase the technical expertise it has on these matters? Should boards have a cybersecurity committee? These and other questions relevant to cybersecurity are the subject of our Institute's latest research project. In collaboration with PricewaterhouseCoopers, we conducted a survey earlier this year assessing the robustness of cybersecurity governance frameworks in the region. Look out for the resulting report soon to be published on our website.

As you would expect, both our research report and cover story this month have a particular focus on the roles of governance professionals in this space. Members of our profession are increasingly relied upon to advise directors on tech risks and opportunities, and to help build effective frameworks to ensure that organisations can minimise those risks and maximise those opportunities.

While this work is a relatively new addition to the governance professional function, it will be an increasingly critical part of the value we bring to the organisations we work for. Our Institute is committed to do its part to ensure our members are not blindsided by tech issues. In addition to the research report mentioned above, we have also been increasing the number of tech-themed CPD events and guidance notes we offer. Indeed, our second cover story this month reviews the four guidance notes produced by our Technology Interest Group in 2023. Along with cybersecurity, these guidance notes address the responsible deployment of AI tools and Hong Kong's new licensing regime for virtual asset service providers.

In conclusion, I would like to emphasise that we, as governance professionals, don't need to be tech experts. Nevertheless, many tech issues are front and centre when it comes to the work we do. Firstly, we need to provide the board with advice and quality information on the growing body of legislation and regulation relating to relevant tech issues such as data protection and cybersecurity. But secondly, we also need to stay up to date with the ethical and social issues relevant to the evolving digital ecosystem.

Rest assured, our Institute will continue to do its part in preparing members for their expanded roles in tech governance.

Ernest Lee FCG HKFCG(PE)

迎接技术挑战

本刊读者可能已经注意到，在公会所开展的培训和思想引领工作中，技术问题越来越受到关注。本月的《*CGj*》是技术特刊，旨在帮助会员及时了解技术管理方面的许多前沿问题。

本月的第一篇封面故事(Cover Story)探讨的是在当前运营环境下董事会需要高度重视的一个问题--网络安全。鉴于各类组织面临网络攻击的可能性很高，董事会和治理从业人员在建立有效的网络安全治理框架方面的作用受到了越来越多的关注。

董事会是否对网络安全风险和机遇给予了足够的重视？董事会是否应该加强在这些问题上的技术能力？董事会是否应该设立网络安全委员会？这些问题以及其他与网络安全相关的问题是公会最新研究项目的主题。今年早些时候，我们与普华永道合作开展了一项调查，评估本地区网络安全治理框架的健全性。调查报告即将在公会的网站上发布，敬请期待。

如您所料，公会的研究报告和封面故事都特别关注治理专业人士在这一领域的作用。我们作为治理专业人士越来越多地为董事提供有关科技风险和机遇的建议，并帮助建立有效的框架，以确保组织能够最大限度地降低这些风险，最大限度地利用这些机遇。

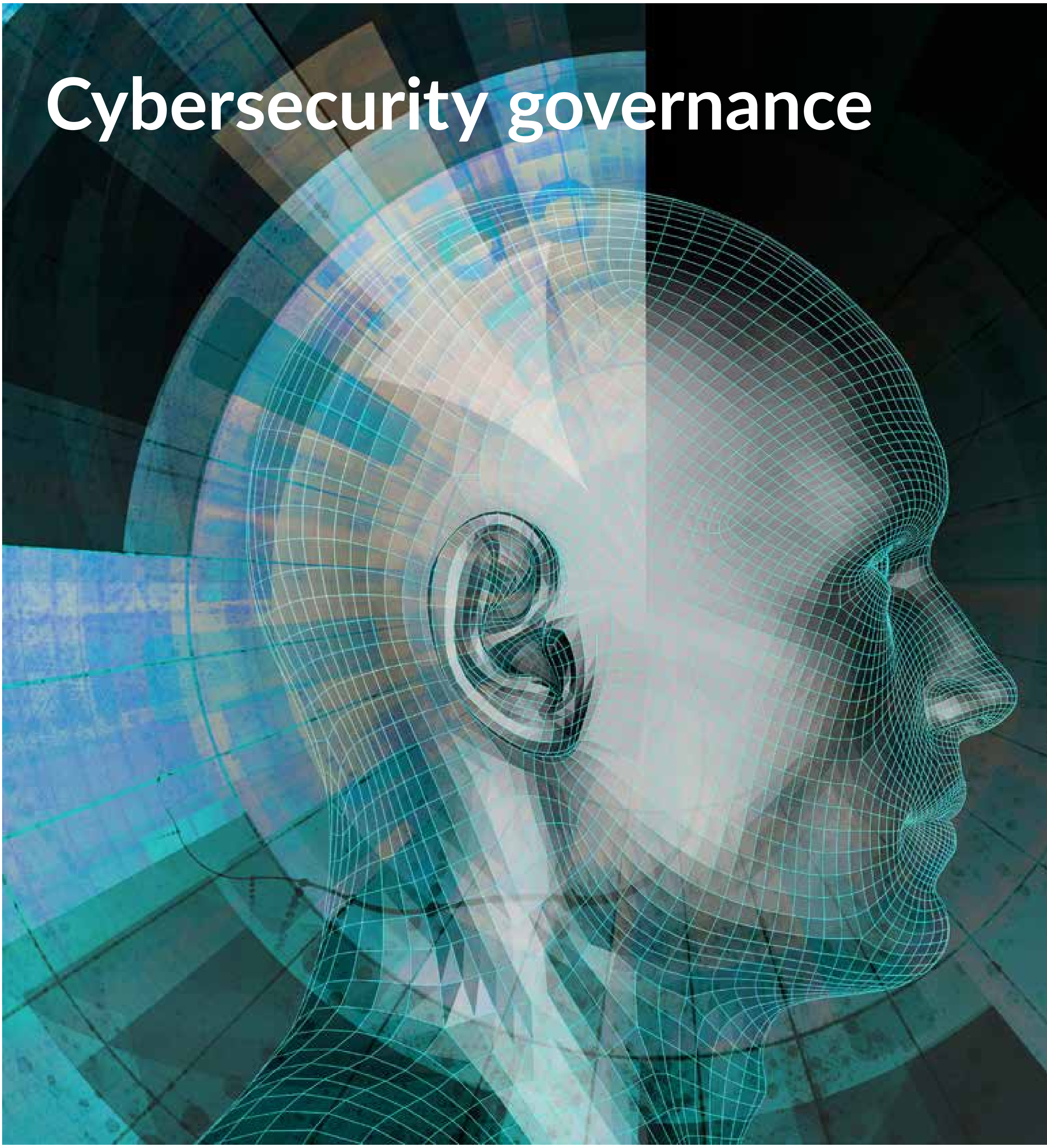
虽然这是治理专业人士的一项相对较新的职能，但它将日益成为我们为所服务组织带来价值的关键部分。公会致力于尽自己的一份力量，确保我们的会员不会受限于技术问题。除上述研究报告外，我们还增加了以科技为主题的持续专业发展课程和指引说明。事实上，本月的第二个封面故事回顾了公会的专业知识兴趣小组在2023 年编写的四份指引说明。除网络安全外，这些指引说明还涉及负责任地部署人工智能工具以及香港针对虚拟资产服务提供商的新发牌制度。

最后，我想强调的是，作为治理专业人士，我们不需要成为技术专家。不过，在我们的工作中，许多技术问题都是前沿和核心问题。首先，我们需要就与数据保护和网络安全等相关技术问题有关的越来越多的法律法规向董事会提供建议和高质量的信息。其次，我们还需要了解与不断发展的数字生态系统相关的道德和社会问题。

公会将继续尽自己的一份力量，帮助会员们做好准备以在技术治理中发挥更大的作用。

李俊豪先生 FCG HKFCG(PE)

Cybersecurity governance



CGj looks at the roles of directors and governance professionals in building a good cybersecurity governance framework.

Cybersecurity governance is one of the key challenges confronting entities, commercial and non-commercial, these days. With the push into digital transformation and as their online footprint increases, organisations find themselves more exposed to cybersecurity attacks.

With headlines of phishing scams and database hacks becoming more commonplace, organisations are increasingly aware of the paramount importance of guarding against malicious online activities, but shoring up their defences and implementing an effective cybersecurity governance framework remain a major challenge.

A new cybersecurity report, soon to be published by The Hong Kong Chartered Governance Institute (HKCGI) and PricewaterhouseCoopers (the HKCGI/PwC Report), highlights some areas that warrant prompt attention by organisations to protect against cyberthreats.

More than 60% of the 1,400 companies surveyed for the HKCGI/PwC Report said they are 'very confident' or 'somewhat confident' in their cybersecurity teams, but only slightly over 36% of these businesses said they have their boards do regular reviews (at least once a year) of cybersecurity strategy.

'This is why our research report is titled "plugging the hole". People are actually not doing as well as they think from a governance perspective. That's why we came up with five imperatives and obviously the number one is, test, test, test your system,' says Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive and co-author of the HKCGI/PwC Report.

Having the right board DNA

Knowing what kinds of testing are needed, however, and how to go about it, is the tricky part. The many different kinds of testing out there, and the many different scenarios impacting what is required, make it

Highlights

- having board members with a cybersecurity or IT background is a key factor in ensuring that organisations are prepared for cybersecurity challenges
- there are also huge benefits from having a cybersecurity committee to lead the board's work in this space
- training exercises for key personnel are an indispensable part of any cybersecurity governance framework

> **the board has to set the right tone and get involved in putting a solid governance structure in place**

difficult to get clear, straight answers to these questions.

Nevertheless, one clear message for organisations and governance professionals is the importance of building the right board DNA. Kok Tin Gan, Founder of PricewaterhouseCoopers (PwC) Dark Lab and co-author of the HKCGI/PwC Report, points out that having board members with a cybersecurity or IT background 'instantaneously' changes the board's DNA when it comes to overseeing cybersecurity. He emphasises that this is a key factor in ensuring that the organisation is prepared for cybersecurity challenges.

'The board or management can always outsource the testing, but how effectively and regularly you monitor the testing process requires board members to have a solid knowledge of cybersecurity to be able to ask the right questions,' Mr Gan points out. He adds that this does not mean that board members need to be 'super techie' – this is about having sufficient knowledge to challenge management about whether they have the right strategies.

New threats, new regulations

As the number of cyber incidents has surged in recent years, jurisdictions around the world are playing catch-up to ensure they have legislation in place to at least ensure that organisations are transparent about the risks they are facing. For instance, the US Securities Exchange Commission (SEC) recently introduced new rules regarding cybersecurity disclosures that mandate public companies to report cybersecurity incidents within four days.

'We have more legislation moves in the cybersecurity and data privacy area,' says Gabriela Kennedy, Partner, Mayer Brown. She adds that the growing number of cybersecurity laws and related regulations in different jurisdictions has pushed companies to prioritise their strategy vis-a-vis cybersecurity.

'The potential leakage of confidential information, trade secrets, intellectual property and personal data can trigger fines and potential litigation, depending on which jurisdiction is involved, and boards have started to pay more attention to cybersecurity,' she says. She adds that strict data privacy and to a certain extent cybersecurity legislation has now been adopted by many jurisdictions in Asia Pacific, another factor heightening the attention of boards to this issue.

Getting boards onboard

For governance professionals a key question will be how to ensure that the board gives due attention to cybersecurity. Ms Kennedy agrees with the point made above about the benefits of getting cybersecurity and IT expertise on the board. There are also huge benefits, she points out, from having a cybersecurity committee to lead the board's work in this space.

Tech-savvy directors and a cybersecurity committee can play a vital role in assisting directly with the company's risk management strategy and understanding what a company needs when it is under attack, Ms Kennedy says. 'This means having somebody who understands the IT infrastructure of the company and would know immediately who to deploy, who to call upon,' she says.

According to the HKCGI/PwC Report, however, only around 21% of businesses said they have a specific cybersecurity committee with defined responsibilities and lines of authority.

Building a good cybersecurity governance framework

The experts interviewed for this article stress that there is no 'one-size-fits-all' solution and different companies may develop different approaches to deal with cyberthreats.

'I think the question is more around how do you make sure that the board builds the right framework for cybersecurity-related governance,' says Dylan Williams FCG HKFCG, General Counsel and Company Secretary, Sands China Ltd.

The board has to set the right tone and get involved in putting a solid governance structure in place, he points out. 'Starting at the top, make sure that the board communicates that the company has a very strong cybersecurity-aware culture. The board should also be involved in defining what the organisation's cybersecurity strategy is,' he says.

The governance framework, both Mr Williams and Ms Kennedy emphasise, must also ensure that the organisation can react accurately and promptly when it comes to cybersecurity threats. Having a person in the right position to make the right decision when the 'fire' starts will help.

'It's important to have people who will know what needs to be done and will have a certain level of authority to make decisions,' Ms Kennedy says. The response plan will depend, however, on the nature of the organisation, the type of data it owns and the areas of risk identified.

Mr Williams and Ms Kennedy also recommend tabletop training exercises for key personnel as an indispensable part of any framework. This is especially true for large companies running businesses across jurisdictions. They should be conducting these exercises at least once a year, Ms Kennedy suggests, bearing in mind that cyberthreats will rarely affect only one office in one country and that the nature of cyberthreats changes over time.

She adds that such training exercises are a good way to get people interested in cybersecurity issues, as well as raising their awareness and understanding about the latest threats of course.

Seeking external help

Even with the best defences, cyberattacks are still likely to occur and each attack can be an important lesson for organisations. The key here, however, is not to try to cover up or underestimate what has happened.

'I've seen many examples of companies trying to play down what has happened,' says Ms Kennedy. 'That's very dangerous because you're not dealing with the real problem. So it's best to bring in an objective and outside team that'll figure out what was the root cause of the incident.'

Mr Williams agrees that having an external consultant can be beneficial in identifying cybersecurity weaknesses, as 'external consultants are constantly up to date with the issues that are being faced by multiple industries,' he says.

Pokit Lok, Principal of Risk Advisory Services at BDO, stresses the importance of having at least a yearly audit by an external party even if the company has an extensive IT team. 'The business people in the company might not be familiar with what the IT people are doing. An external IT audit can check on what the IT team is doing or not doing, and help the company improve its cybersecurity environment,' Mr Lok says.

This is important even in a company with more complex IT systems and large teams. 'You can have a lot of systems to protect your environment, but this does not mean that the systems are configured properly. A professional IT party can help to audit that,' Mr Lok says. Very simple loopholes can get overlooked, he adds. It only takes one member of staff to open a remote desktop link to an important server to allow hackers to compromise the company's entire software ecosystem.

Future trends in cybersecurity

Cyberthreats continue to evolve every day and organisations need to stay up to date with key trends in this space. Data theft stands out as a significant concern. Mr Williams points out that most cybersecurity attacks are fundamentally about getting access to data within organisations. Consequently, one of the fast evolving areas of cybersecurity regulations relates to data protection. In this context, Mr Williams urges governance professionals is to keep an eye on the rapidly evolving data protection laws.

> tech-savvy directors and a cybersecurity committee can play a vital role in assisting directly with the company's risk management strategy and understanding what a company needs when it is under attack

This is another reason why regular data stocktakes or inventory checks are a good idea. Knowing what kind of data is being collected by the organisation will help management and the board understand the nature of the risks they face in the storing of such data. There should be regular assessments of whether data collection policies are in line with data protection regulations, Mr Lok says, and Ms Kennedy points out that organisations often retain unnecessary data and for far too long.

'Most companies have been focused on how they can exploit data – data is the new oil, as they say. And yes, it is the new oil, but it sits in old barrels that get rusty and start leaking a data lake that can soon become a disaster,' she says. Data auditing should therefore assess what data really needs to be stored and for how long, what practices are good and which are not and, of course, an audit should extend to the supply chain because vulnerabilities can be introduced through the supply chain, she adds.

'It is absolutely important to audit your third-party vendors and to look at who is in charge of procuring your IT systems,' she says, 'because vulnerabilities can be introduced through multiple entry points. You might have a junior staff member procuring software that becomes a problem, for example.'

Another key trend that should be on organisations' watch list is the rising number of 'social engineering' scams. This involves scammers impersonating individuals to perpetrate fraud. Ms Kennedy points out that developments in artificial intelligence (AI), such as the increasingly accurate deep fakes enabling the scammers to replicate the voice or image of a CEO or finance director, are making this type of fraud a lot more dangerous. 'AI is giving us a lot of power and fantastic tools, but it's also introducing new threats and vulnerabilities,' she says.

People, people, people

A well-known principle for organisational transformation is to address 'people, processes and technology', but Mr Lok emphasises that people are by far the most important part of this trio when it comes to addressing cybersecurity.

'It doesn't take sophisticated or advanced IT skills to steal a company's money via methods such as phishing or other social engineering attacks. People come first because staff will use the internet and be exposed to fraud so they should have sufficient training and awareness in cybersecurity,' Mr Lok says.

There is also no single 'silver bullet' when it comes to defending against cybersecurity risks, Mr Gan shares. 'If someone tells you that you have to implement A, B or C and then you will be safe, that person is lying to you,' he says. A good defence framework is layered like an onion – each layer guards against a particular scenario, but you can never prevent every scenario. This is another reason why awareness of cybersecurity issues within the company at all levels is so important.

Mr Gan adds that organisations also need to recognise the dangers of underinvesting in cybersecurity. For instance, the bounties that the tech giants offer to people to find critical bugs in their software are worth far less than what the bug would fetch on the black market, he explains, making it less of a financial incentive for tech-savvy people to report the bugs to the company.

'Cybersecurity is all about find and fix – you have to find and then fix. The find is more difficult because it's random, unpredictable and requires a lot of effort,' Mr Gan explains. 'Hence, companies should up their investment in cybersecurity and up their expertise in this area,' he says.

How can governance professionals add value?

The previous section emphasises that cybersecurity needs to involve everyone in an organisation, so what contribution should governance professionals be making in this space?

'Be proactive and get out there,' says Mr Williams. 'Engage with the board, engage with your IT teams, find out what the IT teams are doing, engage with your legal counsel, find out how your legal counsel is addressing some of the issues from a legal perspective. On the contracting side, engage with your auditors, because I'm sure your auditors are doing work in all of these different areas, maybe not for you but maybe for other clients. See in what ways you can learn from them.'

Our interviewees also suggested a number of ways governance professionals can raise their game in this area. Mr Lok recommends getting further certifications and technical expertise. For example, they might consider gaining the Certified Information Systems Auditor certification offered by the Information Systems Audit and Control Association, or the Certified Information Systems Security Professional certification offered by the International Information System Security Certification Consortium.

Mr Gan suggests that one of the most useful skills to acquire is the ability to hack. 'Learning how to hack will give you an extra lens to see what attackers will do, how they might attack and the logic behind the defence systems available,' he says.

Finally, governance professionals need to recognise that it is only a matter of time before their organisation faces a cyberattack. The time to prepare is therefore now.

Imperatives to improve cybersecurity

The new cybersecurity report, soon to be published by The Hong Kong Chartered Governance Institute (HKCGI) and PricewaterhouseCoopers, aims to help directors and governance professionals improve their organisation's cybersecurity, proactively minimise cyber risks, and protect crucial assets and reputations in today's rapidly changing digital ecosystem. To this end, it puts forward the following five imperatives.

1. Prioritise cybersecurity testing. Regularly conduct comprehensive testing, including penetration testing, vulnerability assessments and social engineering simulations, to stop possible cyberthreats from taking advantage of vulnerabilities. Identify weak points and take proactive measures to fix them.

2. Establish security policies and procedures. To reduce potential vulnerabilities, develop and maintain current security policies, include security in the software development lifecycle and promote secure coding practices.

3. Implement identity and access management policies. These manage access to sensitive data and systems, granting authorisation only to authorised employees.

4. Monitor third-party cybersecurity risks. To reduce risks related to external dependencies, assess and evaluate the cybersecurity measures of third-party vendors and partners, and implement effective third-party risk management procedures to protect the organisation's digital ecosystem.

5. Invest in cybersecurity awareness training. To promote a security-conscious culture, offer regular cybersecurity awareness training for stakeholders and employees. Inform them of the most recent online dangers and safe practices for protecting digital assets and data.

Conclusion

In summary, businesses face challenges managing cybersecurity because of rising digital transformation and online threats. The Institute's new cybersecurity report emphasises the importance of paying attention to cybersecurity concerns. Risk management is aided by cybersecurity committees and directors who are computer-knowledgeable. Board commitment, reaction strategies and external audits are all components of a strong cybersecurity governance system. Data protection, social engineering and AI-driven frauds are three future trends. Investment in cybersecurity is crucial and increasing public awareness is important. Governance professionals can contribute by participating in diverse teams, earning certifications and learning hacking techniques. Cyberattack preparation is crucial.

Poo Yee Kai and Kelly Le
Journalists

Tech risks and opportunities: the roles of governance professionals

2023 has been a busy year for the Institute's Technology Interest Group (TIG). This article reviews the latest guidance notes issued by the TIG looking at the roles of governance professionals in handling a range of tech risks and opportunities.

In July 2016, the Institute set up its Interest Groups under the Technical Consultation Panel to produce guidance notes on topics relevant to the work of governance professionals. One of those groups – the TIG – has since published 11 guidance notes, available in the Thought Leadership section of the Institute's website, on a range of topics to help practitioners stay up to date with technology governance issues.

This year saw the addition of four guidance notes to the TIG series and this article reviews these latest additions, looking at the deployment of artificial intelligence (AI) tools, managing cyber risks and virtual asset regulation in Hong Kong.

AI and the governance professional

The use of AI tools is already fairly ubiquitous in Hong Kong and globally. Such tools are in use to improve customer interfaces, to increase productivity and operational effectiveness, and to help with strategic planning and decision-making.

The most recent guidance note published by the TIG – An Overview of Managing the Risks and Opportunities & Responsible Deployment of AI Tools (11th in the series) – recognises that AI tools are 'intimately linked to innovation and competitive advantage'. Published in August 2023, the guidance emphasises that the deployment of AI tools carries both risks and opportunities, and that governance professionals have a crucial role in advising directors and executives on how these can be best managed.

'The responsibility of governance professionals is to assist directors in understanding the risks and opportunities of deploying AI, creating policies and procedures for proper risk management, and ensuring implementation consistent with the business's purpose and values,' the guidance says.

It goes on to highlight the major risks governance professionals should be aware of. First among these is the potential risk of bias in AI tools.

'ChatGPT and other AI systems learn from a massive amount of data, and if that data contains any biases, the AI system may unintentionally reinforce those biases. It is critical to take proactive measures to combat prejudice and implement plans to ensure that decisions are made fairly,' the guidance says.

The protection of data privacy is another key risk to consider. Organisations need to be aware, for example, of the growing body of legislation and regulation concerning data privacy protection.

'Companies must manage data ethically since AI depends on it. Strong data protection measures are required to protect user information and adhere to privacy laws, such as encryption, anonymisation and secure storage,' the guidance says.

It also addresses another, perhaps less-well recognised, area of risk resulting from the potential social impacts of AI tools. The most obvious example of this would be the displacement of, or discrimination against, workers. Governance professionals should not, therefore, see their contribution solely in terms of helping organisations to remain compliant with relevant legislation. This is of course important, but practitioners can add significant value by keeping boards aware of the ethical issues to consider.

'As a governance professional, your responsibility is to steer businesses towards a future in which AI and human values coexist peacefully, enhancing society and promoting responsible digital transformation,' the guidance says.

Managing cyber risks and opportunities

In February this year, Ada Chung Lai-ling FCG HKFCG, Privacy Commissioner for Personal Data,

Highlights

- governance professionals can add significant value by keeping boards aware of the ethical issues to consider when deploying AI tools
- cybersecurity risks need to be taken seriously by boards and governance professionals can play a key role in making sure that this issue gets the attention it deserves
- preventing all cyberattacks is unlikely to be possible and the focus should therefore also be on achieving zero disruption from such attacks

> as a governance professional, your responsibility is to steer businesses towards a future in which AI and human values coexist peacefully, enhancing society and promoting responsible digital transformation

Hong Kong, wrote an article in this journal discussing the increasing trend of cyberattack incidents in Hong Kong and globally. She pointed out that, not only are cyberattacks increasingly common, they are usually highly destructive both in terms of an organisation's IT system integrity and its reputation.

In this context, governance professionals have a role to play in helping to build effective policies and governance frameworks to defend against, and minimise the disruption caused by, cyberattacks. The 10th issue in the TIG series of guidance notes – An Overview to Facilitate Boards to Manage Cyber Risks – emphasises that cybersecurity risks need to be taken seriously by boards and governance professionals can play a key role in making sure that this issue gets the attention it deserves.

'All company boards... must include the management of cyber risk as part of their fiduciary and oversight responsibilities. That is, a reasonable director should be concerned with cyber risk, which consistently is ranked as a top-of-the-agenda risk matter that boards should consider,' the guidance says.

This does not just mean keeping directors aware of the cybersecurity protections in place, however. The guidance emphasises that boards need to take on an active oversight role. 'Board members must assume that cyberattacks are likely and exercise their oversight responsibilities to actively ensure that executives and managers have made adequate preparations to respond to, and recover from, these attacks,' it says.

Building bridges between management and the board

The TIG guidance also emphasises the benefit of keeping an open dialogue between management and the board on cybersecurity. 'The governance professional should facilitate discussions of cybersecurity frequently and actively with management. This is not a "one and done" type of decision, but a constantly shifting and moving target. The more regularly the board is exposed to their organisation's cyber situation, the more comfortable and knowledgeable they become,' it says.

This also means ensuring board members have access to the organisation's cybersecurity experts. The guidance suggests that, while inviting these cyber executives to report to the board is a good first step, governance professionals should consider other ways to deepen their relationship. 'The time to build the bridge is not during a cyber incident; this should occur well before difficult conversations are necessary,' it adds.

Consider resilience in addition to protection

New cyberthreats continue to emerge and the TIG guidance emphasises that, even with the best possible technological safeguards, not all cyberattacks can be thwarted. 'Therefore, in our view, the ultimate objective of an organisation should be "zero disruption" from a cyber breach. This shifts the emphasis from protection to resilience when designing a cybersecurity programme,' the guidance says.

Virtual asset regulation in Hong Kong

Hong Kong seeks to position itself as a major market for virtual assets (VAs) and VA-related products. This was made explicit by the Policy Statement on Development of Virtual Assets in Hong Kong published by the Financial Services and the Treasury Bureau in October 2022.

Nevertheless, the collapse of FTX, one of the world's largest crypto exchanges, in November 2022, demonstrated the potential risks to investors. The Securities and Futures Commission (SFC), the regulator of virtual asset service providers (VASPs) in Hong Kong, has been issuing statements and press releases to warn investors about the risks involved.

On 13 December 2022, it issued a statement warning that investors may suffer significant, or even total, losses in the event of fraud or the collapse of a VA platform. More recently, on 7 August 2023, it issued a press release reminding investors to be wary of the risks of trading virtual assets on unregulated VASPs.

Hong Kong's new regulatory regime

Hong Kong is currently implementing a new regulatory regime to bring VASPs under SFC regulation. The Anti–Money Laundering and Counter–Terrorist Financing Ordinance (AMLO) was amended in December 2022 to introduce a new licensing regime for VASPs to be supervised by the SFC. It also proposed statutory anti–money laundering and counter–financing of terrorism obligations that will be very relevant to governance professionals working for trust or company service providers (TCSPs).

> **all company boards… must include the management of cyber risk as part of their fiduciary and oversight responsibilities**

While the amended AMLO became effective earlier this year, the new licensing regime is still in the process of being implemented. From 1 June 2023 to 29 February 2024, unlicensed VASPs can submit licence applications to the SFC. VASPs operating a VA exchange in Hong Kong that have not applied to the SFC for a licence on or before 29 February 2024, and VASP licence applicants that have been issued a rejection notice, will be required to close down their VA exchange business in Hong Kong by 31 May 2024, or within three months upon the issuance of the rejection notice (whichever is later).

What will this mean for governance professionals?

As part of its commitment to assist governance professionals to stay up to date with these developments, the TIG issued a guidance note in two parts (eighth and ninth in the series) earlier this year, looking at how the new regulatory regime for VASPs will impact governance professionals.

The expansion of the VA market will impact governance professionals in various sectors, but there are already direct impacts to be considered in the financial sector. For example, financial institutions (including licensed VASPs under the amended AMLO) will need to perform customer due diligence (CDD) measures before carrying out an occasional transaction that is a transfer involving VAs amounting to no less than HK$8,000, whether the transaction is carried out in a single operation or in several operations that appear to be linked. Moreover, in comparison with other financial institutions, licensed VASPs will need to perform CDD measures for a much broader range of occasional transactions.

The guidance note also highlights the new criminal offences relating to fraud involving VAs. These offences potentially carry severe penalties. The offence involving fraudulent or deceptive devices in VA transactions, for example, carries a fine of up to HK$10 million and 10 years' imprisonment, and on summary conviction up to HK$1 million and three years' imprisonment. The offence of fraudulently or recklessly inducing others to invest in VA carries up to HK$1 million and seven years' imprisonment, and on summary conviction a level six fine and six months' imprisonment.

These criminal offences will be applicable to any person, regardless of whether that person is providing a VA service or not, and will also be applicable to overseas VA exchanges that are not licensed by the SFC.

> ***The guidance notes reviewed in this article are available in the Thought Leadership section of the Institute's website: www.hkcgi.org.hk.***

Credits

The Institute thanks the members of the Technology Interest Group (TIG) and external authors who worked on the guidance notes reviewed in this article. The members of the TIG are: Dylan Williams FCG HKFCG (Chair), Ricky Cheng, Harry Evans, Gabriela Kennedy and Philip Miller FCG HKFCG. Mr Williams authored the 10th issue guidance note on managing cyber risks. Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive and Secretary of the Institute's Interest Groups, authored the 11th issue guidance note on AI tools. Hannah Cassidy, Partner, Natalie Curtis, Partner, Calvin To, Associate, and Valerie Tao, Professional Support Lawyer, Herbert Smith Freehills, authored the eighth and ninth issue guidance notes on Hong Kong's new licensing regime for virtual asset service providers. The Institute also thanks April Chan FCG HKFCG, Institute Past President and Chairman of the Institute's Technical Consultation Panel (which oversees the work of the Institute's Interest Groups), for her contributions.

Comments and/or suggestions relating to the Institute's Interest Groups can be addressed to Mr Datwani at: mohan.datwani@hkcgi.org.hk.

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Rethinking the
retirement age

In the context of an ageing population, both here in Hong Kong and around the world, Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive, explores the governance, ethical and ESG considerations relevant to retirement arrangements.

The World Health Organisation confirmed recently that the world's population is ageing more quickly than before. For instance, in 2020 there were more adults aged 60 and older than children under five. Moreover, the percentage of people over 60 worldwide is predicted to increase from 12% to 22% between 2015 and 2050.

Age-inclusive workplaces are also increasingly recognised as being part of organisations' ESG responsibilities. The UN Sustainable Development Goal 8 calls for sustained, inclusive and sustainable economic growth, as well as full and productive employment and decent work for all. Additionally, from a diversity perspective, older workers who may provide insights based on their experiences should be included in the employment mix. While there is no one-size-fits-all, businesses should consider the retirement age issue more generally as part of their commitment to diversity and inclusion, along with sustainability in the context of an ageing population.

Age considerations relevant to Hong Kong's talent shortage

The ageing population trend is also apparent in Hong Kong. According to a poll by one of the city's main business chambers, 'nearly three in four Hong Kong companies have been experiencing a labour shortage, with the majority reporting that the issue has persisted for at least a year'. The Hong Kong General Chamber of Commerce surveyed 196 members in April 2022 and discovered that 74% were struggling with a talent shortage. 61% of respondents indicated that the labour shortage has persisted for one to three years, while 22% said it has persisted for longer.

The government is aware of this problem (see Figure 1) and is implementing a strategy to draw talent from all over the world to reclaim its position as a hub for international trade. It was successful in drawing applications, particularly from the Mainland, but it should consider longer retention of experienced employees in the workplace. Experienced employees have knowledge and skills that have historically contributed to Hong Kong's success.

Rethinking the retirement age

Since individuals are living longer and the population is getting older, many governments around the world have been adopting different retirement age models. In Hong Kong, the government has taken the initiative to raise the retirement age from 60 to 65 for civilians who join the civil service on or after 1 June 2015 under a contractual model.

There are other retirement age models that governance professionals should be aware of since they can have ESG implications and can affect the resilience of business operations, especially in the multi-jurisdictional business context. The various retirement age models include the freedom of contract, and the prohibitive and hybrid models.

1. Freedom of contract

There is no statutory retirement age (SRA) in Hong Kong, but contract parties can agree upon and implement a default retirement age (DRA). The government initiative to raise the retirement age for new civil service hires has prompted many businesses in Hong Kong to reconsider the appropriate retirement age. It is

Highlights

- the percentage of people over 60 worldwide is predicted to increase from 12% to 22% between 2015 and 2050
- Hong Kong should consider longer retention of experienced employees in the workplace to address its current labour shortage
- the majority of respondents to an Equal Opportunities Commission study in 2016 agreed that a person's abilities, not their age, should determine when they should retire

businesses should consider the retirement age issue more generally as part of their commitment to diversity and inclusion, along with sustainability in the context of an ageing population

important to remember that people are healthier and are expected to live longer because of medical advances. Organisations should also consider how many workers are expected to retire and plan for their extensions, where appropriate. It will make sense from the standpoint of the employer–employee relationship to have a policy regarding discussions about when a person should retire and whether there could be other arrangements, for example part-time employment. In the end, the issue under this model is one of communication.

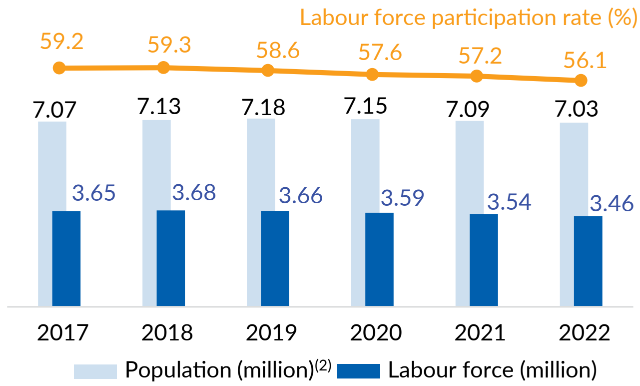
2. Prohibitive model
A DRA under any contractual arrangement is viewed as a kind of ageism (that is, age discrimination) in the UK and other countries. It is prohibited to treat a person unfairly or differently based on their age and, in this case, for continued employment. Except for specific SRAs authorised by law, such as for firefighters, it is against the law for an employment contract to stipulate a retirement age. The question that countries like the UK focus on is why a person should be obliged to retire at a specific age when there may be no valid justifications, such as physical restrictions on manual labour, loss of faculties for intellectual jobs, talent development and succession planning.

In reality, it is not even acceptable to inquire about a person's anticipated retirement date, making it difficult to make long-term business plans for operations. This is the major drawback of this model from the business perspective. However, where a business has exposure to the UK and similar jurisdictions, legal and compliance will need to consider the long-arm reach of the law of these jurisdictions from the compliance perspective.

3. Hybrid model
The Retirement and Reemployment Act (RRA) was adopted in Singapore in 2012. This resulted in the creation of an SRA of 65. Companies must, however, provide eligible individuals with reemployment possibilities up to the age of 68. Using the Skills Development Levy (SDL) Act, the government pushes businesses to raise employee skill levels. The employer must make a minor compensatory payment to the employee if the parties cannot reach an effective agreement to continue the employment following the SRA. The key result is that everyone knows when and how to start to talk about retirement and retention arrangements.

Combating age discrimination
Age discrimination in the workplace in Hong Kong was the focus of a study commissioned by the Equal Opportunities Commission (EOC) in 2016 that aimed to gauge the problem's size and weigh the possibilities of enacting legislation outlawing it. According to the research, more than one-third of respondents said workplace age

Figure 1: Population and labour force[1] in Hong Kong in recent years



Notes: (1) Excluding foreign domestic helpers.
(2) Mid-yearpopulation.

Source: Research Office, Legislative Council Secretariat

talent retention and retirement arrangements are closely related issues that are likely to become material ESG issues as the population ages

discrimination was a serious issue for older workers. However, over 60% of those polled were against the creation of an SRA. Most individuals agreed that a person's abilities, not their age, should determine when they should retire. Others argued that employers and employees should be free to negotiate retirement arrangements together. According to the survey, it seems that the freedom of contract model predominates in Hong Kong, with the caveat that employees would prefer adequate communication about retirement decisions and follow-up employment.

The EOC study also describes the actions taken to address ageism in the workplace, including those in Hong Kong, Japan and Australia, along with the UK and Singapore (discussed above).

- Hong Kong has tried several times to determine what the general population thinks about the rules forbidding age discrimination. According to surveys conducted in 1999 and 2001, there is a disconnect between people's views on age discrimination and their actual experiences. This might change with time as the debate is a continuing one on business flexibility versus ageism.

- In Japan, a provision mandating businesses to provide equal opportunity to all employees, regardless of age, was added to the Employment Measure Act (EMA) in 2007. Some programmes, including on-the-job and off-the-job training, support new and experienced workers. Senior employees are encouraged to find employment thanks to the Older Persons Employment Stabilisation Act (OPESA).

- Age discrimination was made illegal in Australia's states and territories in the 1990s. The Age Discrimination Act of 2004 and the Fair Work Act of 2009 protect individuals from age discrimination in several areas of public life, including the workplace. The Australian House of Representatives recommends salary subsidies, skill-building projects and informational campaigns to entice mature workers to participate in the employment market.

Talent retention and retirement arrangements are closely related issues that are likely to become material ESG issues as the population ages. Since managing a business requires people, it is important to keep up to date with these developments and engage with this material governance issue affecting corporate sustainability and resilience.

Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive
The Hong Kong Chartered Governance Institute

Staying on target

Authors at the Research Centre for Sustainable Hong Kong, City University of Hong Kong, make some policy suggestions to help Hong Kong achieve its greenhouse gas emissions reduction targets.

This article compares the emissions reduction policies in Singapore and Hong Kong, outlines the different areas of emphasis in the two cities' respective strategies and recommends some directions to enhance the effectiveness of Hong Kong's emissions reduction policies.

Hong Kong's annual per capita greenhouse gas (GHG) emissions in 2020 was 4.5 tCO^{2}-e (this represents the amount of GHG emissions measured in metric tons of carbon dioxide equivalent). This is lower than Singapore's by more than 50%. However, if Hong Kong is to achieve the government's medium-term target of reducing Hong Kong's emissions by 50% before 2035, as compared to the 2014 level, current emissions reduction policies will need to be reviewed.

The Hong Kong Government published its Hong Kong Climate Action Blueprint 2050 in 2021, outlining four major strategies and measures to reduce carbon emissions, namely:

1. net-zero electricity generation
2. energy-saving and green buildings
3. green transport, and
4. waste reduction.

Compared with Singapore, Hong Kong has performed well in reducing GHG emissions and it is being more aggressive in achieving carbon neutrality. Due to its different economic structure, Singapore's high energy-consuming secondary (manufacturing) industry accounts for nearly 30% of its GDP and produces far more emissions than the tertiary (services) industry of Hong Kong, which accounts for 94% of Hong Kong's total economic output.

However, if Hong Kong intends to achieve its medium-term emissions

Highlights

- 23% of Hong Kong's fuel for electricity came from coal in 2020, as compared to 1% in Singapore
- to achieve its 2050 carbon neutrality goal, Hong Kong needs to increase the renewable fuel mix for electricity generation
- Hong Kong has yet to implement a carbon tax in contrast to Singapore, which started imposing such a tax in 2019

target it will need to further reduce carbon emissions by one-third as compared to the 2020 level (see Table 1). Formulating effective emissions reduction policies requires the use of 'push' and 'pull' factor policies. Push factor policies aim to encourage society to abandon the use of high-emissions technology and energy by increasing the cost of such technology and energy. By contrast, pull factor policies focus on enticing society to use more low-carbon technology and energy by reducing the cost of such technology and energy.

Six emissions reduction policy tools

Based on the push and pull factors described above, we have deduced six emissions reduction policy tools (see Table 2). 'Regulatory reform' and 'Market control' measures adopt the

> "in terms of using renewable fuel for electricity generation, Hong Kong lags significantly behind Singapore and the world"

Table 1. Emissions targets for Hong Kong and Singapore

	Hong Kong	Singapore
Recent emissions level	4.5 per capita tCO²-e (Year 2020)	9.0 per capita tCO²-e (Year 2019)
Carbon peak year	Year 2014 (6.2 per capita tCO²-e)	9.0 per capita tCO²-e (Year 2019)
Carbon neutral year	Year 2050	Mid-21st century
Medium-term target for per capita emissions	3.0 tCO²-e (Year 2035)	–
Distribution of carbon emissions	Power generation (60%) Transportation (20%) Industrial production (5%) Waste (9%) Construction (6%)	Power generation (39%) Transportation (14%) Industrial production (45%) Waste (1%) Construction (1%)

Source: Legislative Council Research Group, Legislative Council of the HKSAR

Table 2. Six policy tools for emissions reduction

Push and pull factors	Emissions reduction policies
Push factors	1. Regulatory reform 2. Market control
Pull factors	3. Commercialisation mechanism 4. Financial/fiscal mechanism 5. Direct investment 6. Governance mechanism

This classification of the six policy instruments refers to Peñasco, C, Anadón, LD, & Verdolini, E (2021). Systematic review of the outcomes and trade-offs of 10 types of decarbonisation policy instruments. Climate Change, 11(3), 257–265).

Table 3. Emission reduction policy tools in Hong Kong and Singapore

Policy classification			Hong Kong	Singapore
(1) Regulatory reform	Debt scheme/Quota	Renewable portfolio Standard/Renewable energy Obligation (generation)	o	o
		Renewable fuel standards or blending obligations (end users)	o	o
	Standard	Deregulation of energy projects (eg small projects)	√	√
		Tariff/Grid regulation	o	o
		Pollution and waste control	√	√
		Pollution and waste recycling	√	√
		Energy efficiency limits	√	√
	Corporate information disclosure		√	o
(2) Market control	Carbon price and Carbon trading	Carbon tax/energy tax	o	√
		Carbon emissions right trading	o	o
	Tradable green certificate		√	√
(3) Commercialisation mechanism	Technical standardisation		o	√
	Risk hedging investment (eg insurance, loan guarantees, green equity, power purchase agreements (PPAs))		o	√
	Transnational cooperation		√	√
	Business incubation		√	√
(4) Financial/fiscal mechanism	Tax plan	Tax incentives/reductions (eg acquisition tax, value-added tax, corporate income tax and accelerated depreciation)	√	o
		R&D tax incentives (for R&D research investment)	o	o
		Tax credits (production tax credit (PTC), investment tax credit (ITC))	o	o
	Financial plan	Green bond	√	√
		Green fund	√	√
		Green loans	o	o
	Subsidy programme	Subsidies (for storage infrastructure, restructuring)	√	√
		Control subsidy	√	o
		Bidding and auction	o	√
	Feed-in tariffs (TiFs)		√	o
(5) Direct investment	Government procurement		√	√
	R&D funding		√	√
(6) Governance mechanism	ESG		√	√
	Corporate social responsibility		√	√
	Electronic measuring tool		o	√
	Green taxonomy		√	√

'o' = The policy tool is not applied here. '√' = The policy tool is applied here.

Source: Liu, Y, Dong, L, & Fang, MM (2023). Advancing 'Net Zero Competition' in Asia-Pacific under a dynamic era: A comparative study on the carbon neutrality policy tool kit in Japan, Singapore and Hong Kong. Global Public Policy and Governance, 1–29.

pricing method of the social cost of carbon emissions. They price in the emissions fee and increase the total cost for high-emissions technology and energy.

1. Regulatory reform – focuses on the influence from the government, such as raising the price of fossil fuels through administrative means.

2. Market control – focuses on establishing trading mechanisms, such as establishing carbon emissions trading systems and imposing carbon taxes to induce compliance from the market.

3. Commercialisation mechanism – promotes the use of brand new low-carbon technologies through commercial means and market mechanisms, such as providing financial guarantees for investors.

4. Financial/fiscal mechanism – refers to policies that ensure higher profits or lower operating costs in low-carbon technologies for investors, such as direct or indirect subsidies (for example feed-in tariffs) or loans with below-market interest rates.

5. Direct investment – refers to government funding to specific projects or companies to support the development of low/net-carbon energy technologies.

6. Governance mechanism – refers to guidelines that evaluate the operations of a company (for example ESG standards) and help investors to identify whether the company can achieve the carbon reduction targets.

Comparison of the emissions reduction policies of Hong Kong and Singapore

We further break down the six policy tool kits into 31 sub-items, and highlight the differences between the emissions reduction policies adopted in Hong Kong and Singapore (see Table 3). We note several major differences discussed below.

Imposing a carbon/energy tax

A carbon/energy tax is a market control mechanism that aims to pressure companies and individuals to reduce their carbon footprints by introducing a hefty price tag on carbon emissions. A study of Japan's long-term economic data found that a carbon tax would have a minimal impact on the country's economy and would allow an effective allocation of tax revenue towards green energy technology subsidies, while also enabling the reduction of other taxes.

Singapore started imposing a carbon tax of US$11 (approximately HK$86) per ton of carbon dioxide in 2019.

Table 4. Fuel mix of electricity generation in 2020

	Hong Kong	Singapore	Worldwide
Coal	23%	1%	35%
Fuel oil	–	–	3%
Natural gas	48%	96%	23%
Nuclear energy	28%	–	10%
Renewable energy	<1%	3%	29%

Source: Legislative Council Research Group, Legislative Council, the HKSAR

while Hong Kong encourages cross-border collaboration on carbon-neutral technologies, it has yet to introduce any concrete measures to back up this policy

The tax will progressively increase to the target price of US$29 (about HK$227) per ton of carbon dioxide by 2030. However, Hong Kong has yet to implement a carbon tax as the city mainly relies on imported coal and natural gas for energy production, and there are fears that imposing a carbon tax may harm the stability and cost of energy supply in Hong Kong.

Using renewable fuel for electricity generation

In terms of using renewable fuel for electricity generation, Hong Kong lags significantly behind Singapore and the world (see Table 4). 23% of Hong Kong's fuel for electricity came from coal in 2020, as compared to 1% in Singapore. Without CLP Power Hong Kong's purchase of 10 billion kilowatts of electricity from Daya Bay Nuclear Power Plant annually, coal would take up more than 30% of Hong Kong's total fuel mix of electricity.

Technical standardisation and risk-hedging investment tools

Technical standardisation facilitates technical collaboration across regions and organisations. Risk-hedging investment is a risk offset strategy favoured by multinational green investments. Considering the confined territorial areas of Hong Kong and Singapore, the mutual recognition of international carbon credit certificates and cross-border circulation of carbon trading would be beneficial. Hong Kong could use financial, technical and marketing support as incentives to attract local enterprises to participate in global renewable energy projects.

Singapore is the market leader in solar photovoltaics, and the city actively promotes international cooperation and technology transfer of renewable energy projects. While Hong Kong encourages cross-border collaboration on carbon-neutral technologies, it has yet to introduce any concrete measures to back up this policy.

Summary

This paper examines the differences between the carbon reduction policies of Hong Kong and Singapore, and makes recommendations to improve Hong Kong's emission reduction measures. There is no one-stop policy solution as each policy has its advantages and limitations, so we shall need to implement a variety of measures to achieve carbon neutrality.

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Research Centre for Sustainable Hong Kong, City University of Hong Kong

This article is based on Policy Paper 21 of the Research Centre for Sustainable Hong Kong, City University of Hong Kong. It is the first of three papers making policy recommendations to help reduce GHG emissions in Hong Kong.

Sponsors beware

As the SFC imposes another heavy fine for sponsor failures, authors at Mayer Brown highlight the key lessons sponsors need to learn about the expected standards for sponsor work in Hong Kong.

The Securities and Futures Commission (SFC) in Hong Kong has reprimanded and fined Changjiang Corporate Finance (HK) Ltd (CJCF) HK$20 million for serious and extensive sponsorship failures in six listing applications submitted between September 2015 and December 2017. The SFC has also banned CJCF from acting as a sponsor for listing applications on The Stock Exchange of Hong Kong Ltd (SEHK) of any securities for one year from 18 August 2023, or until the SFC is satisfied that CJCF has adequately ensured its compliance with the relevant sponsor-related requirements, whichever is later.

Under paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct), a sponsor is required to conduct reasonable due diligence on a listing applicant so as to ensure that the disclosure in the application proof prospectus and all information provided to the SEHK is true, accurate and complete in all material respects, and does not omit any material information.

The SFC found that, in breach of various sections of the Code of Conduct, CJCF had fallen 'substantially below the standards expected of it as a sponsor' and failed to discharge its duties as the sole sponsor in the six listing applications, namely, the listing applications of:

- Pacific Infinity Resources Holdings Ltd (Pacific Infinity)
- Van Chuam International (Cayman) Ltd (Van Chuam), and
- Rising Sun Construction Holdings Ltd (Rising Sun)

to list on the Main Board of SEHK, and the listing application of:

- AsiaPac Net Media Holdings Ltd (AsiaPac)
- Perpetual Power Holdings Ltd (Perpetual Power), and
- Byleasing Holdings Ltd (Byleasing)

to list on the GEM of the SEHK.

Summary of the sponsor's breaches of the Code of Conduct

Reasonable due diligence – Code of Conduct paragraphs 17.2(b) and 17.4(a)(i). CJCF did not perform all reasonable due diligence for three of its listing applications.

Advice and guidance – Code of Conduct paragraphs 17.3(b)(i) and (ii). CJCF did not properly advise or guide three of the listing applicants on their compliance with all relevant listing qualifications.

Identifying material issues – Code of Conduct paragraph 17.4(d)(i). CJCF failed to ensure disclosure of all material information in the application proof prospectuses of three of its listing applications.

Proper records – Code of Conduct paragraphs 17.2(e) and 17.10(c)(ii) and (v). There were systemic record-keeping failures in that CJCF failed to maintain proper records of the due diligence works it claimed to have done for all listing applications. It did not retain a substantial portion of verification notes and their supporting materials, and it did not document work done, analyses and conclusions

Highlights

- sponsors are expected to exercise reasonable judgement and apply professional scepticism
- they should decline to submit a listing application for and on behalf of the issuer if the issuer refuses to address any non-compliance with the relevant requirements
- they also need to keep records to be able to demonstrate that proper and sufficient due diligence was carried out

against a substantial number of steps in the due diligence plans.

Professional scepticism – Code of Conduct paragraph 17.6(b). Without proper records of due diligence, CJCF failed to demonstrate it had exercised professional scepticism by querying the reliability of information and verifying statements disclosed in the application proof prospectuses.

Details of the six listing applications

Pacific Infinity

In the listing application for Pacific Infinity (an exporter of unprocessed nickel ore from the Philippines to the Mainland), the SFC found that CJCF fell short of the required standard by failing to conduct any due diligence on a legislative bill in the Philippines which, if enacted, would have the effect of banning the export of all unprocessed minerals, thereby adversely affecting the core business of Pacific Infinity. While CJCF was aware of the bill, it failed to identify this as a red flag and take any follow up action.

The SFC further found that CJCF failed to disclose all material information in the application proof prospectus (including the likelihood of the enactment of the bill and Pacific Infinity's contingency business plans), which impeded investors from forming a 'valid and justifiable' opinion of Pacific Infinity's shares, financial condition and profitability.

AsiaPac

In the listing application for AsiaPac (a digital marketing service provider), the SFC found that CJCF did not discharge its duty as the sponsor because it failed to properly advise and guide AsiaPac to make sufficient material disclosure in its application proof prospectus. AsiaPac, for unjustifiable reasons, was reluctant to disclose certain information in the application proof prospectus relating to its pricing strategy and how it increased profitability, but the SFC found that it was CJCF's duty to insist that the disclosure made by AsiaPac was sufficient so that investors could understand AsiaPac's financials.

Perpetual Power

In respect of Perpetual Power (an infrastructure company dealing with hydropower plants in the Mainland), the listing application was submitted by CJCF despite the fact that Perpetual Power was in fact ineligible for listing because it was non-compliant with a GEM Listing Rule (which required the issuer to have land title certificates and building ownership certificates for all properties in the Mainland used in infrastructure projects; Perpetual Power lacked certificates for two out of three of its hydropower plants). The SFC found that CJCF had failed to properly advise and guide Perpetual Power on its compliance with all relevant listing qualifications.

Van Chuam

In respect of the listing application for Van Chuam (a property developer in the Mainland), the SFC found that CJCF did not discharge its duty as the sponsor because it failed to conduct proper due diligence on two core aspects of Van Chuam's debt restructuring arrangements. The SFC found that CJCF, among other things, did not obtain and review all relevant loan agreements for the purpose of verifying their existence, or perform any appropriate verification to assure itself that the underlying loans were in fact distressed and hence eligible for restructuring by the asset management company.

Further, the SFC found that CJCF had failed to disclose all material information in the application proof prospectus, including the salient terms of the various agreements under the debt restructuring arrangement, the basis for qualifying the underlying loans as distressed assets, and the fund flows and total financing costs of the debt restructuring arrangements.

Rising Sun

In the listing application for Rising Sun (a property construction company in the Mainland), the SFC found that CJCF fell short of its required standard by failing to conduct reasonable due diligence on the risk that Rising Sun might not be able to meet its working capital requirements due to its negative operating cash flows. In particular, the SFC found that CJCF had simply accepted Rising Sun's financial condition at face value, without performing any appropriate verification in respect of the fact that the turnover period of Rising Sun's trade receivables was significantly longer than the credit period granted to its customers.

Byleasing

The SFC found that CJCF failed to properly advise and guide Byleasing on the selection of the track record period and the timing of submission of the listing application in accordance with the GEM Listing Rules and SEHK

> some sponsor firms in the Hong Kong financial markets continue to ignore the SFC's Code of Conduct and published guidance on the expected standards of sponsor work

guidance, resulting in the SEHK's return of the application.

Our comments

It appears that some sponsor firms in the Hong Kong financial markets continue to ignore the SFC's Code of Conduct and published guidance on the expected standards of sponsor work.

In a circular dated 26 March 2018, the SFC set out a summary of its findings following a thematic review of sponsor work. We note that a number of problems with sponsor performance identified by the SFC in the thematic review have been repeated in the present case:

- failure to exercise reasonable judgement and apply professional scepticism (all six listing applications)
- failure to conduct reasonable due diligence (for example, Van Chuam and Rising Sun)
- failure to identify and follow up on red flags (for example, Pacific Infinity), and
- failure to maintain proper records (for example, Rising Sun).

On 14 March 2019, the SFC imposed its largest fines for inadequate sponsor work against four major international financial institutions totalling around HK$786 million. These enforcement actions were intended by the SFC to send a strong deterrent message to the industry that sponsor failures would not be tolerated. Nevertheless, since March 2019, there have been eight more enforcement actions (including this one) in which shortcomings previously publicised appear to have been repeated.

Bearing in mind these cases, our key takeaways for sponsors are highlighted below.

Ignore red flags at your peril. Not paying attention to red flags or failing to fully investigate and conduct reasonable due diligence on them may result in a rejection of the listing application by the SEHK and potentially an enforcement action by the SFC.

Sponsors must stand up to issuers if necessary. As demonstrated in this case, it is ultimately the sponsor's responsibility to insist on advising the issuer regarding its compliance with the relevant requirements before a listing application is submitted and to decline to submit the listing application for and on behalf of the issuer if the issuer refuses to address any non-compliance with the relevant requirements.

Implement a robust and customised due diligence plan. This should be done for each sponsor engagement, instead of relying on a generic due diligence checklist.

Ensure that sufficient records are maintained. The records need to demonstrate that proper and sufficient due diligence was carried out and that any red flags or contentious issues were adequately investigated and how they were resolved.

Alan H Linning, Thomas Kollar, Billy KM Au, Wei Na Sim and Sara Troughton
Mayer Brown

Professional Development

Seminars: July 2023

4 July
Navigating shareholder disputes: best practices in the Cayman Islands and BVI

Chair: *Terry Kan ACG HKACG, Partner, Specialist Advisory Services, ShineWing*

Speakers: *Michael Snape, Partner, Justin Davis, Partner, and Maria On, Managing Associate, Ogier*

6 July
Hong Kong securities enforcement update – practical knowledge and applied practices

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

Speaker: *Jimmy Chan, Partner and Head of Financial Regulation, Jingtian & Gongcheng LLP*

12 July
Fraud risk management and mitigation 2.0

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: *Jessica Li, Partner, and Helen Cheng, Associate Director, PwC*

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

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

24 July
Virtual asset trading platforms – overview of the SFC's rules & regulations

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

Speakers: *Elizabeth Wong, Director of Licensing and Head of Fintech Unit, Intermediaries, Securities and Futures Commission; Angelina Kwan, Senior Advisor, IMC Asia Pacific; and Hannah Cassidy, Partner, Head of Financial Services Regulatory, Asia, Herbert Smith Freehills*

26 July
Anti-money laundering/counter-financing of terrorism (AML/CFT) measures – local regulatory updates with discussion on control measures

Chair: *Alberta Sie FCG HKFCG(PE), Institute Professional Services Panel member and AML/CFT Work Group member, and Director and Company Secretary, Reanda EFA Secretarial Ltd*

Speakers: *Gloria So, Partner, and Ronald Chung, Assistant Manager, SW Hong Kong*

31 July

Cross-border employment and HR matters: FAQs + updates

Chair:	*Eric Chan FCG HKFCG(PE), Chief Consultant, Reachtop Consulting Ltd*
Speaker:	*Grace Chen, Senior Manager, HR Advisory, Vistra China*

ECPD Videos on Demand

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

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

For enquiries, please contact the Institute's Professional Development Section: (852) 2830 6011, or email: cpd@hkcgi.org.hk.

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
6 October 2023	6.45pm–8.45pm	Company secretarial practical training series: corporate communication and regulatory compliance – practice and application	2
9 October 2023	2.30pm–4.30pm	Jurisdictional roundup: regulatory compliance updates for BVI, Cayman Islands, Bahamas and UK (ROE obligations)	2
11 October 2023	4.00pm–5.30pm	Managing litigation and enforcement risks – practical guidance on pre-contractual negotiations and pre-action considerations	1.5

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

Membership

Membership/graduateship renewal for the financial year 2023/2024 – final call

The renewal notice, together with the debit note for the financial year 2023/2024, was sent to all members and graduates by email at the beginning of July 2023 to the email address registered with the Institute. Members and graduates should settle the payment as soon as possible, but no later than Saturday 30 September 2023.

All members and graduates are highly encouraged to settle their annual subscription directly online. Please ensure that you settle your annual subscription by the deadline, as failure to do so will constitute grounds for membership or graduateship removal.

For enquiries, please contact the Membership Section: (852) 2881 6177, or email: member@hkcgi.org.hk.

Membership (continued)

New Associates

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

Chen Tingchan
Cheng Siu Chun
Cheng Yan
Cheung Pik Wah
Chiang Ka Man
Chu Shuk Yin
Diao Shaolong
Fan Chonglan
He Jiaqi
Hui Sheung Ting
Kwok Wai Ming
Lau Wing Kwok
Lee Wai Shan
Li Hang
Li Xiaohui
Li Yi
Liu Jing
Lo Ka Lai, Elsa
Mei Zhe
Po Ngai, Natalie
Shi Panpan
Shing Yuen Wai
Tang Hoi Ki
Tang Yun
Tong Chiu Yu
Wang Xiru
Wong Suet Ying
Yang Xue
Yau Ching Yi
Yu Wing Yan, Yanny
Zhou Jieran

New graduates

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

Au Kai Yin
Cai Yunzhi
Chan Ching Man
Chan Mei Ting
Chung Yan Ki
Huang Xuefei
Hui Ka Man
Lam Sing Hon
Lau Yat Lun, Horry
Law Hoi Ki
Leung Yik Fung
Liu Gang
Lui Ying Lee
Luo Qizhi
Shi Junzheng
Su Linxi
Sun Bo
Wan Sin Yu
Wang Yanju
Yang Dongqin
Yin Yuan
Yip Cheuk Yim, Jane

Membership activities: July 2023

8 and 22 July

Art jamming – acrylic paint workshops

20 July

網上玄學講座：“九運” 風水拆解指南

Forthcoming membership activities

Date	Time	Event
28 October 2023	2.30pm–5.30pm	Joint professional indoor war game

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

Advocacy

HKMU Scholarships and Awards Gala 2022–2023

On 18 July 2023, Ernest Lee FCG HKFCG(PE), Institute President and Technical Partner, Deloitte China, and Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), Past International President, Honorary Adviser to Council and Institute Past President, and Executive Director and Company Secretary, CK Hutchison Holdings Ltd, attended the HKMU Scholarships and Awards Gala 2022–2023 as distinguished guests.

Nominations for the HKCGI Prize 2023

The Institute takes great pride in presenting The Hong Kong Chartered Governance Institute Prize 2023 (HKCGI Prize). This award recognises governance professionals who have made outstanding contributions to the Institute and to the Chartered Secretary and Chartered Governance profession over a substantial period of time.

We have a community of over 7,000 members in Hong Kong and the Mainland. Celebrating the achievements of leaders in the governance profession will inspire others to play their part in bringing the profession forward. Members are cordially invited to nominate candidates who have made ongoing and significant contributions to the Institute and our profession.

These may include a track record of outstanding contributions to:

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

The nomination deadline is Saturday 30 September 2023. Submit your nominations now!

For enquiries, please contact Melani Au: (852) 2830 6007, or email: member@hkcgi.org.hk.

Advocacy (continued)

The Hong Kong Chartered Governance Institute 2023 Annual General Meeting – call for nominations for election to Council

Members are invited to nominate candidates for election to Council of the Institute at the 2023 Annual General Meeting (AGM). The Articles of Association of the Institute provide that Fellows who are ordinarily resident in the Divisional Territory are eligible to stand for election. More details are available on the Institute's website: www.hkcgi.org.hk.

Duly completed and signed nomination forms must be returned to the Institute's Secretariat in person or by post no later than 6.00pm on the nomination closing date of Tuesday 3 October 2023.

For enquiries, please contact the Membership Section: (852) 2881 6177, or email: member@hkcgi.org.hk.

The 70th Governance Professionals ECPD seminars

The Institute held its joint training for A+H share board secretaries and independent directors, and the 70th Governance Professionals ECPD seminars from 19 to 21 July 2023 in Dalian, Liaoning Province, under the theme of Information Disclosure and Governance Compliance. This event attracted over 120 participants, mainly comprising board secretaries and equivalent personnel, CFOs, directors, supervisors and other senior management from companies listed or to-be-listed in Hong Kong and/or the Mainland.

Institute Vice-President Dr Gao Wei FCG HKFCG(PE) delivered a welcome speech. Council member Edmond Chiu FCG HKFCG(PE) and other senior professionals and governance practitioners shared their insights on the following topics:

- interpretation of the Administrative Measures for Independent Directors of Listed Companies (to be released)
- case analysis of continuing liabilities of directors from listed companies and penalties for non-compliance
- overview of the Institute's Guidelines on Practices of Directors of Mainland Companies Listed in Hong Kong
- the practice and role of directors' liability insurance from the perspective of claiming cases
- updates on disclosure regulations and non-compliance cases for companies listed in both Hong Kong and the Mainland
- case study: ESG practices of Fosun International Group
- corporate ESG and climate disclosure – corporate competitiveness from the perspective of information disclosure
- information disclosure practices for A+H share companies
- case study: M&A integration of A+H share company – Dalian Port Co Ltd's merger with Yingkou Port Co Ltd, and
- group discussion: how independent directors and board secretaries address governance compliance risks.

The Institute would like to express its sincere appreciation to all speakers and sponsors, as well as to all participants, for their generous support and participation.


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香港公司治理公会
A+H股董事会秘书/独立董事联合培训
暨第七十期公司治理专业人士强化持续专业发展讲座
信息披露与治理合规
2023年7月19日至21日 辽宁大连
主办方：
合作方：


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Chartered Governance Qualifying Programme (CGQP)

June 2023 examination diet

The results of the June 2023 examination diet were released on 15 August 2023. Candidates can access their examination results from their accounts on the Institute's website. The examination papers, mark schemes and examiners' reports are also available to download from the Login area of the Institute's website.

Pass rates

A summary of the pass rates for the CGQP June 2023 examination diet is set out below:

Module	Pass rate
Part One	
Corporate Governance	34%
Corporate Secretaryship and Compliance	40%
Hong Kong Company Law	43%
Interpreting Financial and Accounting Information	44%
Part Two	
Boardroom Dynamics	40%
Hong Kong Taxation	57%
Risk Management	22%
Strategic Management	42%

Module Prize and Merit Certificate awardees

The Institute is pleased to announce the following Module Prize and Merit Certificate awardees for the June 2023 examination diet. The Module Prizes are sponsored by The Hong Kong Chartered Governance Institute Foundation Ltd. Congratulations to all awardees!

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

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

Module	Module Prize awardees
Corporate Governance	Ip Tan Ieng
Hong Kong Company Law	Leung Ka Lai

Module	Merit Certificate awardees
Boardroom Dynamics	Ching Kit Man
Corporate Governance	Choi Hang Yi Wang Jiangqin Li Wing Yan, Frenda
Corporate Secretaryship and Compliance	Mo Yingfei
Hong Kong Company Law	Chan Ching Fei, Vanissa
Interpreting Financial and Accounting Information	Lau Suet Ying, Alice Cheung Pik Yuen, Belinda

November 2023 examination diet

Timetable

The November 2023 examination diet of the CGQP will be held between 20 and 30 November 2023.

Week one

Date/Time	20 November Monday	21 November Tuesday	22 November Wednesday	23 November Thursday
9.15am–12.30pm*	Hong Kong Taxation	Hong Kong Company Law	Interpreting Financial and Accounting Information	Corporate Secretaryship and Compliance

Week two

Date/Time	27 November Monday	28 November Tuesday	29 November Wednesday	30 November Thursday
9.15am–12.30pm*	Corporate Governance	Risk Management	Strategic Management	Boardroom Dynamics

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

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

Key dates

Key dates	Description
17 October 2023	Pre-released case studies for the Part 2 modules: Risk Management, Strategic Management and Boardroom Dynamics
Early November 2023	Release of examination admission slips
21 December 2023	Closing date for examination postponement applications
Mid-February 2024	Release of examination results
Mid-February 2024	Release of examination papers, mark schemes and examiners' reports
Late February 2024	Closing date for examination results review applications

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

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

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

Chartered Governance Qualifying Programme (CGQP) (continued)

Learning support

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

Video-recorded Student Gatherings

The Video-recorded Student Gatherings provide students with a better understanding of the requirements of the CGQP examinations and help them prepare more thoroughly for the examinations. The videos are available from the Student Gathering page under the Learning Support subpage of the Studentship section of the Institute's website: www.hkcgi.org.hk.

Examination technique online workshops and student seminars

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

Key dates for the examination technique online workshops

Key dates	Description
September to October 2023	Examination technique online workshops – parts I and II
13 October 2023	Examination technique online workshops – submission deadline for the mock examination paper
Late October 2023	Examination technique online workshops – part III

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

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

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

Student Ambassadors Programme 2023/2024 – recruitment of mentors

Our Student Ambassadors Programme (SAP) serves as a platform to introduce and enhance students' understanding of the career of a governance professional. One of the key features of SAP is the Mentorship Programme, which gives our student ambassadors the chance to learn from experienced members of the profession.

We would like to invite Institute members to join the SAP Mentorship Programme as our mentors to nurture the young generations as future governance professionals.

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

For enquiries, please contact the Qualifications and Assessments Section: (852) 2881 6177, or email: student@hkcgi.org.hk.

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www.hkcgi.org.hk

Chartered Governance Qualifying Programme (CGQP) (continued)

Forthcoming studentship activities

Date	Time	Event
7 October 2023	1.30pm–5.00pm	The Career Paths of a Governance Professional 2023

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

Studentship renewal for the financial year 2023/2024 – final call

The renewal notice for the financial year 2023/2024 was sent to all students to the email address registered with the Institute in early July 2023. Students should settle the payment as soon as possible, but no later than Saturday 30 September 2023.

All students are highly encouraged to pay their renewal fee directly online. Please ensure that you settle your renewal fee by the deadline, as failure to do so will result in the removal of studentship from the student register.

For enquiries, please contact the Studentship Registration Section: (852) 2881 6177, or email: student_reg@hkcgi.org.hk.

Notice

Featured job openings

Company name	Position
Hong Kong Red Cross	Manager (Governance Support)
MTR Corporation Ltd	Manager–Company Secretarial (Ref: 230001M5)
The Hong Kong Chartered Governance Institute	Assistant Manager (Ref: QA2023-08)
The Hong Kong Chartered Governance Institute	Senior Officer/Officer, Marketing and Communications (Ref: MKT 2023-04)

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

Data scraping on social media

On 25 August 2023, the Office of the Privacy Commissioner for Personal Data (PCPD), together with eleven privacy or data protection authorities from Argentina, Australia, Canada, Colombia, Jersey, Mexico, Morocco, New Zealand, Norway, Switzerland and the UK, issued a joint statement to social media platforms and other websites that host publicly accessible personal data about global expectations of privacy protection.

In particular, the statement highlights the key privacy risks associated with data scraping, and reminds social media platforms and other websites of their responsibilities to protect personal data from unlawful data scraping. Data scraping, which generally involves extraction of data (including personal data) from the web by automated processes, raises significant privacy concerns. It can result in personal data being sold on the dark web without the knowledge and consent of the data subject, leading to exploitation of personal data for targeted cyberattacks, identity fraud and unwanted direct marketing or spam messages.

In the joint statement, the signatories point out that:

- personal information that is publicly accessible is still subject to data protection and privacy laws in most jurisdictions
- social media companies and the operators of websites that host publicly accessible personal data have obligations under data protection and privacy laws to protect personal information on their platforms from unlawful data scraping, and
- mass data scraping incidents that harvest personal information can constitute reportable data breaches in many jurisdictions.

The signatories recommend that these social media platforms and websites should also implement multilayered technical and procedural controls to mitigate the privacy risks of data scraping, which include, among others:

- designating a team and/or specific roles to identify and implement controls to protect against data scraping activities
- taking steps to review automated scraping programmes and data scraping, and take actions to stop such activities
- monitoring accounts with unusually high engagement with other accounts so as to block suspicious accounts, and
- continuously monitoring security risks and threats from malicious or other unauthorised actors to their platforms.

In addition, the signatories remind users, before sharing their personal data online, to beware of the risk that their personal data could be within the reach of potential scrapers who could use it for harmful purposes. Users are also advised on the measures they can take to mitigate the risk of data leakage.

Source: PCPD media statement of 25 August 2023. The joint statement can be downloaded from the PCPD website: www.pcpd.org.hk.

The SFC concludes consultation on risk management guidelines for futures dealing activities

On 25 August 2023, the Securities and Futures Commission (SFC) published consultation conclusions on its proposed risk management guidelines for licensed futures brokers. The consultation began on 25 November 2022 and ended on 31 January 2023. The SFC received 21 written submissions from industry associations, futures brokers, professional bodies, consultancy firms and individuals.

The guidelines set out a comprehensive risk management framework for futures brokers covering market risk management, commodity futures trading, client credit risk management, concessionary margining and risk management over executing or clearing agents. Requirements for funding liquidity risk management, safeguarding client assets, trading in futures markets outside Hong Kong and stress testing are also included.

Respondents generally appreciated the SFC's guidance on the risk management practices expected of futures brokers and their feedback has been incorporated in the guidelines where appropriate. To address the market's comments, the SFC has provided more principles-based guidance in place of some prescriptive rules and quantitative thresholds.

Futures brokers have a transitional period of six months to comply with the guidelines and an additional 12 months to implement system changes for compliance with requirements relating to the automation of client risk limit controls and stress testing.

Source: SFC press release of 25 August 2023. The guidelines will become effective on 25 February 2024. More information is available on the SFC website: www.sfc.hk.

The SFC and the ICAC conduct joint operation against suspected market manipulation syndicate

On 29 August 2023, the SFC and the Independent Commission Against Corruption (ICAC) conducted a joint operation involving two companies listed on The Stock Exchange of Hong Kong Ltd (SEHK) on suspicion that their shares were being manipulated from December 2022 to August 2023. The joint operation was conducted under the arrangement of the Memorandum of Understanding signed between the SFC and the ICAC.

The SFC and the ICAC searched 14 premises suspected of links to the market manipulation case. In the joint operation, the ICAC also arrested one core member of the suspected syndicate under the Prevention of Bribery Ordinance.

The investigation revealed that an extremely well-organised syndicate was suspected of orchestrating a scheme to ramp up the share prices of the two listed companies, thus breaching relevant provisions of the Securities and Futures Ordinance (SFO). The SFC suspected that the ultimate purpose of the scheme was to inflate the market capitalisation of the two listed companies to facilitate their selection as constituents of major market indices and for the syndicate to make a profit by selling their shares of the listed companies to index tracking funds at inflated prices.

To facilitate the operation of the scheme, the arrested core syndicate member was suspected to have bribed two senior executives of one of the two listed companies into disseminating false and misleading information about the company.

Source: Joint SFC/ICAC press release of 29 August 2023. More information is available on the websites of the SFC (www.sfc.hk) and the ICAC (www.icac.org.hk).

Cross-Agency Steering Group announces priorities

On 7 August 2023, the Green and Sustainable Finance Cross-Agency Steering Group (Steering Group) announced its key priorities to further promote and consolidate Hong Kong's role as a leading sustainable finance hub. Established in May 2020, the Steering Group is co-chaired by the Hong Kong Monetary Authority (HKMA) and the SFC. It aims to coordinate the management of climate and environmental risks to the financial sector, accelerate the growth of green and sustainable finance in Hong Kong and support the government's climate strategies.

The key priorities announced in August are highlighted below.

Establish world-class regulation through alignment with global standards

The Steering Group aims to develop a comprehensive Hong Kong roadmap for adopting the International Financial Reporting Standards (IFRS) Sustainability Disclosure Standards as appropriate, taking into account Hong Kong's position on the global green finance map, local regulatory expectations and circumstances. The IFRS Sustainability Disclosure Standards were released on 26 June 2023. The Steering Group will set up a working group with the participation of relevant authorities and stakeholders to look into the elements to be covered by this roadmap and make recommendations to the Steering Group.

Boost Hong Kong's vibrancy and competitiveness

The Steering Group aims to boost Hong Kong's vibrancy and competitiveness through capacity building, data enhancement and technology innovation of the finance ecosystem to support net-zero transition across the economy. Workshops will be arranged to support non-listed companies and small and medium-sized enterprises (SMEs) in their sustainability planning and reporting, as well as their broader usage of available data sources and tools. The Steering Group will also develop a data portal to increase the availability and accessibility of climate-related data collected through the Climate and Environmental Risk Questionnaire for Non-listed companies/small and medium-sized enterprises (SME Questionnaire).

The SME Questionnaire was launched by the Steering Group in December 2022, in collaboration with CDP, an international non-profit organisation that runs the global environmental disclosure system for companies, to aid SMEs' sustainability reporting processes, and raise their sustainability visibility to lenders, investors and supply chain clients so as to better access sustainability financing. It will also facilitate financial institutions' collection and assessment of company-level data for risk assessment and relevant business decisions. It is the first cross-sector reporting template designed for first-time reporting corporates in Hong Kong, especially SMEs, and is aligned with the framework of the Financial Stability Board's Task Force on Climate-related Financial Disclosures.

In addition, The Steering Group will explore opportunities for public–private partnerships to promote the development of technology-driven solutions, and engage with relevant stakeholders to develop a Hong Kong green fintech map to raise the profile of firms in this sector.

Support the net-zero transition

The Steering Group intends to grow dynamic, trusted markets with diverse products to mobilise capital at larger scale to support the net-zero transition. Relevant agencies in the Steering Group have been integrating transition considerations into their broader policy work to support sustainable finance development. A dedicated workstream will explore ways to further support financial institutions and corporates in their transition planning and reporting. Meanwhile, the Steering Group is extending its efforts to build Hong Kong into an international carbon market to connect opportunities across the Mainland, Asia and the rest of the world.

Source: HKMA press release of 7 August 2023. More information is available at: https://sustainablefinance.org.hk.

Regulators reach consensus on introducing block trading under Stock Connect

On 11 August 2023, the SFC and the China Securities Regulatory Commission (CSRC) jointly announced that they have reached a consensus on the introduction of block trading (manual trades) under Stock Connect. Manual trades refer to trades conducted outside SEHK's trading system and reported to SEHK.

Block trading provides an alternative trading mechanism to enable market participants to execute large-sized transactions. The introduction of block trading under Stock Connect will enable southbound and northbound investors to participate in the block trading facilities currently available in the Hong Kong and Mainland markets respectively.

The block trading arrangements for Stock Connect will be developed based on the existing operational models and regulations in each market with appropriate adjustments.

Source: Joint SFC/CSRC announcement of 11 August 2023. More information is available on the websites of the SFC (www.sfc.hk) and the CSRC (www.csrc.gov.cn).

Regulators conclude consultation on revising OTC derivative Clearing Rules

On 29 August 2023, the HKMA and the SFC issued their joint consultation conclusions on proposed amendments to the Clearing Rules for over-the-counter (OTC) derivative transactions – Securities and Futures (OTC Derivative Transactions–Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules.

Under the proposal, certain interest rate swap transactions referencing alternative reference rates (ARRs) would be subject to the clearing obligation under specified conditions. At the same time, the regulators would repeal the current requirement to clear certain interest rate swap transactions referencing interbank offered rates (IBORs), which are or will no longer be published or considered representative. This is in line with global interest rate benchmark reforms, particularly the transition from the use of IBORs to ARRs.

The proposal received general support and the amendments will be submitted to the Legislative Council for negative vetting. Subject to the legislative process, the amended Clearing Rules are expected to come into effect no earlier than 1 July 2024.

Source: SFC press release of 29 August 2023. The joint consultation conclusions paper can be downloaded from the websites of the HKMA (www.hkma.gov.hk) and the SFC (www.sfc.hk).

EFRAG-GRI joint statement of interoperability

On 5 September 2023, the European Financial Reporting Advisory Group (EFRAG) and the Global Reporting Initiative (GRI) published a joint statement on the high level of interoperability achieved between the European Sustainability Reporting Standards (ESRS) and the GRI Standards.

EFRAG provides technical advice to the European Commission in the formation of ESRS. The GRI Standards are the most widely used frameworks for reporting on sustainability. The ESRS and GRI Standards have adopted the same definition for impact materiality. For example, they both follow the requirement formulated in the EU's Corporate Sustainability Reporting Directive (CSRD) to adopt a double materiality approach.

The CSRD entered into force on 5 January 2023. This new directive modernises and strengthens the rules concerning the social and environmental information that companies have to report. A broader set of large companies, as well as listed SMEs, will now be required to report on sustainability. The new rules will ensure that investors and other stakeholders have access to the information they need to assess the impact of companies on people and the environment, and for investors to assess financial risks and opportunities arising from climate change and other sustainability issues.

The first companies will have to apply the new rules for the first time in the 2024 financial year, for reports published in 2025.

Source: Joint EFRAG/GRI press release of 4 September 2023. More information is available on the websites of EFRAG (www.efrag.org) and GRI (www.globalreporting.org).