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August 2019

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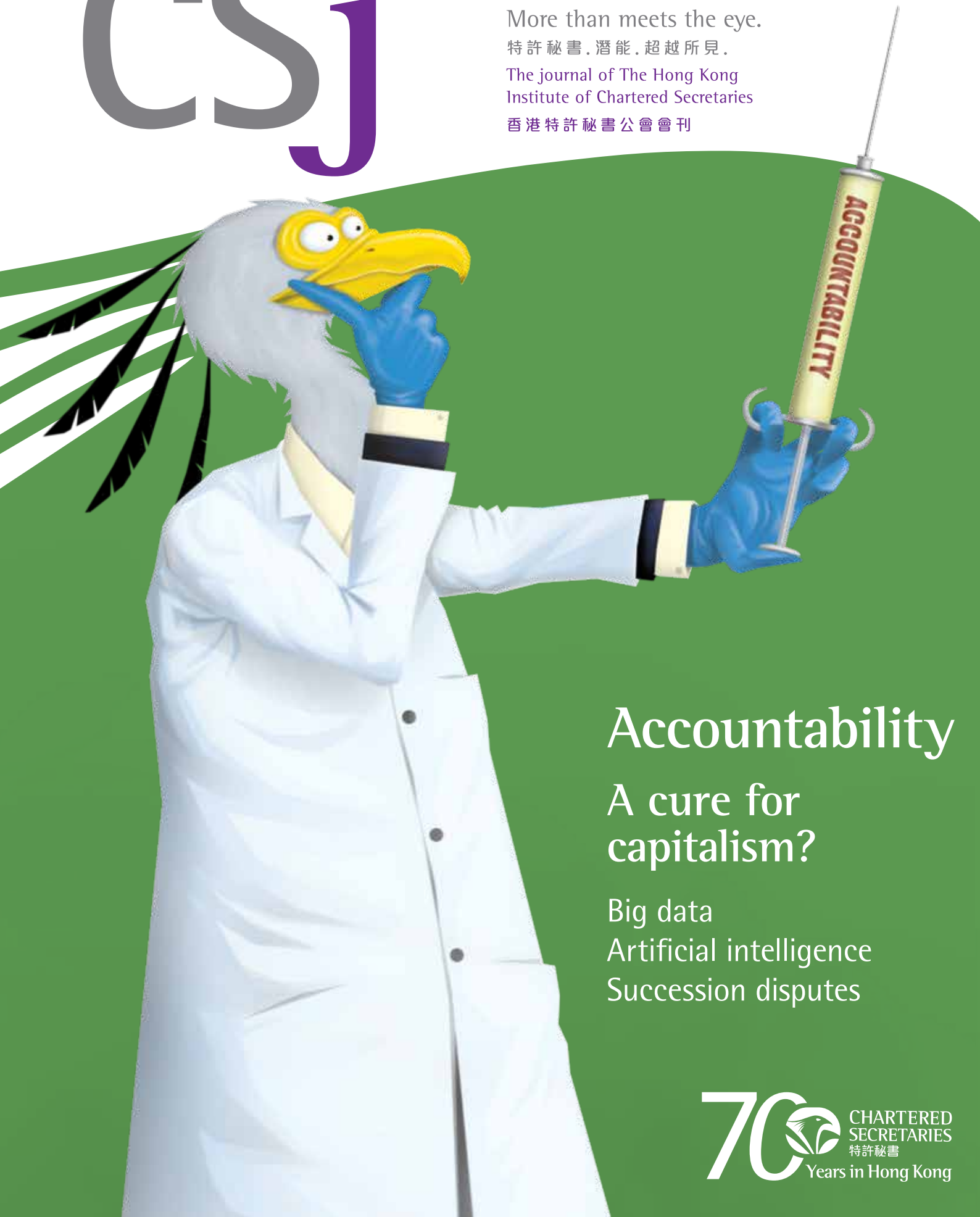

Accountability

A cure for capitalism?

Big data
Artificial intelligence
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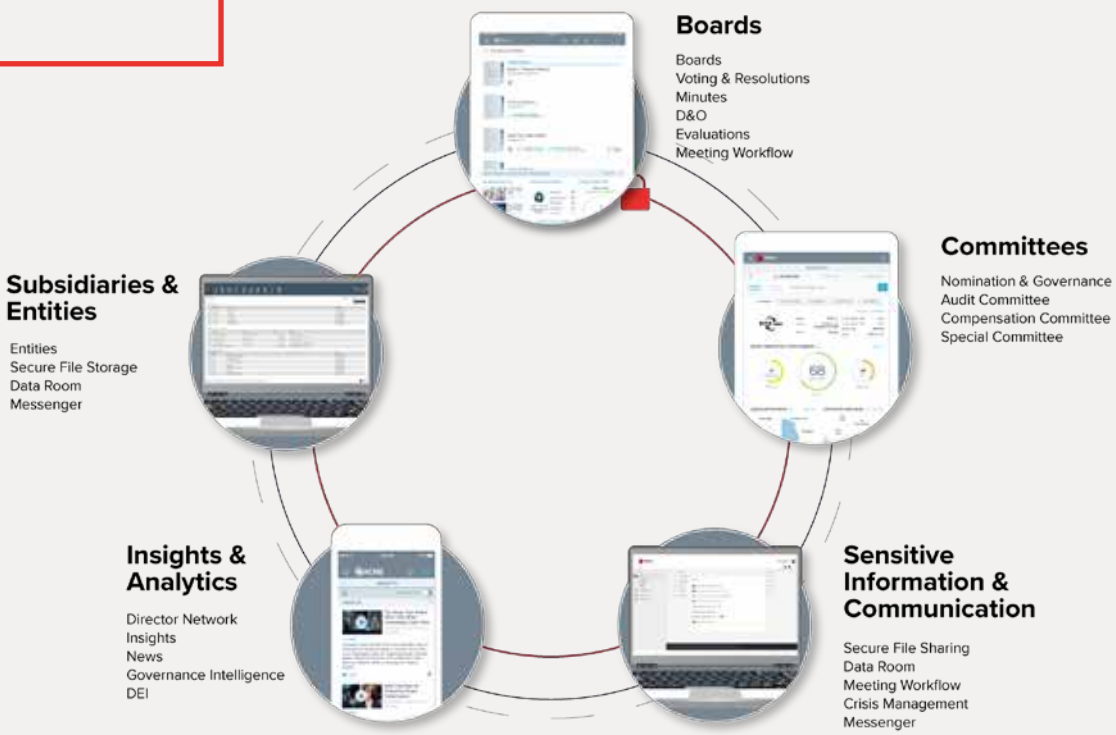

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CHARTERED SECRETARIES 特許秘書

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The Hong Kong Institute of Chartered Secretaries (HKICS) 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 throughout Mainland China. HKICS was first established in 1949 as an association of Hong Kong members of The Institute of Chartered Secretaries and Administrators (ICSA) of London. It was a branch of ICSA in 1990 before gaining local status in 1994 and has also been ICSA's China/Hong Kong Division since 2005. HKICS is a founder member of Corporate Secretaries International Association (CSIA), which was established in March 2010 in Geneva, Switzerland. In 2017, CSIA was relocated to Hong Kong where it operates as a company limited by guarantee. CSIA aims to give a global voice to corporate secretaries and governance professionals. HKICS has over 6,000 members and 3,200 students.

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Contents

Making it personal

Our journal this month brings us back to the fundamental core principles that underlie most of what we do as governance professionals – fairness, responsibility, transparency and accountability. Since the 2008 global financial crisis, regulators have been increasingly interested in the remarkable 'cleansing' properties of the latter two principles. Fraud and malpractice cannot thrive where the actions of market players are carried out in full public view and where breaches of market rules are met with a swift and calamitous nemesis meted out by regulators.

Achieving perfect transparency and accountability is, of course, no easy task, but the convergence in accounting standards globally over the last decade has certainly been a major success as far as transparency is concerned. Our cover story this month investigates the possibility that we are on the brink of a similar breakthrough for accountability by virtue of a much more aggressive enforcement of individual accountability by regulators globally.

In the US, the memorandum entitled 'Individual Accountability for Corporate Wrongdoing', published by the then US Deputy Attorney General Sally Yates in September 2015 was an early clarion call for the new approach. 'Americans should never believe, even incorrectly, that one's criminal activity will go unpunished simply because it was committed on behalf of a corporation', Ms Yates famously stated on the publication of her memo. US presidential candidate Senator Elizabeth Warren has been an equally high-profile advocate of this approach. Her proposed Corporate Executive Accountability Act would introduce three new, separate means by which executives could face criminal liability for their inattentiveness to compliance risks.

In 2016 the UK brought in a new regime designed to ensure that senior managers in financial services firms would be accountable for their decisions. The Senior Managers and Certification Regime (SMCR) initially applied to firms in the banking and insurance industries, but, from 9 December this year, will also apply to all financial services firms regulated solely by the Financial Conduct Authority and authorised under the Financial Services and Markets Act 2000.

Here in Asia, Hong Kong has been an early pioneer of this approach. The attempt to ensure individual accountability among licensed corporations was one of the principal motivations of the Responsible Officer (RO) regime introduced by the Securities and Futures Commission (SFC) almost 16 years ago. Under this regime, licensed corporations were required to nominate individuals as ROs to ensure that the SFC could target the misconduct of key individuals with management responsibility.

The RO regime did not always succeed in pinning responsibility and accountability in the right places, however. In some cases, licensed corporations were able to appoint relatively junior officers as ROs and the key decision-makers were able to escape regulatory scrutiny. To remedy this, the SFC introduced the Manager-in-Charge (MIC) regime in October 2017. Under this regime, licensed corporations need to identify eight core functions and appoint at least one individual to be in charge of each function. This has given the SFC a much more reliable roadmap of the network of senior individuals running licensed corporations in Hong Kong and the SFC confirms in this month's journal that a number of MIC investigations focusing on serious misconduct are underway.

The MIC regime only applies to corporations licensed by the SFC, but it has implications for the market as a whole. Our cover story points out that holding individuals accountable for breaches of Hong Kong's Competition Ordinance is a key goal of the Competition Commission and enforcement action is already underway. Elsewhere in Asia we have seen similar developments. In Australia, the Banking Executive Accountability Regime designed to make senior executives in banks more accountable for their actions came into effect for the largest banks in Australia on 1 July 2018. Moreover, the Monetary Authority of Singapore is in the process of rolling out guidelines to strengthen accountability and standards of conduct across the financial industry.

Will this new trend be a game-changer for our market and markets around the world? As stated above, basic human psychology would suggest that a more aggressive enforcement of transparency and individual accountability is likely to have a very significant deterrent effect on fraud and malpractice. Moreover, as our Senior Director and Head of Technical & Research, Mohan Datwani states in this month's cover story, it will also have very significant implications for directors' and managers' liability. We as governance professionals, then, ignore this prevailing new wind at our peril.

David Fu FCIS FCS(PE)

个人问责

今期月刊回归管治专业人员大部分工作所本的基本核心原则：公平、负责、透明及问责。自2008年环球金融危机以来，监管机构对最后两项原则的「净化」特点日益感兴趣。假如市场参与者的行为完全公开，而违反市场规则的行为又能迅速受到监管机构严惩，欺诈和不法行为便难以猖獗。

要做到完全透明和问责，当然并不容易，但过去十年来，全球各地的会计标准趋向统一，对提高透明度肯定大有裨益。今期的封面故事指出在问责性方面，我们也可能快将取得类似的突破。全球各地的监管机构倾向更进取地要求个人问责，势将进一步加强问责性。

2015年9月，美国时任司法部副部长耶茨发表题为「企业失当，个人问责」的备忘录，便是这个新监管模式的早期倡导者。在发表备忘录时，耶茨说了很知名的一番话：「美国人绝对不应以为刑事行为只要是代表机构所做的，便可免受惩罚。」美国总统候选人、参议员华伦也同样高调提倡这模式，她提出的《企业高管责任法案》，便建议三种不同的新方法，让高管为不理会合规风险而负上刑事责任。

2016年，英国实行新制度，确保金融服务机构的高级管理人员将为自己的决定问责。高级管理人员及认证制度最初适用于银行及保险公司，但由今年12月9日起，所有仅受金融行为监管局规管，并根据《2000年金融服务及市场法》获得认可的金融服务机构，也将奉行这制度。

亚洲方面，香港是这种监管模式的先锋。差不多16年前，证券及期货事务监察委员会（证监会）推出负责人员制度，其中一个主要动机，就是确保持牌法团内的个人问责。在这制度下，持牌法团须按规定提名负责人员，确保证监会可就主要管理人员的不当行为作针对性的处理。

不过，负责人员制度并非经常能准确地针对责任所在。有些持牌法团指定相对低级的人员为负责人员，而主要决策者却能避过监管机构的监察。为补不足，证监会在2017年10月实施核心职能主管制度，持牌法团须识别八项核心职能，每项职能指定最少一人主管。这让证监会更可靠地掌握香港持牌法团的高级人员网络，而在今期的月刊中，证监会证实现正进行多项核心职能主管调查，涉及严重失当行为。

核心职能主管制度只适用于获证监会发牌的法团，但对整个市场也有启迪作用。今期的封面故事指出，竞争事务委员会的一个主要目标，是要让个人为违反香港的《竞争条例》负责，而相关的执法行动已经展开。在亚洲其他地区，也有类似的发展。澳洲的银行高管问责制，旨在使银行的高级行政人员更为个人的行为负责，由2018年7月1日起在澳洲最大的银行开始实施。此外，新加坡金融管理局现正推出多项指引，加强金融业界的问责性，提高操守水平。

这个新趋势会否改变香港和全球其他市场的游戏规则？正如上文所述，从心理反应的角度推想，在透明度和个人问责性方面加强执法，很可能对欺诈和不法行为产生重大阻吓作用。此外，正如本会高级董事及专业技术及研究总监高朗在封面故事所述，这趋势对董事和管理人员的责任也有重大影响。作为管治专业人员，假如我们无视这个新风向，便会冒很大风险。

傅溢鸿 FCIS FCS(PE)

Individual accountability

Globally we are seeing the introduction of new regimes to make it easier for regulators to hold individual executives and board members responsible for corporate misconduct. *CSj* looks at the implications of this trend for directors, managers and governance professionals in Hong Kong.

They used to tell us in law school that the corporate veil was sacrosanct, that if we could penetrate the veil and hunt down individuals behind it, what would be the point of incorporation? The company would die a slow death, unused and little missed. So we drew the curtains and the company thrived, driving economies and providing wealth for entire communities. But with little oversight, and even less means to do so, fraud and negligence entangled themselves within their pleats and folds. Along came the golden boys, Lehman Brothers, Goldman Sachs, and the seams stretched even further. Finally the financial crisis and the inevitable fallout, and the curtain was torn apart by the enraged public.

Governance and accountability have become the new buzzwords, with CEOs, chairmen and directors now subject to new levels of scrutiny. The global approach has been shaped by the Yates Memorandum, which stressed that one of the most effective ways to combat corporate misconduct is to hold individuals accountable. The author of this memorandum is now a contender for the highest office in the US. This global about-turn has created ripples across financial markets and regulators worldwide have seized the opportunity.

The global picture

Mohan Datwani FCIS FCS, the Institute's Senior Director and Head of Technical & Research, gives us the backdrop to the regulatory changes. 'After the 2008 financial crisis,' he points out, 'it became clear that corporate governance was weak. Ambiguity around the roles and responsibilities of managers and directors meant that enforcing personal accountability was fraught with difficulty. Neither directors nor those in management positions were really being held accountable for their actions. Hence the introduction of new regimes to make it easier for regulators to hold individual executives and board members responsible for corporate misconduct.'

One of the precursors post-2008 to rebuilding trust in the banking industry was the UK's senior manager regime (SMR), which was implemented in 2016. Aimed at increasing the personal accountability of senior management in the financial services industry, one of the key features of the SMR is to establish the principle that senior executives, while they may delegate specific tasks, cannot delegate their accountability and personal oversight. A statutory responsibility was imposed on managers to take reasonable steps to prevent regulatory breaches from occurring. With the new regime in place, regulators would have the information available to quickly identify the senior managers responsible for the areas at fault.

Developments in Hong Kong

In Hong Kong, the Securities and Futures Commission (SFC) introduced a Responsible Officer (RO) regime for licensed corporations (LCs) almost 16 years ago. But limitations with this regime quickly became apparent.

'There were gaps when it came to identifying those persons with real responsibility,' the SFC says. 'We have observed that some LCs do not necessarily appoint their most senior managers as ROs. For example, in a review of the management structure of certain firms, we found a senior executive who was supervising six ROs, but was himself only licensed as a representative. In some extreme cases, junior executives were

Highlights

- the Securities and Futures Commission (SFC) believes that Hong Kong's Manager-in-Charge (MIC) regime has heightened the awareness of individual managers regarding their accountability, regulatory obligations and potential liabilities
- the SFC confirms that it is currently pursuing a number of MIC investigations focusing on serious misconduct that has raised firm-wide compliance and internal control issues
- governance professionals need to alert directors to the global trend towards the enforcement of individual accountability since this is likely to have implications for directors' general liability

> “the whole game globally is moving towards individual responsibility and directors have to understand that”
>
> Mohan Datwani FCIS FCS(PE), Solicitor, Institute Senior Director and Head of Technical & Research

appointed ROs, while the controlling minds of the firm stayed in the shadows, with the intent of escaping regulatory scrutiny.'

The SFC needed a roadmap of the network of senior individuals running LCs in Hong Kong. Therefore in April 2017, the Manager-in-Charge (MIC) regime, similar in essence to the UK's SMR, came into effect and was fully implemented by the end of the year. Specifically, the SFC identified eight core functions of LCs, including overall management oversight, key business line, risk management and compliance, and required LCs to appoint at least one individual to be in charge of each function. The SFC would have to be notified of all MIC appointments and related changes.

'Previously there was no systematic way for the SFC to collect management structure information of LCs, particularly for certain core functions such as risk management and compliance that do not constitute an SFC-regulated activity. That is why an important objective of the MIC regime is to provide more guidance on the management structure information which is required to be submitted to the SFC, as well as guidance on who should seek to become ROs,' the SFC says.

MICs need to be fit and proper. The new regime provided more clarity as to their seniority and authority to properly supervise their respective functions. As of 30 June 2019, nearly 11,000 individuals had been appointed as MICs. Among them, 64% were licensed persons, while the remaining 36% were mainly responsible for managing control and operational functions.

Does the MIC regime work?

The MICs in charge of overall management oversight and key business lines are required to be licensed as ROs. However, regardless of whether an MIC is licensed or not, he or she falls directly within the disciplinary ambit of the SFC under Part IX of the Securities and Futures Ordinance (SFO). For the SFC, in addition to directors and ROs of a firm, MICs of core functions are regarded as senior management. All of them are regulated persons under the SFO.

The MIC regime attempts to penetrate further behind the corporate veil to target the misconduct of individuals with management responsibility. It allows the regulator to identify individuals who could be held accountable for misconduct or control failures.

Interestingly, the head of the legal division per se is not required to be an MIC albeit he or she may be an MIC under other core functions. 'This is because general counsels have to deal with privileged information, not because they are not a vital element,' Mr Datwani says.

One of the key components of the MIC regime is the requirement for the board to adopt a formal document setting out the management structure of the corporation. It should cover information including reporting lines and the roles and responsibilities of senior management personnel. Although this document does not need to be submitted, the SFC may request sight of it at any time.

Has this led to a strengthening of governance structures? 'At smaller fund companies that have less compliance infrastructure, they tend to recognise that falling foul of this new regulation will potentially impact their ability to remain in the industry,' says Ignites Asia, an online media portal focusing on the fund management industry. Mr Datwani points out that it is up to an LC board to appoint an individual as the MIC of one or more core functions. LCs can also outsource these functions with management retention of responsibilities.

The SFC believes the MIC regime has heightened awareness of individual MICs regarding their accountability, regulatory obligations and potential liabilities as senior management, including that of MICs who are not required to be licensed.

'Many LCs have taken concrete measures to enhance their governance and management structures, including strengthening their board composition and establishing new committees comprising senior personnel to manage their business and associated risks. They have also delineated job responsibilities and the reporting lines of individual senior managers. LCs have better aligned their senior management with the existing RO regime. Many of them have identified their chief executives and heads of business at group or regional level to be ROs. Many of these individuals were

> many licensed corporations have taken concrete measures to enhance their governance and management structures, including strengthening their board composition and establishing new committees comprising senior personnel to manage their business and associated risks
>
> The Securities and Futures Commission

only licensed representatives or not even licensed in the past and have now applied to be ROs,' the SFC says.

Accountability backed by enforcement

The true test of the effectiveness of any accountability regime is, of course, whether it is backed up by enforcement. The SFC indicates that it is currently pursuing a number of MIC investigations focusing on serious misconduct that has raised firm-wide compliance and internal control issues. The MIC regime also provides useful information for the SFC's enforcement work. It has been leveraging this regime to help it identify senior managers in charge of core functions.

It adds that it will investigate activities that suggest misconduct or call into question the fitness and properness of a regulated person. It may initiate an investigation on the basis of information from any source, which may include the public, other regulators or law enforcement agencies within or outside Hong Kong, or which arise from its monitoring of day-to-day trading in the stock exchange and derivatives markets, from its inspection of intermediaries or from investigations into other matters such as civil market misconduct or criminal offences. Following the investigation, it will then consider whether or not there is sufficient evidence to commence disciplinary proceedings.

The sanctions are civil rather than criminal, which is where it differs from the SMR in the UK where convictions may result in jail time.

The SFC is not the only regulator in Hong Kong to recognise the importance of imposing individual accountability. In an interview with this journal (*CSj*, May 2018 edition), Brent Snyder, Chief Executive Officer, Competition Commission (CC), confirmed that the CC would be seeking to hold individuals accountable for breaches of Hong Kong's competition law. 'Companies can only act through their employees and my view is that if you want to deter companies from acting illegally, you have to deter the officers, directors and employees. That means seeking sanctions against them. Holding individuals accountable will be a part of our cases going forward,' he said.

The CC made good on this promise in September last year when it brought its first direct enforcement action against individuals. 'These proceedings drive home the deterrent message that not only companies but also individuals... may expect to face the full force of the law, Mr Snyder was quoted in *Hong Kong Lawyer* as saying (*Hong Kong Competition Commission Brings Charges Against Individuals*, October 2018).

What should governance professionals be doing?

Mr Datwani emphasises that governance professionals are 'essential facilitators' when it comes to advising on the impacts of the new individual accountability trend. Firstly, they need to be clear about which regulatory regimes are most relevant to their organisation. The UK's SMR may be relevant for multinational banks, for example, while the MIC regime applies to licensed corporations in Hong Kong. 'If you are in the governance profession you really need to stand back and look at your organisation as a whole, and establish both its weaknesses and strengths. Directors and other key personnel need the relevant training. The governance professional is equipped to understand the different regimes and market developments,' he says.

Even where no specific regime applies, governance professionals need to alert directors to the global trend towards the enforcement of individual accountability since this is likely to have implications for directors' general liability. 'The whole game globally is moving towards individual responsibility and directors have to understand that,' Mr Datwani says. 'But we have to educate ourselves if we are to educate others and effectively perform our governance function'.

Sharan Gill

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

The future of governance in the digital era

Part one – an introduction to big data and governance

Dr Jag Kundi, a Hong Kong–based scholar-practitioner active in the FinTech space, launches a series of articles in *CSj* exploring the interaction of emerging technologies of the digital era on governance and ethics.

In the 21st century, data is an essential resource that powers the information economy, in a similar way that oil fuelled the industrial economy in the 18th century. 'Data is the new oil' as the *Economist* magazine put it in a recent and quite influential article. If this is the case, then this raises a whole range of complexities and opportunities for organisations. Just like oil, how do we govern and manage this valuable resource, prevent leaks and spills and use this to enhance and create stakeholder value? In this three-part series, these complexities around managing and governing data will be examined. This first article looks at governance and big data. The series will then turn to the way data is being decentralised on a blockchain, and eventually the role and impact of ethics on artificial intelligence (AI) and machine learning. This may be all very new and cutting-edge, but it has profound implications for society.

Big data and governance

As businesses seek to benefit from the current digital transformation taking place across sectors, new terms are being bandied around such as FinTech, RegTech, InsurTech, PropTech and HealthTech, to name a few. Whatever the nomenclature used, capturing, classifying and analysing big data is at the heart of these new approaches. Senior managers are realising that a successful transition to becoming data-driven can only be achieved with quality data and that requires a high level of data governance.

What is big data?

To understand data we need to start with some basic questions – what does 'big data' mean and how big is big data?

To address these questions, we need to look at the number of current internet users, as it is by their online activity that big data is being created. In 2018 for example, more than one million users came online for the first time each day (see Figure 1: World internet usage and population statistics, and Figure 2: Digital around the world in 2019).

Gartner's definition of big data circa 2001, which is still widely used, focused on three Vs – data is arriving in increasing volumes, with ever-higher velocity and containing ever greater variety. This means that big data is getting larger, more complex and arising from new data sources such as the 'internet of things' (IoT). These data sets are so voluminous that traditional data processing software just can't manage them, but these massive volumes of data can be used to address business problems that previously firms would not have been able to handle.

IBM added two further Vs – veracity (implying trust in the data) and value (via superior data analytics) – to characterise big data.

To further understand the sheer complexity involved, consider that data doesn't sleep. An infographic provided by Domo in 2018 (www.domo.com/learn/data-never-sleeps-5?aid=ogsm072517_1&tsf100871281=1), highlights how much data is generated every minute. For example, Google conducts 3.8 million searches, YouTube users watch 4.3 million videos and Snapchat users share 2 million snaps every minute.

At our current pace there are 2.5 quintillion bytes (2,500,000,000,000,000,000 bytes) of data produced every day (see Figure 3: Data measurement scale), but that pace is only accelerating with the growth of IoT. As at the end of 2018, Statista estimates there were 23.14 billion IoT devices connected to the internet and forecasts that this will roughly double by 2022 (www.statista.com/statistics/471264/iot-number-of-connected-devices-worldwide).

Highlights

- tougher regulatory requirements around data privacy and data security are making data governance a top priority for organisations
- businesses face two urgent challenges: how to identify actionable insights within data and how to protect it
- if good data governance doesn't exist, then organisations may struggle to effectively use their data to generate business value

To contextualise the sheer volume of this amount of data it is worth pausing to consider the present data measurement scale.

One last thought on the amount of data created is that 90% of all data in the world has been generated over the last two years!

The governance challenge

For companies, big data offers massive challenges around the capture of data, data storage, data analysis, data search, data sharing, data transfer, data visualisation, data querying, data updating, data privacy and data sources. Governance of such huge amounts of data has become of paramount concern. Indeed, certain industries are more at risk such as healthcare and banking. In such cases the amount of effort and expense spent on data governance should be related to the level of risk.

Over time, due to normal business activity, diversity, growth, product expansion, legacy systems and M&A, several different types of data can be introduced to an organisation. Furthermore, this data is typically stored in various platforms and databases, including networked storage, individual hard drives, flash drives and in the cloud. The lack of a unified data management policy and standards raises a number of critical questions.

- What types of data are available within these databases?
- Where is the data stored?
- Who is the ultimate owner of the data?
- Is data being merged with other data sets before being used in reports?
- Can we respond promptly and with confidence to any data requests from regulators?

As the volume, variety, veracity and velocity of available data continues to grow at the rates indicated, businesses face two urgent challenges: how to identify actionable insights within this data (data mining and data analytics) and how to protect it. Both of these challenges depend on a high level of data management and data protection – together data and governance, or for short data governance. We can think of

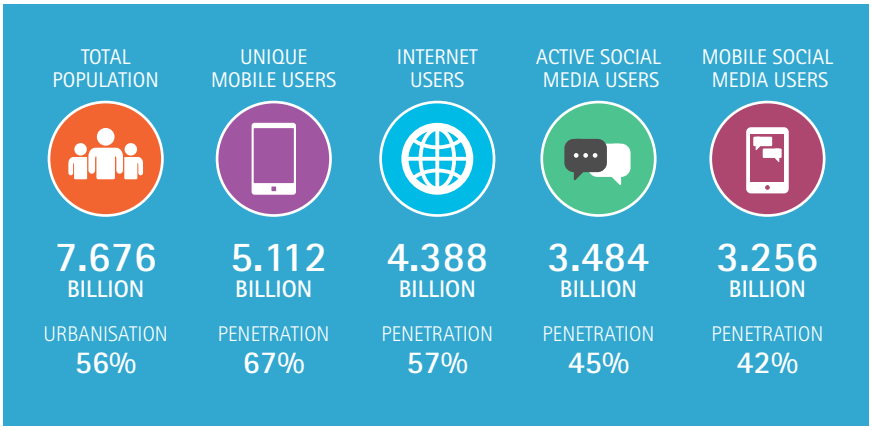
Figure 1: World internet usage and population statistics

World regions	Population (2019 estimate)	Population % of world	Internet users 31 Mar 2019	Penetration rate (% population)	Growth 2000–2019	Internet users %
Africa	1,320,038,716	17.1 %	492,762,185	37.3 %	10,815 %	11.2 %
Asia	4,241,972,790	55.0 %	2,197,444,783	51.8 %	1,822 %	50.1 %
Europe	829,173,007	10.7 %	719,365,521	86.8 %	584 %	16.4 %
Latin America / Caribbean	658,345,826	8.5 %	444,493,379	67.5 %	2,360 %	10.1 %
Middle East	258,356,867	3.3 %	173,542,069	67.2 %	5,183 %	4.0 %
North America	366,496,802	4.7 %	327,568,127	89.4 %	203 %	7.5 %
Oceania / Australia	41,839,201	0.5 %	28,634,278	68.4 %	276 %	0.7 %
World total	7,716,223,209	100.0 %	4,383,810,342	56.8 %	1,114 %	100.0 %

Notes:
- Internet usage and world population statistics estimates for 9 May 2019.
- Demographic (population) numbers are based on data from the United Nations Population Division.
- Internet usage information comes from data published by Nielsen Online, by the International Telecommunications Union, by GfK, by local ICT Regulators and other reliable sources.

Source: www.internetworldstats.com

Figure 2: Digital around the world in 2019



Source: https://datareportal.com/reports/digital-2019-global-digital-overview

> "senior managers are realising that a successful transition to becoming data-driven can only be achieved with quality data and that requires a high level of data governance"

data governance as a combination of both the IT and the business aspects of a firm.

Data governance is linked to a certain extent to IT governance since data management is seen as a discipline of IT management. Both concepts are considered as being part of a company's corporate governance. Organisational issues that are not within the scope of IT management are part of data quality management. Therefore, data governance defines all necessary decision rights, accountabilities, standards, rules and policies for subsequent data management.

Because of this bifurcation of governance and management in relation to big data, a new approach to data governance is needed for several reasons. Firstly, big data comes in various formats, including structured, unstructured and semi-structured. In addition, the sources of data may not be under the control of the teams that manage it.

Data governance is the formal management of data assets within an organisation. It covers areas such as data stewardship, data quality, data dictionaries, and others to help companies understand and control their data assets and focus on the proper management of data. It can also cover data security and privacy, integrity, usability, integration, compliance, availability, roles and responsibilities, and overall management of internal and external data flows.

Another side effect of this is that, if good data governance doesn't exist, then organisations may struggle to effectively share and use their data to generate business value as they may not have a clear view of their customer needs. This could result in lost opportunities for revenue and create more business risk for them. They could also be left vulnerable to regulatory requirements.

The drivers of data governance are usually regulatory and legal requirements; however, a governance rule can be any practice to which the company wishes to adhere. Governance would dictate where certain types of data may be stored and codifies data protection methods, such as encryption or password strength. It can also be used to dictate how to back up data, who has access to data, and when archival data is too old and no longer needs to be kept and can be destroyed. Organisations can also set governance objectives around improving data quality or breaking down silos that isolate certain data. In this context, data governance is primarily used to refer to the strategy of managing and controlling data.

Implementing data governance requires establishing rules and policies within organisations from a high strategic level to a detailed operational and process level. A data governance policy can help organisations improve their overall performance as well as reduce risk. Such a policy should address the following concerns.

1. What governance mechanisms are there for implementing data governance, for example the roles, responsibilities and committees needed internally and externally?

2. How will the integrity of data be kept, for example how is data stored and maintained and how is its trust value verified?

3. Who is the owner of the data and how can its accuracy and suitability for decision-making be ensured?

4. Who has access to the data and how to set up a usage permissions system to allow users to access data for analysis and reporting?

5. How to ensure that the data is compliant with all current regulations (for example the EU's General Data Protection Regulation), and is secure and private?

For point 5 above, witness the recent fine for British Airways (BA) and its parent International Airlines Group (IAG) amounting to US$230 million, in connection with a data breach that took place in 2018 and affected some 500,000 customers browsing and booking tickets online. In their investigation, the UK regulator – the Information Commissioner's Office (ICO), found 'that a variety of information was compromised by poor security arrangements at [BA], including log in, payment card, and travel booking details, as well as name and address information'. Closer to home here in Hong Kong, Cathay Pacific also had a data breach in 2018 affecting 9.4 million customers and investigations are still in progress. In the current era of tighter rules on how companies manage personal data, it will be interesting to see the magnitude of the fine Cathay Pacific eventually faces for this breach.

One way to prevent such lapses is for organisations to adopt a Data Governance Organisation Structure that clearly details the roles of business teams in data governance (see Figure 4: A typical Data Governance Organisation Structure).

Figure 3: Data measurement scale

Unit	Value	Size
bit (b)	0 or 1	1/8 of a byte
byte (B)	8 bits	1 byte
kilobyte (KB)	1000^1 bytes	1,000 bytes
megabyte (MB)	1000^2 bytes	1,000,000 bytes
gigabyte (GB)	1000^3 bytes	1,000,000,000 bytes
terabyte (TB)	1000^4 bytes	1,000,000,000,000 bytes
petabyte (PB)	1000^5 bytes	1,000,000,000,000,000 bytes
exabyte (EB)**	1000^6 bytes	1,000,000,000,000,000,000 bytes
zettabyte (ZB)	1000^7 bytes	1,000,000,000,000,000,000,000 bytes
yottabyte (YB)	1000^8 bytes	1,000,000,000,000,000,000,000,000 bytes

** 1 exabyte = 1 quintillion

The governance imperative

Because information is at the centre of organisations, data governance is also at the centre of organisations. This article suggests a framework that organisations can adapt and adopt for data governance.

Given that regulatory requirements are now more demanding around data privacy, personal information, data security, data provenance and historical data, this makes data governance a top priority for organisations. Witness the introduction of new job titles such as Chief Information Officer, Chief Data Officer, Big Data Architect, Data Scientist and Data Governance Manager. These factors emphasise the higher priority and value attached to data and its management within organisations. In abstract, any corporate process can be thought of as a series of decisions. Without good information to make those decisions, organisations are sailing into a murky future rather than steering to a bright blue ocean.

Dr Jag Kundi

The next article in this series will explore the impact of blockchain on governance.

Dr Jag Kundi is a Hong Kong–based scholar-practitioner active in the FinTech space. He acts as a board adviser, mentor and investor to high-growth businesses and start-ups covering digital currencies, tokenisation and international contactless payment solutions. As a scholar he has developed and taught academic and professional programmes for HKU SPACE covering FinTech and big data and governance, as well as advised other local institutions on this subject matter for undergrad and postgrad programmes. He can be contacted by email: dr.kundi@live.com, or via LinkedIn: www.linkedin.com/in/jagkundi.

Figure 4: A typical Data Governance Organisation Structure

Committees to monitor and implement governance

To ensure effective monitoring, supervision and implementation of governance within the organisation, a cascade of three committees would provide additional support to this structure.

Data Governance Council

The Data Governance Council would be responsible for reviewing and approving general governance measures. Ideally this should be composed of the Sponsor, the Data Governance Lead, the Head Data Steward and Head Database Administrator.

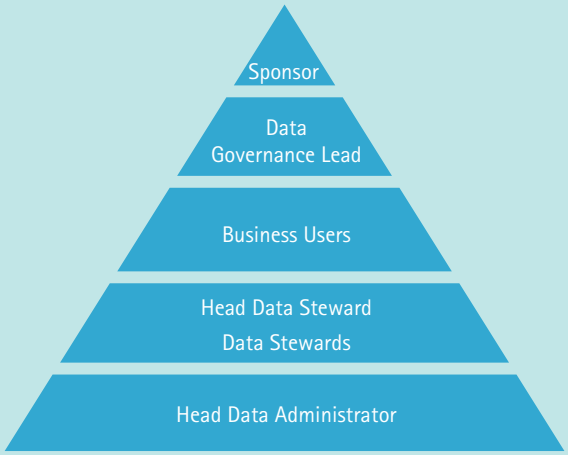
Governance Office

The Governance Office would meet more frequently. The role of its members would be to enforce and disperse data governance across all business units and IT so that data governance and strategies are common practice. It would be led by the Data Governance Lead and then the Head Data Steward, Head Database Administrator, all data stewards and at least one heavy or power user representative.

Working groups

The working groups would drive data management projects. These committees can be more ad hoc in nature, as needed. They would be led by a Data Steward and would be composed of other data stewards and IT experts having knowledge about data modelling, data analysis and migration.

Roles of business teams in data governance



Sponsor
- a well-respected senior manager at the C-level
- provides strategic direction and funding
- advocates for data governance 'buy-in'

Data Governance Lead
- enforces policies
- evaluates suitable governance projects for funding
- coordinates between business and technical groups
- establishes key performance indicators
- works with business teams and IT resources to prioritise and resolve issues

Business Users
- have ultimate business authority for the data they own
- are accountable for data definitions, usage guidelines, policies and cost
- support data governance and standards teams
- develop investment recommendations for executive management review/approval

Head Data Steward
- has responsibility for the whole organisation
- implements and enforces governance requirements
- designs and implements architecture of data flows, overseas audits and implements follow-up actions

Data Stewards
- are attached to a particular department or business unit
- determine usage permissions and policies
- provide business side inputs when drafting or amending governance requirements
- identify, define and standardise data elements
- act as subject matter experts for data related issues

Head Data Administrator
- responsible for understanding data modelling and implementation
- maintains technical processes, for example tracking usage, formatting, availability/accessibility and integration of data systems

Artificial intelligence and regulatory compliance

Emily Foges, CEO, Luminance, and Emma Walton, Knowledge and Innovation Manager, Slaughter and May, suggest ways that artificial intelligence can be harnessed by corporate governance professionals in the area of regulatory compliance.

Artificial intelligence (AI) has become entwined in business processes across a range of industries. Increasingly we see corporate leaders and innovation teams proactively exploring how they can harness AI in their workflows to increase efficiencies, attain time savings and better manage risk. When people speak of AI, they are typically referring to a set of technologies that include machine learning – the ability of a platform to automatically learn and improve from experience without being explicitly programmed. With AI already routinely deployed in certain repetitive tasks, it is apt to explore how AI can be harnessed by corporate governance professionals in the area of regulatory compliance.

The pain points of regulatory compliance

Corporate governance professionals face the formidable task of ensuring that their organisations are managed according to proper governance standards and processes. Internally, this means instituting mechanisms and policies to govern decision-making processes. Externally, corporate governance professionals need to stay on top of changing regulatory requirements in order to ensure that their organisation remains compliant with the rules and standards of the business and political environment in which it operates.

With the explosion of enterprise data, this is a growing challenge for corporate governance professionals. The sheer volume of data and documentation within an organisation can make it a challenge to locate potential risk and ensure that the organisation's processes and documentation keep pace with regulatory changes. Organisations with lean teams and limited resources run the risk of missing crucial details amongst the masses of documentation.

Enter artificial intelligence

It is against such a backdrop that corporate governance professionals are

Highlights

- it is important to recognise the capabilities and limits of artificial intelligence (AI) in order to achieve the right balance between the roles of humans and AI in any workflow
- AI can be deployed for some of the low-level repetitive work, but the analytical layer of document review remains the responsibility of humans
- effectively harnessing AI allows corporate governance professionals not just to identify risks more astutely but to strengthen the organisation's overall capacity for risk management

> “corporate governance professionals are increasingly turning to AI to meet the demands of regulatory compliance”

increasingly turning to AI to meet the demands of regulatory compliance. While document review and data extraction software have been around for a while now, such legacy software often requires extensive set-up and training. The user first needs to introduce rules and predefined parameters in order for the platform to be able to perform certain tasks, such as recognise named entities (for example a company name) or extract figures from text within a document into an Excel sheet. The process of configuring such software can be time-consuming and detracts from the time savings the software is meant to bring about in the first place.

However, the increasing sophistication of machine learning algorithms has meant that we now have access to solutions that are far more flexible and adaptable to a range of use cases without the need for extensive configuration. Sophisticated machine learning systems are able to digest data and draw out significant patterns and correlations at near-instant speeds, rendering them perfect for tasks that involve repetitive processing of large volumes of information where attention to detail is paramount.

At their core, advanced AI platforms rely on pattern recognition technology to comb through vast volumes of documentation and identify repeated patterns, thereby reducing hundreds of variations into manageable clusters based on their similarities and differences. Such AI platforms are able to locate key information within a body of data, identify standards and deviations, and therefore flag anomalies which are potential risks for the organisation.

Some areas where AI has been deployed for corporate governance include fraud detection, where AI assists forensic teams in searching unstructured documents for target information, and trade surveillance, where AI combines trade data with electronic and voice communication records to track emerging patterns of behaviour among traders and predict latent risks. AI has also been used extensively in the area of document review.

Responding to changes in legislation and meeting deadlines

AI platforms have also been helping corporates respond to changes in legislation. For instance, when the EU General Data Protection Regulation (GDPR) was first introduced in May 2018, many organisations struggled to determine how their processes for collecting and managing personal data had to change in order to comply with the regulations. Furthermore, legal teams also had to review existing contractual relationships with suppliers and other key stakeholders to ensure that data privacy provisions were compliant. Even when time is spent trawling through thousands of contracts in the hope of identifying every relevant data privacy clause, this process cannot provide absolute certainty that all exposure has been identified.

Prior to the introduction of the GDPR, a law firm and an AI solution provider worked together with one of the law firm's financial services clients to harness the power of AI to review thousands of contracts which might need to be amended before the new regulations came into force. The AI platform's pattern recognition algorithms quickly grouped documents based on their conceptual similarities. As a result, those conducting the review could easily identify groups of contracts that had similar drafting and therefore review just a handful of documents within that cluster, applying the analysis to the documents that shared the same characteristics. This allowed the team to quickly identify the documents which required amendment and those which did not. Once those documents which required amendment had been identified, a more detailed review of the relevant clauses could be carried out. Without AI this would have been a daunting, time-consuming process. With the help of the AI platform, the review time per document was reduced from 40 minutes to 6 minutes on average.

AI platforms can assist clients who find themselves in the midst of a data breach. A law firm's data protection team taught an AI platform to read commercial contracts and to identify any jurisdictions in which a data breach notification must

“with AI taking the burden of low-level cognitive tasks, corporate governance professionals can focus on providing recommendations for the business and better position themselves as advisers of business strategy”

be made, as well as the timeframe for making that notification. This information can be quickly extracted into a report so that within minutes the company is equipped to formulate an action plan for making data breach notifications.

The workflows described above in the GDPR context can be applied to other areas of compliance or any change in legislation which would potentially result in a re-papering exercise.

The benefits of deploying AI in regulatory compliance

As seen from the examples above, deploying AI in regulatory compliance would enable corporate governance professionals to overcome some of the difficulties of managing an organisation's documentation and processes. Instead of reviewing a hundred different contracts that look somewhat similar, with the help of an AI platform you can instantly determine that there are, for example, only five main clusters of documents and focus on the meat of the review. Beyond the time savings brought about by the removal of repetitive work, effectively harnessing AI removes the need for risky sampling methods and gives corporate governance professionals renewed confidence that they have conducted a rigorous review and attained a more holistic understanding of the business.

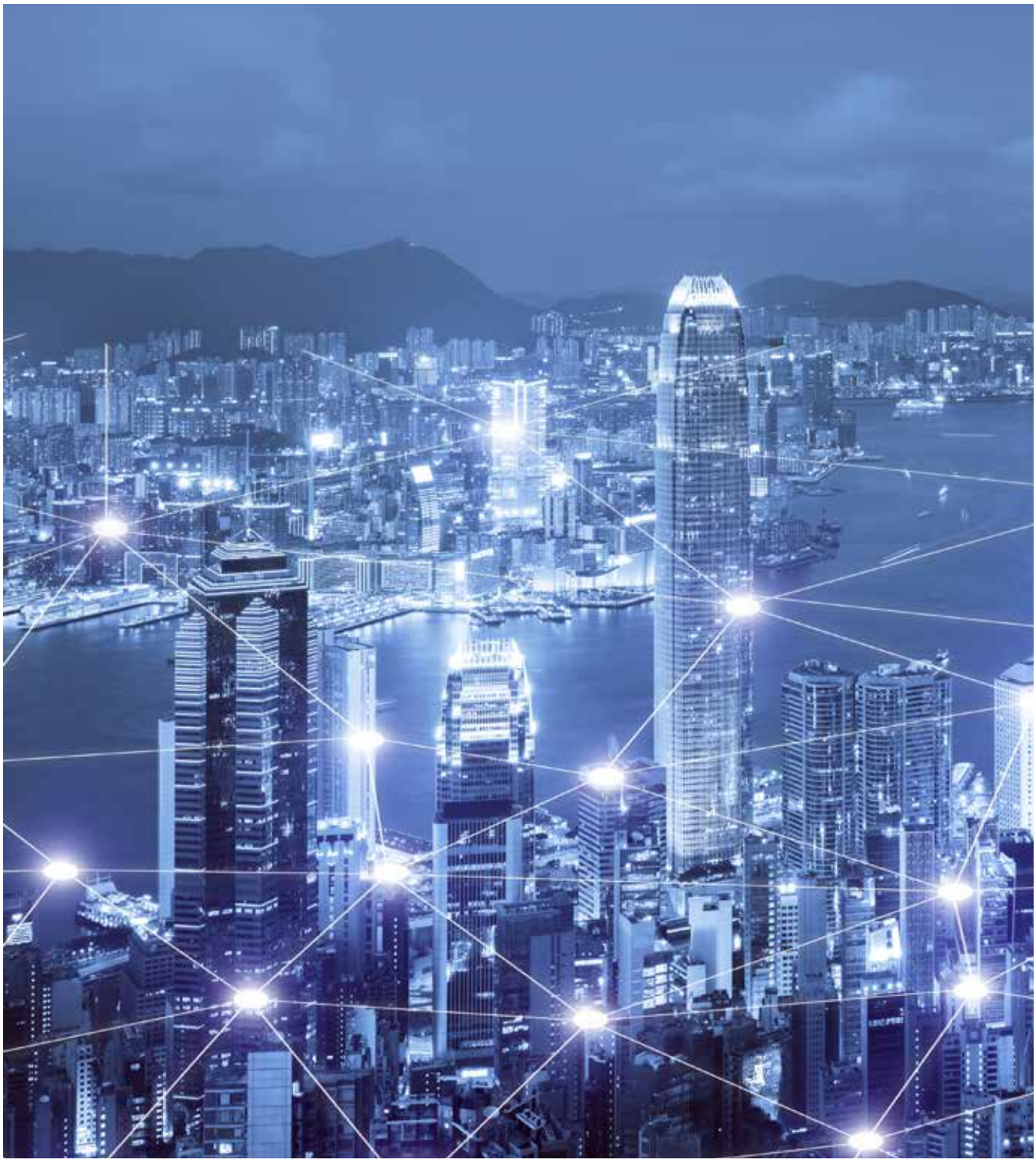
As businesses increasingly incorporate AI into their processes, it is important to recognise the capabilities and limits of AI in order to achieve the right balance between the roles of humans and AI in any workflow. AI can be deployed for some of the low-level repetitive work, but the analytical layer of document review remains the responsibility of humans. While document review software can instantly pinpoint the one contract out of a thousand similar contracts that has a differently worded data privacy clause, it is still up to the professional to determine the implication of this anomalous wording based on their understanding of the organisation's risk profile, interests and priorities at a given point in time.

Shameek Kundu, Chief Data Officer at Standard Chartered Bank, has been quoted in the *Financial Times* stating that using AI is 'about improving our risk appetite, reducing the risk but also increasing our ability to take risk'. With risk management being a central aspect of corporate governance, effectively harnessing AI allows corporate governance professionals not just to identify risks more astutely but to strengthen the organisation's overall capacity for risk management.

With AI taking the burden of low-level cognitive tasks, corporate governance professionals can focus on providing recommendations for the business and better position themselves as advisers of business strategy.

Emily Foges
CEO, Luminance

Emma Walton
Knowledge and Innovation Manager, Slaughter and May



International arbitration

The use of Hong Kong arbitration for international commercial disputes

Joe Liu, Deputy Secretary-General, Hong Kong International Arbitration Centre, reviews the benefits of international arbitration in cross-border commercial disputes and highlights the advantages of Hong Kong as a favoured seat of arbitration.

Benefits of international arbitration

International arbitration is the preferred method of resolving international commercial disputes. According to Queen Mary University of London and White & Case's 2018 International Arbitration Survey, 97% of 922 respondents indicate that international arbitration is their preferred method of dispute resolution. There are several reasons why commercial entities generally prefer arbitration for cross-border commercial disputes. The key reasons are summarised below.

1. Worldwide enforceability of arbitral awards

The final decision made in an arbitration is known as an 'arbitral award'. A treaty named 'the New York Convention' provides a global network for the enforcement of arbitral awards in 160 countries. Under the New York Convention, an arbitral award made in one of the contracting states is enforceable in all other contracting states, subject to limited exceptions. This is why arbitration is particularly suitable for cross-border disputes where the enforcement of an award against a party or its assets in a foreign country may be necessary.

2. Free choice of arbitrators and counsel

A party to an arbitration is generally free to select or nominate any arbitrator of its choice. If a dispute is submitted to a sole arbitrator, the parties will normally be given a period of time to select an arbitrator jointly. If a dispute is submitted to three arbitrators, each party will normally be given an opportunity to select an arbitrator and the third arbitrator will normally be selected by the parties, co-arbitrators or a neural authority. This allows arbitrators with suitable qualifications and relevant experience to be selected to determine a dispute. Parties' participation in the selection process also helps to ensure their confidence in the individuals who will decide on their dispute.

There are generally no restrictions on a party's choice of counsel to represent it in an arbitration. A party can be represented by solicitors and/or barristers qualified in the place of the arbitration or elsewhere, or choose to participate without any legal representation.

3. Flexible procedures

Parties can agree to apply any set of procedures or agree on a bespoke procedure tailor-made for their dispute. They can choose any governing law, place of arbitration, hearing venue, language and number of arbitrators (typically one or three).

4. Confidentiality

Arbitral proceedings and awards are generally private and confidential. Parties are prohibited from publicising any information relating to their arbitration and award, subject to some exceptions. In Hong Kong, arbitration-related court proceedings and judgments are also confidential unless the parties agree or the court directs otherwise.

5. Finality

Arbitral awards are final and binding. No appeal on the merits of a dispute is allowed. This feature is attractive to parties that wish to prevent any appeals on a decision at multiple levels, which would thereby extend the process for resolving a dispute. However, some parties

Highlights

- in a 2018 survey, 97% of respondents indicated that international arbitration is their preferred method of dispute resolution, while Hong Kong has been consistently voted among the top four seats of international arbitration in the world since 2015
- all arbitrations seated in Hong Kong, whether domestic or international, are governed by the Arbitration Ordinance (Cap 609), which is based on the 2006 version of the United Nations Commission on International Trade Law Model Law
- a new arrangement, signed on 2 April 2019, between the HKSAR Government and the Mainland Chinese Supreme People's Court allows their respective courts to provide mutual assistance in interim measures in aid of arbitral proceedings, thus strengthening Hong Kong's position as the premier venue for arbitrations with a Mainland Chinese connection

> “judicial independence and the pro-arbitration approach taken by the Hong Kong courts are another key feature of Hong Kong arbitration”

hold a less favourable view of the finality of an arbitral award and wish to preserve the ability to appeal in the event of any errors made by the arbitral tribunal.

Seat of arbitration

If parties agree to resolve their dispute by arbitration, the next question to consider is where to arbitrate, or in legal terms, where the seat of arbitration should be. The seat of arbitration is a legal concept which determines the procedural law that governs the arbitration, the courts that have the jurisdiction to supervise the arbitration and the place in which the arbitral award is deemed to be made.

Hong Kong is a popular seat of arbitration. According to the Queen Mary University of London and White & Case's surveys, Hong Kong has been consistently voted among the top four seats of arbitration in the world since 2015.

Advantages of arbitration in Hong Kong

All features discussed above are available in Hong Kong arbitrations. The Arbitration Ordinance (Cap 609) (the Ordinance) is the legislation that governs all arbitrations seated in Hong Kong. The Ordinance is based on the 2006 version of the United Nations Commission on International Trade Law (UNCITRAL) Model Law – a set of legislative text published by a body of the United Nations reflecting international arbitration practice. The Ordinance provides a clear and comprehensive legal framework for arbitration in Hong Kong with no distinctions between international and domestic arbitrations. The Ordinance is a piece of fast-evolving legislation that is updated regularly to include amendments to improve the arbitral process in Hong Kong. Some of the recent amendments include the enforceability of relief issued by emergency arbitrators in or outside Hong Kong, the ability to submit disputes over intellectual property rights to arbitrations in Hong Kong and the use of third party funding in arbitrations and associated proceedings in Hong Kong.

Judicial independence and the pro-arbitration approach taken by the Hong Kong courts are another key feature of Hong Kong arbitration. The courts act independently and in accordance with the Ordinance to provide support for arbitration such as the issuance of interim measures and enforcement of awards. Between 2009 and 2017, the courts refused to enforce only seven awards out of 249 applications – an enforcement rate of 97.2%. The courts have also designated a specialist judge to deal with all arbitration-related matters to make sure that such matters are determined consistently by a judge with the relevant expertise.

Hong Kong also takes pride in the reputation and quality of the arbitral institutions that operate in the city. Hong Kong's flagship arbitral institution is the Hong Kong International Arbitration Centre. Other arbitral institutions in Hong Kong include the Hong Kong office of the International Court of Arbitration of the International Chamber of Commerce, the Hong Kong Arbitration Center of the China International Economic and Trade Arbitration Commission and the International Arbitration Centre of the Chinese Arbitration Association, Taipei.

The latest development in Hong Kong arbitration is the conclusion of an arrangement between the Hong Kong SAR

Government and the Supreme People's Court of the People's Republic of China on 2 April 2019 to allow the Hong Kong and Mainland Chinese courts to provide mutual assistance in interim measures in aid of arbitral proceedings. For the first time, the arrangement provides a legal framework for Mainland Chinese courts to issue interim relief in support of arbitrations seated in a jurisdiction outside Mainland China. The availability of such relief from the Mainland Chinese courts to eligible arbitrations in Hong Kong strengthens Hong Kong's position as the premier venue for arbitrations with a Mainland Chinese connection.

Conclusion

Hong Kong is widely regarded as a preferred forum for international commercial disputes, particularly those involving Mainland Chinese parties. With the recent new arrangement to allow the Mainland Chinese courts to issue interim measures in aid of Hong Kong arbitrations, Hong Kong is set to play a leading role in providing dispute resolution services to projects under the Belt and Road Initiative and in the Greater Bay Area.

Joe Liu

Hong Kong International Arbitration Centre (HKIAC)

Joe Liu oversees dispute resolution proceedings under HKIAC's auspices and develops HKIAC's rules and procedures. Prior to joining HKIAC, he worked as a Registered Foreign Lawyer at Allen & Overy in Hong Kong and at the Singapore International Arbitration Centre. Mr Liu is a recognised expert in the field of international dispute settlement and is a frequent speaker and writer on related issues. More information is available on the HKIAC website: www.hkiac.org.

Nip conflicts in the bud

Effective corporate governance tools for family business succession

Anna Chan and Martin Tse, Oldham, Li & Nie Lawyers, overview the various corporate governance tools available to facilitate the smooth running of family businesses and alleviate potential family disputes.

It is sad – but unfortunately not uncommon – when family members take each other to court over family business disputes. It is certainly undesirable to see any disturbance to a family's harmony, but how can we nip conflicts in the bud? In this article, we will examine how corporate governance tools can be utilised to assist family business succession plans.

Learning from precedents

You may still remember when the Kwok brothers – who were once members of the board of directors of Sun Hung Kai Properties Ltd (SHKP), Hong Kong's second-largest developer and a publicly listed company – resorted to legal proceedings to resolve their dispute over control of the company. In 2008, Walter Kwok, the eldest of the three brothers, applied to the Hong Kong courts for an urgent injunction to prevent the directors from voting to terminate his appointment as chairman and chief executive, and/or to re-designate him as a non-executive director. The injunction was dismissed on the basis that the court cannot interfere with board matters involving the internal management of the company.

While the SHKP case concerned a matter happening at board level, the legal initiative brought by Walter Kwok was ultimately a reflection of the difficulty with being a minority shareholder. Generally, the court cannot assist a minority shareholder to hold onto his or her directorship because 'majority rule' dictates under the present legal framework.

Another precedent case over control of a family business was seen with Yung Kee Holdings Ltd (YKHL), the ultimate holding company operating the Yung Kee Restaurant, which is famous for its roast goose dishes. Kam Kwan Sing ('Sing') brought a petition against his brother Kam Kwan Lai ('Lai') on the grounds that YKHL's affairs had been conducted in a manner unfairly prejudicial to his interests, and Sing sought an order that Lai buy out his shares or, alternatively,

Highlights

- under the legitimate notion of 'majority rule', the courts in Hong Kong do not generally interfere with the affairs of a company in favour of a minority shareholder, which may prove challenging in the event of a family business succession crisis
- a pre-agreed shareholders' agreement is an invaluable component of the corporate governance toolkit for handling family business succession plans
- in general, the sooner a shareholders' agreement is executed the better, since unforeseen events or a family dispute can occur at any time

> there is no doubt that a shareholders' agreement can address many of the corporate governance issues that arise in the process of a family business succession

that YKHL be wound up. In the end, the Court of Final Appeal made a winding-up order in 2015, which was stayed for 28 days for the parties to negotiate the terms of a possible buy-out (for which the parties failed to make an agreement). It was particularly unfortunate that the parties had in principle agreed to a buy-out arrangement but were unable to work out the details, notably the price. As a result, the winding-up of YKHL was unavoidable and the process was left to professional liquidators, who were outsiders to the family.

From the above precedents, we know that under the legitimate notion of 'majority rule', seldom does the court interfere with the affairs of a company in favour of a minority shareholder. Furthermore, although under the existing framework there are mechanisms to assist a minority shareholder against oppressive acts of the majority, reliance on such mechanisms is insufficient since this will often lead to uncertain or radical results that may not suit the purposes of the minority shareholder.

This may prove a problem in a family business succession. There needs to be something extra. For example, in the Yung Kee Restaurant case, such an outcome could have been prevented if there had been prior consensus over a shares buy-out mechanism in the shareholders' agreement. Provisions can be made in advance to specify how a buy-out price is arrived at, whether by way of net asset value (NAV), multiplier-over-profit or a cash flow approach. Once the rules of the game are in place, shareholders are spared from any unnecessary debates and confrontations because they only need to follow the black-and-white terms.

A shareholders' agreement, however, is just a tool, one that is based on the broader concept of corporate governance, which is a crucial aspect of any family business succession plan.

Corporate governance tools

Corporate governance – meaning the standardisation of the relationships between the company management, board of directors, shareholders and other stakeholders, which in the context of a family business includes family members who are neither directors nor part of management – is pivotal to ensuring the smooth operation of a company and to balance the interests of different stakeholders.

Corporate governance tools in a family business may consist of:

1. ***Companies Ordinance (Cap 622).*** Cap 622 contains provisions regulating Hong Kong companies, as well as companies incorporated outside Hong Kong but which have established a place of business in Hong Kong.

2. ***Articles of Association.*** A company's Articles of Association have to be registered with the Companies Registry as public information, which does not favour the protection of family privacy, and should not be frequently amended.

3. ***Shareholders' agreement.*** A shareholders' agreement will usually be signed by all shareholders and is often

Common provisions in a shareholders' agreement

Ownership succession

- definition of shareholder groups
- mechanism for the sale of shares
- mechanism for setting the sale price
- right of priority
- maintaining the shareholding distribution ratio, and
- arrangements for counter-purchase and buy-out.

Leadership succession

- appointments, qualifications and responsibilities of the board and management.

Other items

- scope of business
- decision-making mechanisms for major events
- right to information and accounts
- non-compete clause
- dividends and financing
- deadlock clause, and
- duration of validity of the agreement.

legally binding so that the company is governed according to a set of pre-agreed rules, and to ensure that shareholders can ascertain their rights and scope through the agreement.

4. ***Independent directors/external consultants.*** Making use of independent directors or external consultants can safeguard the overall interests of the company, but is more suitable for larger family businesses.

5. ***Trust operations/family office.*** This is better suited to family businesses that have grown to the second or third generation.

Shareholders' agreement

There is no doubt that a shareholders' agreement can address many of the corporate governance issues that arise in the process of a family business succession. A shareholders' agreement is a contract concluded between all shareholders of a company in order to define their respective rights and responsibilities, and to organise the management of the company. It supplements the Articles of Association of the company by, among other things, regulating the relationship between the shareholders, the management of the company and the ownership of the shares. The shareholders can also effectively make use of the shares they own in accordance with the shareholders' agreement, or make use of provisions to exit the company in a way that is acceptable to all shareholders.

The timing of signing a shareholders' agreement is important. In reality, one always comes across events that are wholly unforeseeable – such as death, mental incapacity, divorce or sudden crisis/dispute within the family. In general, the sooner a shareholders' agreement is executed the better because unforeseen events or a family dispute could happen at any moment. Also, if a shareholders' agreement is concluded at an early stage, when the number of family members is smaller (before its organic growth horizontally), unanimous consensus can be more easily attained.

> "it is better to nip conflicts in the bud than to see your long-lived family business go up in flames"

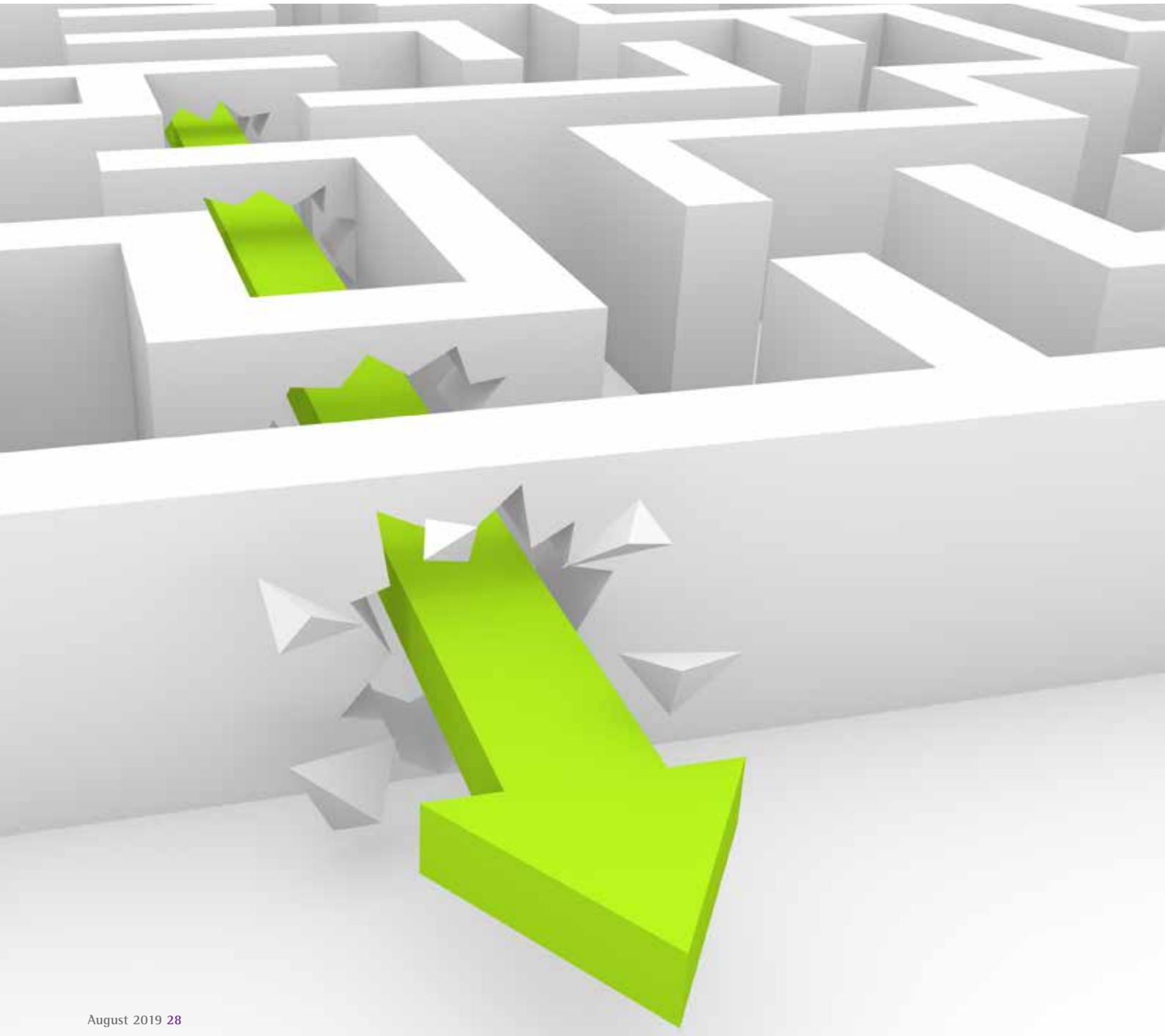
Conclusion

Formalising the relationship between family members through contractual arrangements might sound odd to some; it may not sit well with the traditional Chinese concept of parenthood or fraternity. However, contractual terms do provide resolution (at least to a certain extent) to any potential future family disputes over a family business. It is better to nip conflicts in the bud than to see your long-lived family business go up in flames.

Anna Chan, Partner, and Martin Tse, Associate
Oldham, Li & Nie Lawyers

New reverse takeover rules

New listing rule amendments to become effective on 1 October 2019 seek to enhance Hong Kong's reverse takeover rules and continuing listing criteria.



Hong Kong's listing rules require listed issuers to maintain sufficient operations and to have assets of sufficient value to warrant their continued listing. Hong Kong Exchanges and Clearing Ltd (HKEX) has been cracking down on the misuse of shell companies – where companies divest much of their business but maintain their listing only motivated by the value of their listed status – by tightening the application of Hong Kong's reverse takeover rules and continuing listing criteria.

On 26 July, The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly owned subsidiary of HKEX, published conclusions on its consultation paper regarding backdoor listing, continuing listing criteria and other listing rule amendments. The consultation was part of a series of measures undertaken by the Exchange to strengthen and enhance the long-term health, quality and sustainability of the Hong Kong market.

'These changes will enhance both the reverse takeover (RTO) rules and the continuing listing criteria, helping to address evolving market practices in backdoor listing and improve the regulation of shell activities,' said David Graham, HKEX's Head of Listing. 'The rule changes are a positive step forward for the whole market and will not restrict legitimate business activities, business expansion or diversification of listed issuers.'

Respondents to the consultation were supportive of the initiatives to address backdoor listing and shell activities, though some commented on specific RTO proposals and their possible application to normal business activities of issuers. The Exchange has made some modifications to the proposals in order to reflect the market's response. In addition, the Exchange has modified some of the proposed amendments to the continuing listing criteria to provide exemptions for banking companies, insurance companies and securities houses that are subject to supervision by other regulatory authorities.

Key listing rule changes

1. Amendments relating to backdoor listings

The definition of RTO transactions is to be amended.

- RTO principle-based test. The amendments codify the six assessment factors under the principle-based test in Guidance Letter GL78-14 with modifications relating to changes in control/ de facto control, and the series of transactions and/or arrangements. This includes acquisitions, disposals and/or change in control or de facto control that take place in reasonable proximity (normally within 36 months) or are otherwise related.

- RTO bright-line tests. The amendments modify the bright-line tests to apply to very substantial acquisitions from an issuer's controlling shareholder within 36 months from a change in control of the issuer. The disposal restriction, for example, modifies the bright-line tests to restrict disposals (or distributions in specie) of all or a material part of the issuer's business proposed at the time of or within 36 months after a change in control of the issuer. The Exchange may also apply the restriction to disposals (or distributions in specie) at the time of or within 36 months after a change in de facto control (as set out in the principle-based test) of the issuer.

- Backdoor listing through large-scale issue of securities. The amendments codify Guidance Letter GL84-15 to disallow backdoor listing through large-scale issue of securities for cash, where there is, or will result in, a change in control or de facto control of the issuer, and the proceeds will be applied to acquire and/or develop new business that is expected to be substantially larger than the issuer's existing principal business.

In addition to the amendments relating to the definition of an RTO transaction,

Highlights

- the listing rule changes seek to address evolving market practices in backdoor listing and improve the regulation of shell activities
- the listing rule amendments revise the indicative factors under the 'change in control or de facto control' factor of the principle-based test of Hong Kong's reverse takeover rules
- transitional arrangements allowing a 12-month delay in the effective date for compliance with some of the new rules are in place

the amendments tighten the compliance requirements for RTOs and extreme transactions.

- Extreme transactions. The amendments codify the 'extreme VSAs' (very substantial acquisitions) requirements in Guidance Letter GL78-14 and rename this category of transactions as 'extreme transactions'. They also impose additional eligibility criteria on the issuer that may use this transaction category. The issuer must operate a principal business of substantial size, or the issuer must have been under the control or de facto control of the same person(s) for a long period (normally not less than 36 months) and the transaction will not result in a change in control or de facto control of the issuer.

- Requirements for RTOs and extreme transactions. The amendments modify the listing rules to require the acquisition targets in an RTO or extreme transaction to meet the requirements of Rule 8.04 and Rule 8.05 (or Rule 8.05A or 8.05B), and the enlarged group to meet all the new listing requirements in Chapter 8 of the listing rules, except Rule 8.05. Where the RTO is proposed by a Rule 13.24 issuer, the acquisition targets must also meet the requirement of Rule 8.07.

2. Amendments to continuing listing criteria for listed issuers

- Rule 13.24 (sufficient operations). Rule 13.24 will be amended to require an issuer to carry out a business with a sufficient level of operations and to have assets of sufficient value to support its operations to warrant its continued listing (and not sufficient operations or assets set out in the current Rule 13.24). Proprietary securities trading and/or investment activities by an issuer's group (other than a Chapter 21 company) are normally excluded when considering whether the issuer can meet Rule 13.24 (except for those carried out by a member of the issuer's group that is a banking company, an insurance company, or a securities house that is mainly engaged in regulated activities under the Securities and Futures Ordinance).

- Rules 14.82 and 14.83 (cash companies). The amendments will (i) extend the definition of 'short-dated securities' in Rule 14.82 to cover investments that are easily convertible into cash and rename it as 'short-term investments'; and (ii) confine the exemption under Rule 14.83 to cash and short-term investments held by members of an issuer's group that are banking companies, insurance companies or securities houses.

- Transitional arrangement. A transitional period of 12 months from the effective date (1 October 2019) will apply to listed issuers that do not comply with the new Rule 13.24 or 14.82 strictly as a result of the listing rule amendments. The transitional arrangement will minimise the impact of the listing rule amendments on those issuers by allowing them a 12-month period to comply with the listing rules as amended. For the avoidance of doubt, the transitional arrangement will not apply to issuers that do not comply with the current requirements under Rule 13.24 or 14.82, or become non-

ACRU 2019 insights

Hong Kong's reverse takeover rules and the continuing listing criteria were addressed in the 20th Annual Corporate and Regulatory Update (ACRU) of The Hong Kong Institute of Chartered Secretaries, held on 5 June 2019 at the Hong Kong Convention and Exhibition Centre. Patrick Yu, Senior Vice-President, Listed Issuer Regulation, Listing Department, Hong Kong Exchanges and Clearing Ltd (HKEX), focused his ACRU presentation on the misuse of shell companies. He pointed out that HKEX applies a qualitative not a quantative test when assessing sufficiency of operations and assets. HKEX does not apply a prescribed threshold on 'sufficiency', but looks for evidence as to whether the issuer's business is viable and sustainable, and whether the business has substance. He warned that HKEX will suspend trading where issuers are deemed to have breached the sufficiency test, for example, where there is a very low level of operating activities and revenue, which is not the result of a temporary downturn in the market, or where assets do not generate sufficient revenue and profits.

A full review of the Institute's 20th ACRU is available in the July 2019 edition of this journal.

> “the rule changes are a positive step forward for the whole market and will not restrict legitimate business activities, business expansion or diversification of listed issuers”

David Graham, Head of Listing, Hong Kong Exchanges and Clearing Ltd

compliant with the new Rule 13.24 or 14.82 after the effective date.

The Exchange will also adopt other proposed listing rule amendments relating to issuers' securities trading and/or investments, significant distributions in specie, notifiable transactions and connected transactions as set out in the consultation paper with minor modifications.

Summary of major modifications to the RTO rules

Following the consultation, major modifications made to the RTO proposals include those described below.

- Revising the indicative factors under the 'change in control or de facto control' factor of the principle-based test of the RTO rules to the following: a change in (i) controlling shareholder of the issuer; or (ii) the single largest substantial shareholder who is able to exercise effective control.
- Removing references to greenfield operations, equity fundraisings and termination of business from the 'series of transactions and/or arrangements' factor of the principle-based test of the RTO rules to address concerns about possible application of the RTO rules to issuers' transactions in the normal course of business.
- Removing the proposal to apply additional requirements where the issuer aborted transactions that are considered part of a series of transactions and there is a 'pre-ordained' strategy to circumvent the new listing requirements, to address concerns about regulatory uncertainty.
- Removing the proposed RTO compliance requirement for the enlarged group to meet Rule 8.05 applicable to Rule 13.24 issuers, to address concerns that smaller issuers would be particularly restricted.
- Revising the proposed additional requirements on issuers that may use the extreme transaction category, to address concerns about unfair treatment of mid- or small-sized issuers.

Online resources

To assist issuers with compliance, the Exchange has published three new guidance letters on the application of the listing rules as amended.

- guidance on application of the reverse takeover rules (HKEX-GL104-19)
- guidance on large-scale issues of securities (HKEX-GL105-19), and
- guidance on sufficiency of operations (HKEX-GL106-19).

The Exchange has also published a frequently asked question on the notifiable transaction requirements relating to securities transactions (FAQ Number 057-2019).

Source: Hong Kong Exchanges and Clearing Ltd

The Consultation Conclusions, respondents' submissions, amendments to the Main Board Listing Rules and amendments to the GEM Listing Rules are available on the HKEX website: www.hkex.com.hk.

Modern governance

Chris Lawley, Vice-President APAC, Diligent, suggests four steps for boards to modernise their governance.

Diligent recently launched a new category called 'modern governance' to bring boards of directors and leadership teams up to speed in today's digital world. Simply put, modern governance is the practice of empowering leaders with the technology, insights and processes required to fuel good governance.

The importance of good governance is best understood in its absence. According to a recent Diligent Institute report – *Modern Governance Report*, published in May 2019, 'governance shortfalls' globally are at US$490 billion in value and the top 20% of companies outperformed the bottom 20% by 17 points, or 15% over a two-year period. In other words, good governance is a competitive advantage.

Through our interactions with board members and governance professionals around the world we've learned a few things. Good governance is dynamic and it can look a little different from one organisation to the next. Yet there are a few modern governance principles that hold constant. We've translated these into action items for today's boards.

Four steps boards can take towards modern governance

1. Re-examine the governance structure you've inherited

When you join a board, you are in a governance structure (that is, an existing set of rules, roles and processes that govern the board and the broader organisation). Rakhi Kumar, Senior Managing Director and Head of ESG Investments and Asset Stewardship at State Street Global Advisors, challenges board members to re-examine the model and principles by which they govern. 'Too often, boards fail to ask why things are the way they are. The inherited governance structure may not be wrong, but it should be purposeful. Boards should be able to explain why it works,' he said at a Diligent event last year.

It's this kind of introspection that led Netflix to design and adopt a transparent board-management communication model, which caps board material at 30-page outlines and focuses discussions on strategy. A similar self-examination led the Prudential board to reform their proxy disclosure with six internalised governance principles, which they adopted from the Investor Stewardship Group.

Diligent's recently published book – *Governance in the Digital Age* – based on interviews with corporate directors, suggests that the modern age necessitates a new era of governance and what progressive boards and directors should be doing to make that happen.

2. Focus on board composition

Today's organisations may have the right mix of people sitting around the boardroom table, they may have aligned board skills with long-term strategy as much as possible, but executing on succession-planning principles is where many boards fall short. This is one area where data is vastly underutilised.

Modern boards should have today's universe of board candidates at their fingertips. This type of function is available for boards and must be utilised to identify gaps, monitor

Highlights

- the modern age necessitates a new era of governance
- modern governance is the practice of empowering leaders with the technology, insights and processes required to fuel good governance
- with business risks growing in number and complexity, today's organisations cannot afford any blind spots

> “modern governance practices are helping companies to outperform the market and helping boards to deal with crises before they become catastrophes”

peer composition, gauge candidate supply and recognise conflicts of interest.

3. Improve visibility around key risks and opportunities

Expanding board members' knowledge around industry trends and emerging technologies is important – how is your board empowering and challenging itself on a regular basis? With business risks growing in number and complexity, today's organisations cannot afford any blind spots. They cannot chance complacency. Companies that fail to innovate are destined for irrelevance – we've seen this time and again with legacy companies.

It's not enough to simply have dashboards, reporting frameworks and information gathering networks that allow you to identify red flags. A modern governance solution alerts boards to predict shareholder voting actions, enables reputational risk monitoring and enhances visibility across peer groups.

4. Avoid easy cyber mistakes

Board and company leaders are notoriously guilty of using text messaging or personal email to share sensitive information and materials. Even if they are not sensitive in nature, they may be used as entry points for bad actors. Organisations that practice modern governance do not make mistakes – they communicate through secure messaging tools and document sharing through protected data rooms. The best part, however, is that secure communication is no longer at the expense of convenience – it has all the functionality and ease of everyday messaging and collaboration tools.

Modern governance matters

Modern governance is about more than meeting the structural requirements for the measures described above. Governance failures can sometimes be traced to the absence of these structural requirements, but they can also have to do with harder-to-measure governance issues. The way a board deals with crises, or how effectively a board can oversee culture, or how a board responds to risk, or who a board chooses to lead the company – all of these factors play crucial roles in companies' successes or failures.

Strong corporate governance is critical for companies that seek to maintain high performance and avoid devastating crises. The cost of poor governance practices is high. Consistently, companies with governance deficits perform worse than their peers who adhere to modern governance – and they underperform against their industry's average.

The good news is that, even as corporate governance has become increasingly demanding, many boards are stepping up to the challenge. As the rate of change increases and the speed of information continues to change the business landscape, it is only becoming more important for boards of directors to have both the structural and cultural safeguards in place to detect and respond to issues. Modern governance practices are helping companies to outperform the market and helping boards to deal with crises before they become catastrophes.

Chris Lawley, Vice-President APAC
Diligent

Professional Development

Seminars: June 2019

14 June

Company secretarial practical training series: change in directors and officers: practice and application

Speaker: Ricky Lai FCIS FCS, Company Secretary, HKC (Holdings) Ltd

17 June

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

Speaker: Ricky Lai FCIS FCS, Company Secretary, HKC (Holdings) Ltd

18 June

A new chapter of China's foreign investment regime – the 2019 Foreign Investment Law

Chair: Edmond Chiu FCIS FCS(PE), Institute Membership Committee Vice-Chairman and Professional Services Panel member, and Executive Director, Corporate Services, Corporate & Private Clients, Vistra Hong Kong Ltd

Speakers: Alan Xu, Partner; and Gloria Wu, Associate; Zhong Lun Law Firm

19 June

Risk management and internal control

Chair: Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd

Speaker: Michael Chan, Institute Qualification Development Panel member, Senior Consultant, Cheng & Cheng Ltd, and Chief Executive, C&C Advisory Services Ltd

20 June

Legal risk prevention in corporate governance and shareholders interest protection

Chair: Richard Leung FCIS FCS, Institute Past President, and Barrister-at-law, Des Voeux Chambers

Speakers: Grace Chiu, Lawyer & Partner; and David Liang, Lawyer & Partner; Guangdong Sun Law Firm

20 June

How blockchain can change KYC compliance for governance professionals

Chair: Christine Chung FCIS FCS, Institute Professional Development Committee member, and Company Secretary, Virtual Banking by Standard Chartered Bank

Speaker: Kim Li, Director of Sales & Business Development, KYC-Chain Ltd and SelfKey

24 June
From offshore to the Greater Bay Area

Chair: *Alberta Sie FCIS FCS(PE), Institute Professional Services Panel member, and Company Secretary & Director, Reanda EFA Secretarial Ltd*
Speakers: *Travis Lee, Director, China Tax; and Eugene Yeung, Director, Corporate Tax Advisory; KPMG Tax Services Ltd*

24 June
Handling dawn raids by the ICAC & the SFC

Chair: *Terry Wan FCIS FCS, Group Company Secretary, Li & Fung Ltd*
Speaker: *Sherman Yan, Managing Partner, Head of Litigation & Dispute Resolution, ONC Lawyers*

25 June
Practical guidelines to Company Law

Chair: *Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research*
Speakers: *Peter Lake, Partner; and Benita Yu, Partner; Slaughter and May*

26 June
Connected transactions and notifiable transactions in practice

Chair: *Ken Yiu ACIS ACS(PE), Institute Chief Operating Officer and Director of Professional Development*
Speaker: *Eve Chan, Partner, Facey & Associates LLP*

27 June
Preparing industry overview section for successful IPO

Chair: *Wendy Ho FCIS FCS(PE), Institute Education Committee member, and Executive Director of Corporate Services, Tricor Services Ltd*
Speaker: *Kevin Lam, Partner, ShineWing*

Professional Development (continued)

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
20 August 2019	6.45pm-8.15pm	New definition of permanent establishment	1.5
22 August 2019	2.30pm-4.00pm	Open-ended fund companies – regulations and practical guidance	1.5
28 August 2019	6.45pm-8.15pm	Practical guidelines to enhance the ESG value	1.5

For details of forthcoming seminars, please visit the CPD section of the Institute's website: www.hkics.org.hk.

Online CPD (e-CPD) seminars

For details, please visit the CPD section of the Institute's website: www.hkics.org.hk. For enquiries, please contact the Institute's Professional Development Section: 2830 6011, or email: cpd@hkics.org.hk.

Membership

Membership/graduateship renewal for the 2019/2020 financial year

The membership/graduateship renewal notices for the 2019/2020 financial year, together with the demand note, were posted to members and graduates in early July 2019. Members and graduates should settle the payment, as well as complete and return the personal data update form to the Institute as soon as possible, but no later than Monday, 30 September 2019.

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

Members and graduates who have not received the renewal notice should contact the Institute Membership Section immediately: 2881 6177, or email: member@hkics.org.hk.

Grandfathering of Chartered Governance Professional designation

The Council has agreed to the 'grandfathering' policy for conferring the Chartered Governance Professional designation to members on a quarterly basis.

As at 30 June 2019, 4,734 (77%) out of the total membership of 6,141 were awarded the Chartered Governance Professional designation.

New graduates

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

Lau Yung Yung
Leung Yin Ling, Natalie
Ng Wai Ying, Claudia
Weng Jie
Wong Man Yi
Wong Pui Shan

Rewarding the Extraordinary

70 CHARTERED SECRETARIES 特許秘書 Years in Hong Kong

The Hong Kong Institute of Chartered Secretaries Prize 2019

Call for Nominations

The Hong Kong Institute of Chartered Secretaries Prize will be awarded to a member or members who have made significant contributions to the Institute, and the Chartered Secretary and governance profession over a substantial period.

Awardees are bestowed with the highest honour – recognition by their professional peers. We urge you to submit your nominations now!

The nomination deadline is on Monday 30 September 2019.

Please visit www.hkics.org.hk or contact Melani Au: 2830 6007, or email: member@hkics.org.hk for details.

Please act now!

Membership (continued)

New Fellows

The Institute would like to congratulate the following Fellows elected in June 2019.

Sze Fung Ming FCIS FCS

Ms Sze is the Head of Company Secretary for Bank of Communications Trustee Ltd, a group member of Bank of Communications Co, Ltd listed on the Shanghai Stock Exchange (stock code: 601328) and Hong Kong Stock Exchange (stock code: 3328). She leads a company secretarial team to manage the corporate governance function of the bank's group in Hong Kong.

Ms Sze has served in financial institutions, property and hotel management, retail and telecommunications industries with extensive experience accumulated in initial public offerings, debt issuances and major transactions. She obtained a bachelor's degree with first class honours in business studies from The Hong Kong Polytechnic University and a postgraduate diploma in professional accountancy from The Chinese University of Hong Kong.

Yip Shui Man FCIS FCS

Ms Yip is a Financial Controller and Company Secretary of Netel Technology (Holdings) Ltd (stock code: 8256). Her main responsibilities include overseeing accounting operations, formulating sound financial strategies and ensuring compliance with regulations and corporate governance. She obtained a bachelor's degree with first class honours in professional accountancy from The Chinese University of Hong Kong and is a Certified Public Accountant.

Cheung See Yuet FCIS FCS

Company Secretarial Manager, Alibaba Group (NYSE stock code: BABA)

Ip Tak Wai FCIS FCS

Director, Investor Services Division, Tricor Services Ltd

Yue Wai Shan FCIS FCS(PE)

Manager, Secretarial and Corporate Affairs, SJM Holdings Ltd (stock code: 880)

Members' activities highlights: June - July 2019

7 June 2019
Dragon Boat Race

22 June 2019
Fun & Interest Group – 犬只训练工作坊

4 July 2019
Members' Networking – Governance Challenges in Social Enterprises & Non-Governmental Organisations (NGOs)

6 July 2019
Community Service – 服务智障人士技巧工作坊

Advocacy

HKGCC Business-School Partnership Programme

The Institute joined the Business-School Partnership Programme organised by The Hong Kong General Chamber of Commerce (HKGCC), which aims to provide a platform for students, teachers and businesses to exchange and communicate with each other, while preparing students to gain more understanding of the commercial world. During the year 2018/2019, the Institute partnered with St Mary's Canossian College and 12 students from Forms 4 and 5 enrolled to this programme. The Institute arranged various activities, including a briefing session, Governance Professionals Preview Day, visits to the Companies Registry and Shun Tak Holdings Ltd for these students to understand more about the Chartered Secretarial and governance profession. At the end of the programme, three students submitted a reflection report on their experiences and received an Outstanding Students Report Award from HKGCC at the closing ceremony held on 5 July 2019.

The Institute would like to thank the Companies Registry and Shun Tak Holdings Ltd for their support of this programme.

Advocacy (continued)

HKCPS Yuen Long District Secondary School Students Internship Programme 2019 – launching ceremony

On 29 June 2019, Institute Past President and Council member Mrs Natalia Seng FCIS FCS(PE), Professional Services Panel member Ms Alberta Sze FCIS FCS(PE) and Chief Operating Officer & Director of Professional Development Ken Yiu ACIS ACS(PE), together with representatives from other member bodies of The Hong Kong Coalition of Professional Services (HKCPS), attended a ceremony to launch the Yuen Long District Secondary School Students Internship Programme 2019 of HKCPS. The Honourable CY Leung GBM GBS JP, Vice-Chairman of the Chinese People's Political Consultative Conference was the guest of honour. The programme, which was jointly organised by HKCPS and the Yuen Long District Secondary School Heads Association, aims to provide work experience to fifth form secondary students from the Yuen Long district to broaden their horizons and enhance their self-confidence. The Institute, which has been a member of HKCPS since 2011, will host two interns and has also invited its members and their companies to provide two-week internship opportunities in July and/or August 2019 in support of the programme.

OUHK PGPCG Information Session in Shenzhen

The Open University of Hong Kong (OUHK) organised an information session to introduce its Postgraduate Programme in Corporate Governance (PGPCG) offered at the Harbin Institute of Technology Shenzhen Academy on 19 July 2019. Institute Chief Executive Samantha Suen FCIS FCS(PE) and Registrar Louisa Lau FCIS FCS(PE) were invited to speak on global developments of the governance profession, as well as to introduce the Institute, the dual qualification of Chartered Secretary and Chartered Governance Professional and routes to becoming a member of the Institute. An Institute student and student of the Master of Corporate Governance programme of OUHK, and a Fellow shared their study experiences and their career paths as a company secretary with the participants. Dr Nigel Leung, Associate Professor, Lee Shau Kee School of Business and Adminstration, OUHK, provided details of the PGPCG. The participants found the information session informative and useful.

A bird's eye view

Company secretaries need to be proficient in a wide range of practice areas. *CSj*, the journal of The Hong Kong Institute of Chartered Secretaries, is the only journal in Hong Kong dedicated to covering these areas, keeping readers informed of the latest developments in company secretarial practice while also providing an engaging and entertaining read. Topics covered regularly in the journal include:

- regulatory compliance
- corporate governance
- corporate reporting
- board support
- investor relations
- business ethics
- corporate social responsibility
- continuing professional development
- risk management, and
- internal controls

Subscribe to *CSj* today to stay informed and engaged with the issues that matter to you most.

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CSj, the journal of The Hong Kong Institute of Chartered Secretaries (www.hkics.org.hk), is published 12 times a year by Ninehills Media (www.ninehillsmedia.com).

CHARTERED SECRETARIES 特許秘書

Advocacy (continued)

Welcome lunch for class of 2017–2019 Master of Corporate Governance Programme (Shanghai)

On 18 July 2019, the Institute organised a welcome lunch for 24 graduates of the class of 2017–2019 Master of Corporate Governance Programme (Shanghai) of The Open University of Hong Kong (OUHK). Institute Council member and Education Committee Chairman Dr Eva Chan FCIS FCS(PE) delivered a welcome address to the participants, and ICSA International President and Institute Past President Edith Shih FCIS FCS(PE) presented the HKICS Edith Shih Corporate Governance Scholarship to the six most outstanding graduates of the programme in recognition of their academic achievement.

OUHK Professor Alan Au FCIS FCS, Dr Nigel Leung, Anna Sum FCIS FCS and East China University of Science and Technology Professor Ou Ling attended the lunch. Other Council and committee members, including Ernest Lee FCIS FCS(PE), Stella Lo FCIS FCS(PE), Philip Miller FCIS, Wendy Ho FCIS FCS(PE) and Chief Executive Samantha Suen FCIS FCS(PE) also joined the lunch.

In order to encourage the Mainland students to join the Chartered Secretary and governance profession, when this programme started in 2016 Ms Shih generously donated HK$240,000 to the Institute's charitable foundation – 'The Hong Kong Institute of Chartered Secretaries Foundation Limited' to set up the HKICS Edith Shih Corporate Governance Scholarship for the five-year scholarship scheme dedicated to students of this OUHK programme.

President's Shenzhen visit

Institute President David Fu FCIS FCS(PE) led a delegation, including Institute Past President and Council member Mrs Natalia Seng FCIS FCS(PE), Past President and Mainland China Focus Group (MCFG), convenor Ivan Tam FCIS FCS, Past President and MCFG member Dr Maurice Ngai FCIS FCS(PE), MCFG member Michael Ling, Chief Executive Samantha Suen FCIS FCS(PE), Chief Representative of the Institute's Beijing Representative Office Kenneth Jiang FCIS FCS(PE) and Chief Operating Officer & Director of Professional Development Ken Yiu ACIS ACS(PE), paid a visit to Shenzhen on 14 June 2019 and met with 20 board secretaries, Institute members, Affiliated Persons and students at a dinner gathering. Recent developments of the Institute were shared with the participants.

The Institute would like to thank everyone for attending the dinner gathering and sharing their valuable views.

MAISCA Annual Conference 2019

Institute Chief Executive Samantha Suen FCIS FCS(PE) was invited by the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) to attend their annual conference themed 'Net Dimension in Governance' in Kuala Lumpur on 2-3 July 2019. Over 600 delegates from different industries and sectors attended the conference. Ms Suen took the opportunity to meet with YC Chan FCIS and Grace Tan FCIS, the chief executives of MAISCA and the Singapore Association of the Institute of Chartered Secretaries & Administrators, and discussed the ICSA's new qualifying programme and related matters.

HKICS speaks at the Conference on Global Regulatory Governance 2019

Institute Senior Director and Head of Technical & Research, Mohan Datwani FCIS FCS(PE), participated in the Conference on Global Regulatory Governance 2019, held on 4 July 2019. Mr Datwani participated as a panellist in a practitioner-orientated session on 'Individual Responsibility – A Capital Market Trend' at the invitation of Professor CK Low FCIS FCS of The Chinese University of Hong Kong (CUHK) and Institute Council member, as an organiser of the conference.

The conference debated key issues relating to regulation and compliance with global impacts. It was intended to inspire creative thinking in examining the complexity of regulatory regimes in the emerging economies and developing countries of the Asia-Pacific region from a comparative perspective.

The Institute extends its gratitude to Professor CK Low FCIS FCS for inviting the Institute to participate in the conference.

HKICS Annual Dinner 2020 – save the date!

The Institute will hold its 2020 Annual Dinner on Thursday 16 January 2020 at 6.30pm at the Ballroom, JW Marriott Hotel Hong Kong. The Honourable Lui Tim Leung, Tim, SBS JP, Chairman of the Securities and Futures Commission (SFC) will be the Guest of Honour of this annual signature event.

All members, graduates and students are invited to take part in this exceptional occasion. Please stay tuned! More details of the Annual Dinner 2020 will be announced on the Institute's website www.hkics.org.hk and social media platform soon.

HKICS Corporate Governance Week – mark your diary

2019 marks the 70th anniversary of the presence of The Institute of Chartered Secretaries and Administrators (ICSA) in Hong Kong and the 25th anniversary of the establishment of The Hong Kong Institute of Chartered Secretaries (HKICS). The Institute is organising a Corporate Governance Week (CG Week) from 16-21 September 2019 as one of the major events to celebrate this double anniversary year. The activities during the CG Week will include:

- Stakeholder Networking Luncheon on 16 September 2019 (by invitation only)
- Corporate Governance Forum on 17 September 2019
- Corporate Governance Paper Competition and Presentation Awards on 21 September 2019

For more information, please contact 2881 6177 or email: ask@hkics.org.hk or visit the Institute's website: www.hkics.org.hk.

HKICS attends Government's 2019 Policy Address Consultation

On 24 July 2019, Institute President David Fu FCIS FCS(PE) attended the 2019 to 2020 Policy Address Consultation session organised by the Financial Secretary's Office of the Hong Kong SAR Government to solicit views from professional bodies for the formulation of policy initiatives for the 2019 to 2020 Policy Address.

International Qualifying Scheme (IQS) examinations

	Tuesday 3 December 2019	Wednesday 4 December 2019	Thursday 5 December 2019	Friday 6 December 2019
9.30am–12.30pm	Hong Kong Financial Accounting	Hong Kong Corporate Law	Strategic and Operations Management	Corporate Financial Management
2.00pm–5.00pm	Hong Kong Taxation	Corporate Governance	Corporate Administration	Corporate Secretaryship

IQS study packs (online version)

The updated version of the IQS study packs for Corporate Secretaryship, Corporate Governance, Corporate Administration and Hong Kong Corporate Law subjects are available online. For details of the updates, please refer to the News section of the Institute's website and the PrimeLaw platform for the study packs online version. Students are encouraged to register and read the study packs online.

For enquiries regarding the online study packs, please contact Leaf Tai: 2830 6010, or email: student@hkics.org.hk. For technical questions regarding PrimeLaw, please contact WoltersKluwer Hong Kong's customer service by email: HK-Prime@wolterskluwer.com.

Syllabus update – Corporate Administration

The topic of 'Hong Kong Competition Law' has been included in the Corporate Administration syllabus (effective from the December 2018 examination diet). Students may refer to the IQS syllabus under the International Qualifying Scheme section of the Institute's website and Chapter 14 of the Corporate Administration study pack for this new topic.

Student Ambassadors Programme (SAP) 2019/2020 – recruitment of mentors

SAP has been an effective platform to introduce the dual qualification of Chartered Secretary and Chartered Governance Professional to local undergraduates. Participation of members as mentors is important to introduce the qualification and profession to students. Mentors can share their working experience and professional knowledge, and provide career guidance.

Mentors will be invited to join the Tea Reception in October 2019, the kick-off event of the SAP 2019/2020, to meet with their mentees. Interested members please contact Helen Fung: 2830 6001, or email: student@hkics.org.hk for details.

Studentship

Recruitment – Examiners/Reviewers/Markers of examination papers

The Institute is looking for subject experts who would like to contribute to the Institute's qualifying programme as examiners/reviewers/markers of examination papers.

Requirements:

1. Sound knowledge and experience in the related module(s)
2. Strong editing and writing skills
3. Experience in setting postgraduate level of examination papers and marking schemes
4. Relevant academic and/or professional qualification in the related module(s)
5. Experience as a published writer is an advantage
6. Membership of HKICS/ICSA is an advantage

Interested parties please email full resume to: recruit@hkics.org.hk and quote 'EE_2019'.

For details, please visit the News section of the Institute's website at www.hkics.org.hk.

(Data collected will be used for recruitment purposes only).

New Qualifying Programme (NQP) - reminder

With effect from 1 January 2020, the New Qualifying Programme (NQP) will replace the current International Qualifying Scheme (IQS). The first examination diet of the NQP will be held in June 2020. The NQP will comprise seven modules, of which six are compulsory and the seventh is chosen from two electives:

1. Hong Kong Company Law
2. Corporate Governance
3. Corporate Secretaryship and Compliance
4. Interpreting Financial and Accounting Information
5. Strategic Management
6. Risk Management
7. Boardroom Dynamics or Hong Kong Taxation (electives)

The Institute will announce details of the syllabuses, reading lists, study materials and pilot papers for all the modules in the NQP to students in the near future.

For details, please visit the Studentship section of the Institute's website at www.hkics.org.hk.

If you have any queries, please contact the Education & Examinations Section: 2881 6177, or email: student@hkics.org.hk.

Policy – payment reminder

Exemption fees

Students who received exemption confirmation letters issued in May and June 2019 are reminded to settle the exemption fee by Friday 23 August 2019 and Saturday 21 September 2019 respectively.

Studentship renewal

Students whose studentship expired in June 2019 are reminded to settle the renewal payment by Friday 23 August 2019.

Hong Kong's AML/CFT system is FATF compliant

Hong Kong has become the first member jurisdiction in the Asia-Pacific region to have achieved an overall compliant result as regards its anti-money laundering and counter-financing of terrorism (AML/CFT) regime in the mutual evaluation undertaken by member jurisdictions of the Financial Action Task Force (FATF).

The FATF is an inter-governmental body which sets global standards for AML/CFT. Comprising 39 major economies of the world, the FATF conducts peer reviews of member jurisdictions regularly to assess their compliance with the international AML/CFT standards under a mutual evaluation process. Hong Kong has been a member of the FATF since 1991. Lasting for over a year, the mutual evaluation was undertaken by an assessment team comprising 10 experts from the FATF and the Asia/Pacific Group on Money Laundering. The *Mutual Evaluation Report* (the Report) of Hong Kong was examined by the full FATF membership at its June Plenary held in the US. The Report is expected to be published by the FATF in September 2019.

The Report finds that Hong Kong has a strong legal and institutional framework for AML/CFT, and is particularly effective in the areas of risk identification, law enforcement, asset recovery, counter-financing of terrorism and international cooperation.

'The Government welcomes the FATF's recognition of the compliance and effectiveness of Hong Kong's AML/CFT system. It is a proud testament to Hong Kong's commitment to upholding the integrity of the financial system and its reputation as an international financial centre that is safe and clean for doing business,' said the Financial Secretary, Paul Chan, in a government press release.

The Companies Registry has issued a letter of thanks to the Institute for its contribution, and that of its members, to the overall achievement of Hong Kong in the mutual evaluation.

More information is available in the press release 'Hong Kong has strong framework and effective system for combating money laundering and terrorist financing', on the government website: www.info.gov.hk, and the website of the Companies Registry: www.cr.gov.hk.

Exchange establishes new Listing Review Committee

The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), has established a Listing Review Committee as an independent and final review body for decisions made by the Exchange's Listing Committee, on both disciplinary and non-disciplinary matters.

The proposal to establish the Listing Review Committee was among the proposals put forward in a consultation published in June 2016 – *Joint Consultation Paper on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-making and Governance Structure For Listing Regulation*. This followed the review, begun in 2016, conducted jointly with the Securities and Futures Commission on the decision-making and governance structure for listing regulation.

The Exchange published conclusions to this joint consultation paper in January this year stating that, following support from a large majority of respondents, it would implement its proposals. The listing rule changes became effective on 6 July 2019 and members have been appointed to the inaugural Listing Review Committee.

The Listing Review Committee is a review body only. It will have no other functions.

The consultation paper, consultation conclusions and changes to the Main Board and GEM listing rules, are available on the HKEX website: www.hkex.com.hk.

MoU on audit working papers by Ministry of Finance, CSRC and SFC

The Ministry of Finance of the People's Republic of China (MOF), the China Securities Regulatory Commission (CSRC) and the Securities and Futures Commission (SFC) have entered into a Memorandum of Understanding (MoU) concerning the obtaining of audit working papers in the Mainland arising from the audits of Hong Kong-listed Mainland companies. The cooperation agreed by the three parties under the MoU will facilitate the SFC's access to audit working papers – created by Hong Kong accounting firms in their audits and kept in the Mainland – when conducting investigations into Mainland-based issuers or listed companies, and their related entities or persons. Under the MoU, the MOF and the CSRC will provide the fullest assistance in response to SFC's requests for investigative assistance regarding the provision of audit working papers. The tripartite MOU was signed in Bejing on 3 July 2019.

More information is available on the Securities and Futures Commission website: www.sfc.hk.

Stock Connect to include companies on the SSE Star Market

The Stock Exchange of Hong Kong (the Exchange), Shanghai Stock Exchange (SSE), and Shenzhen Stock Exchange (SZSE) have announced that Stock Connect inclusion arrangements for companies with A-shares listed on the SSE's Sci-Tech Innovation Board (STAR Market), and H-shares listed in Hong Kong, have been agreed.

Currently, A+H companies listed on the Exchange and SSE or SZSE are eligible for trading via Stock Connect. This arrangement will be extended to A+H companies that are listed on the STAR Market. SSE's new STAR Market is different from its main board in terms of trading, regulations and investor eligibility. Accordingly, business and technical assessments, as well as other preparations, need to be completed before stocks listed on the STAR Market become available via Northbound trading of Stock Connect. A+H companies that are listed on the STAR Market will have their A-shares eligible for Northbound trading after relevant business and technical preparations are completed. A date for inclusion will be announced in due course.

The corresponding H-shares in these companies will be included in Southbound trading of Stock Connect when the Northbound arrangements take effect. The inclusion of eligible constituent stocks of the Hang Seng Composite LargeCap, MidCap, and SmallCap indexes to Southbound trading will not be affected by this arrangement.

More information is available on the Hong Kong Exchanges and Clearing Ltd website: www.hkex.com.hk.

Director duties in corporate acquisitions or disposals

On 4 July 2019, the Securities and Futures Commission (SFC) published a *Statement on the conduct and duties of directors when considering corporate acquisitions or disposals*. The statement outlines recurring types of misconduct in relation to corporate acquisitions and disposals that have given rise to concerns and, in some cases, led to intervention by the SFC. These include:

- lack of independent professional valuation for a planned acquisition or disposal
- lack of independent judgement in considering valuation reports by external valuers and profit forecasts from vendors, and
- insufficient independent due diligence on the forecasts, assumptions, or business plans provided by the vendors or the management of the targets.

The statement reminds directors and their advisers that the SFC will have no hesitation in using its powers under the Securities and Futures Ordinance and the *Securities and Futures (Stock Market Listing) Rules* to protect market integrity and the investing public. It also reminds directors and their advisers to comply with their statutory and other legal duties when evaluating or approving the acquisition or disposal of a company or a business.

The statement is available on the Securities and Futures Commission website: www.sfc.hk.

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