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August 2020

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The journal of The Hong Kong  
Institute of Chartered Secretaries  
香港特許秘書公會會刊



Board diversity  
Moving from talk  
to action

Paperless securities  
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## Breaking the 'director' mould

This month our journal looks at the issue of board diversity. Having a diverse range of perspectives on the board is widely accepted as a standard component of good board governance. Unlike other components, however, its acceptance is still largely theoretical – the statistics on board composition in Hong Kong suggest that the enthusiasm for board diversity has not yet led to a change in board recruitment practices. Our cover story this month therefore gets advice from governance professionals on how to move from talk to action on this issue.

Perhaps the first hurdle to implementing a comprehensive diversification programme in the boardroom is simply reconfiguring what we think we are looking for when recruiting directors. The concept of the 'director' seems to have become typecast as a man approaching or in retirement, with an accounting background and a successful career behind him in banking or listed company management. Such a director is likely to be a valuable asset to the board of course, but a board made up entirely of such individuals will be highly vulnerable to 'groupthink'.

Moreover, just appointing one or two non-traditional directors won't cut it – there needs to be critical mass of differing viewpoints to really generate a lively debate and to correct any blind spots the board may have. Nomination committees need to be casting the net wider and thinking out of the box when filling vacant board seats. Looking for more female directors and directors from different

ethnic and cultural backgrounds is an obvious starting point, but why stop there? 'Relevant' professional experience might be outside the traditional sectors of legal, marketing, IT, banking and accounting. To get the right culture of constructive challenge on the board, it might pay to take a chance with younger individuals with no board experience – people on the way up in their career rather than having a proven track record behind them. This will be particularly true of course where your organisation operates in an industry that caters to the young, but younger board members also tend to be in a better position to foresee the demands, opportunities, challenges and expectations the boards will need to respond to in the years ahead.

Board diversity has for too long been an issue that is paid generous lip service but very little real attention. Our Institute has for some time been trying to change this. We published a research report on the topic back in 2012 – Diversity on the Boards of Hong Kong Main Board Listed Companies – available in the Publications section of our website: [www.hkics.org.hk](http://www.hkics.org.hk). Board diversity has been a regular feature of our Continuing Professional Development events since then and it will be a core topic of discussion at our upcoming Corporate Governance Conference (CGC), which will be on the theme Building the Modern Board: A 20/20 Vision. Session 1 of the conference will look at the process for identifying, selecting and recruiting board members to promote better diversity. If you haven't already done so, I urge you to sign up for our CGC, which will take place on 25 and 26 September. In keeping with our efforts to minimise the risk of spreading COVID-19, this year's CGC will be held as a webinar – meaning that anyone, anywhere can

join as long as they have a digital device and online connection. The format will maintain all of the usual functionality for attendees – including, crucially, the ability to ask questions and vote in the online polls. The site visits planned for 26 September will be turned into virtual visits/presentations to be followed by a panel discussion.

Before I go, I would like to highlight the new thought leadership webcast series: The Governance Exchange hosted on the e-community section of The Chartered Governance Institute (CGI) website ([www.cgiglobal.org](http://www.cgiglobal.org)). This series has been looking at how leading company secretaries and governance professionals across a range of countries have responded to COVID-19. Both Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE), Immediate Past International President, CGI, and former Institute President, and David Simmonds FCIS FCS, Institute Vice-President, are featured in this new series.

Closer to home, we are also about to launch a new section on our Institute's website giving you online access to the profiles of our members and students collected as part of our Careers in Governance project. Our online content helps you develop your career as a governance professional and the COVID-19 pandemic has certainly made staying in touch with our Institute – local and global – via our website and social media channels all the more important. Stay in touch and stay safe!

Gillian Meller FCIS FCS

# 打破“董事”常规

本期月刊将探讨董事会多元化的问题。人们普遍认为，董事会上呈现多元化观点是良好董事会治理的标准要素。但是，与其他要素不同的是，人们对此观念的接受大体上仍停留在理论阶段——香港的有关董事会成员构成的数据显示，董事会多元化空有“热情”，尚未落实到改变董事聘任的实践中。因此，对于如何将董事会成员多元化从讨论落实到行动，本期的封面故事将刊发公司治理专业人士的建议。

或许，克服实施董事会成员全面多元化的首个障碍，是在聘请董事时重新思考我们的需求。在人们的观念中，“董事”似乎已被定型为一个接近或已经退休，拥有会计背景，以及拥有在银行业或上市公司担任管理层的成功人士。这样的董事固然可能是董事会的宝贵资产，但完全由该等人士组成的董事会很可能会陷入“群体思维”。

此外，只是任命一或两名非传统董事并不会打破这种局面——大量不同观点的意见才能真正引起活跃的辩论，纠正董事会可能存在的盲点。提名委员会在填补董事会席位空缺时，要把网撒得更大，打破思维常规。当然，我们也可以从寻求更多女性董事和不同种族文化背景的董事开始，但这远远不够。“相关”专业经验可能在传统的法律、市场营销、信息技术、银行业和会计行业之外。为了在董事会上建立正确的建设性挑战文化，可能值得尝试邀请没有董事会经验的年轻

人——即正处于职业上升期的人，而不是拥有可靠工作业绩的人，加入董事会。尤其当你们的机构属于为年轻人服务的行业。较年轻的董事会成员往往能更好地预见董事会在未来几年需要应对的需求、机会、挑战和期待。

长久以来，人们更多的是口头上支持董事会多元化，很少真正关注此议题。公会尝试改变该局面已有一段时间。我们在2012年发布了有关此议题的调研报告——《香港主板上市公司董事会的多元化》(详见公会网站www.hkics.org.hk「公会出版物」栏目)。自那时起，董事会多元化一直是公会持续专业发展讲座的常规主题，这也是公会即将举办的公司治理研讨会(研讨会)的核心议题之一，本年度公司治理研讨会的主题为“建立现代董事会：20/20愿景”。研讨会第一个环节将探讨如何识别、选拔及聘请董事会成员的流程，以更好推动多元化。如果还没报名，本人强烈建议大家报名参加此将于9月25日和26日举行的研讨会。为最大程度降低传播新冠病毒的风险，本年度的研讨会将以网络会议的形式召开——这意味着任何人在任何地方，只要有一台数字设备和网络连接，都可以加入。这种形式为参与者保留了所有常规功能——尤其包括提问和在线调查投票功能。原计划于9月26日进行的实地访问将改为虚拟访问/展示，之后进行小组讨论。

最后，本人想重点推荐新思想领导力网络讲座直播系列：《治理交流》

(详见特许公司治理公会网站www.cgiglobal.org「电子社区」栏目)。该系列讲座一直关注各个国家具领导地位的公司秘书和公司治理专业人士如何应对新冠疫情。特许公司治理公会上任国际会长、香港特许秘书公会前会长施熙德律师FCG(CS, CGP) FCIS(CS, CGP)(PE)和公会副会长司马志先生FCIS FCS是本次新系列讲座的嘉宾。

此外，我们即将在公会网站上推出一个新的栏目「治理职业生涯」，大家可以通过此栏目查看部分杰出会员及学员的职业分享。这新栏目的内容有助于大家拓展自己作为公司治理专业人士的事业，而新冠疫情无疑使公会网站和社交媒体成为大家与公会(在地区和全球范围内)保持联系的重要渠道。保持联系，多多保重！



马琳 FCIS FCS

# Board diversity in Hong Kong – moving from talk to action

CSj gets some best-practice advice from investors, regulators and governance professionals in Hong Kong on how to improve diversity on boards and deliver real change.







Earlier this month, a Qualcomm shareholder sued the company's directors for failing to bring an African American onto its board, or into senior executive positions, while repeatedly showcasing their diversity efforts to the public. The lawsuit is one of three shareholder derivative legal actions filed recently in the US against the country's technology giants. Other tech firms sued this month include Oracle and Facebook, on allegations similar to the Qualcomm suit.

This series of lawsuits has again put the discussion of board diversity under a spotlight. While board diversity has been a hot topic in the field of corporate governance for many years, and some companies have made progress in diversifying their boards over the past decades, businesses are now faced with increased pressure to move beyond verbal commitments and make incremental, measurable changes.

The pressure has also been seen in Hong Kong. In recent years, a minority of listed companies have taken actions to increase board diversity, but the majority still have a homogeneous board makeup.

'Hong Kong is lagging behind in the discussion of board diversity. We have

“  
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about board diversity  
for a very long time,  
but not much progress  
has been made  
”

Zoe Lau, Associate, BlackRock

been talking about board diversity for a very long time, but not much progress has been made,' says BlackRock Associate Zoe Lau, who is part of the company's Investment Stewardship team.

For example, regarding gender diversity, which is the most visible aspect of diversity, among the 50 Hang Seng Index (HSI) constituent companies, women occupy just 13.7% of board positions in the second quarter of 2020, finds a report published by Community Business – a non-profit working to advance responsible and inclusive business practices in Asia. The report also highlights that 12 HSI companies have all-male boards. Both numbers have remained at a similar level over the past two years.

## Highlights

- Main Board Rule 13.92 (or GEM Rule 17.104) requires issuers to have a board diversity policy and to disclose the policy or a summary of it in their corporate governance reports
- among the 50 Hang Seng Index constituent companies, women occupy just 13.7% of board positions in the second quarter of 2020
- businesses are now faced with increased pressure to move beyond verbal commitments and make incremental, measurable changes

Hong Kong also compares poorly to other parts of the world. In the US, all Standard & Poor's (S&P) 100 boards have at least one female director; women also make up 28.6% of the S&P 100 board compositions. The figure stands at 25.3% in Malaysia and 18.4% in Singapore. In India, nearly 16% of directors in the country are women.

In 2018, BlackRock, the world's largest asset manager, stated publicly for the first time its expectation that companies in the US should have at least two female directors. BlackRock further published a commentary on its engagement approach to board diversity in January 2020, highlighting that diversity – and the inclusion of different perspectives – is a globally relevant feature of board quality and effectiveness. Ms Lau, whose work focuses primarily on Greater China, points out one of the main reasons that gender diversity has not improved on Hong Kong boards in recent years is that appointments are usually made from a small pool of female directors.

'Many companies in Hong Kong agree that diversity is an important issue, but they also think the pool of potential female directors is very small and so there is a shortage of female candidates for board seats,' Ms Lau says. This has resulted in certain female directors having longer board tenures on multiple boards. She believes that Hong Kong is ready for more women on boards but there continues to be a problem of inertia.

'Why is the board always a boys' club? This is really not a new problem. Companies that wish to reap the benefits of a diverse board need to reflect on their commitment to lead in the ongoing war for talent. Is there a tendency for the incumbent

board to rely solely on its existing network when looking for new directors, thereby unconsciously excluding potential female candidates? Does the current mix of talent on the board allow robust discussions that can yield resilient decisions in our fast-changing world?' Ms Lau asks.

### Tightening the regulatory net

To break old habits, improve transparency and keep regulations broadly in line with international best practice, Hong Kong Exchanges and Clearing Ltd (HKEX) has introduced tougher rules on board diversity. Effective 1 January 2019, HKEX upgraded Code Provision A.5.6 to Main Board Rule 13.92 (or GEM Rule 17.104) requiring issuers to have a board diversity policy and to disclose the policy or a summary of it in their corporate governance reports. Issuers are also required to disclose any measurable objectives that they have set for implementing the policy and progress on achieving those objectives (see 'What are the listing rule requirements?').

Since May 2019, HKEX has also required companies seeking IPO listing with a single-gender board to come up with measurable objectives and a timeline to move towards a more diverse path – for example committing to nominating a woman to their board within two or three years.

'We want to make board diversity an important discussion and we want a company to think about the type of board composition that works best for them,' says Katherine Ng, Chief Operating Officer and Head of Policy and Secretariat Services of HKEX's Listing Division.

Ms Ng says that she has started to see positive changes. 'A lot of the companies

might not have considered board diversity previously, but now it's on their board agenda and they are performing a proper analysis of their board composition against their business needs. Ten years ago, board diversity may not have been on their radar.'

But for many board diversity advocates in Hong Kong, as they continue to see stagnation despite years of education and advocacy, a stronger push – for example imposing quotas for gender diversity on boards – has started to come into this discussion.

In 2003, Norway became the first European country to issue a law that requires corporate boards to include at least 40% women. Belgium, Italy, Germany and several other countries followed in its footsteps. In 2011, France also instituted a 40% quota for board diversity. At the time, women only comprised 10% of the country's board members. Less than a decade later, the number has hit 43%, surpassing its original goal. No such regulation or legislation, however, has been implemented in Hong Kong.

Ms Ng points out that the discussion about whether quotas for gender diversity should be imposed to improve gender equality in Hong Kong should not solely be led by the securities regulators – this discussion should involve a much broader group of stakeholders. 'Gender equality is a wider social issue and not just a company corporate governance or risk management issue. If you look at other jurisdictions, quotas have been imposed by legislation rather than as a listing requirement by the stock exchange,' Ms Ng says.

“  
the question now is – do we  
need to force change because  
it’s not happening naturally?  
”

Gillian Meller FCIS FCS, Institute President  
and Legal and European Business Director  
of MTR Corporation Ltd



### Diversity is not just about gender

'We all hoped that change would happen because it's in the best interests of companies, but change hasn't happened. So the question now is – do we need to force change because it's not happening naturally?' says Gillian Meller FCIS FCS, Institute President and Legal and European Business Director of MTR Corporation Ltd.

She expressed concern, however, about how any gender (or other) quotas on boards could be implemented. 'If today we say that by 2025 we have to have 30% of women on boards, it would be a real challenge to get the right people on the right boards by that date. While there are plenty of 'board-ready' women in Hong Kong, you could end up with women getting appointed to boards just to put a tick in the box,' she says.

Ms Meller also points out that quotas would only address one aspect of diversity. 'It's easy to talk about women because the statistics are out there, the research is out there. There's no problem

with this, you have to start somewhere, but it is important to remember that there are other aspects of diversity that are equally, if not more, important for some companies,' she says.

She adds that there are many factors in addition to gender that may be relevant when considering board appointments – including family status, ethnicity, age, expertise and sexual orientation. She believes companies need to be asking themselves which aspects of diversity are most relevant to their business with a view to ensuring that their key stakeholders can be understood and their strategies can be supported by the board.

Ms Lau echoes this thought. She points out that the board director is not just an auxiliary role but part of the company's structure for providing insights and the definition of diversity should be a reflection of the company's latest strategy. 'If there are many millennials using your company's product right now, should you not have someone on your board who knows what they like? If technology is advancing your

company's supply chain, has it not become necessary to have someone with a relevant background on the board? These are all important areas to consider,' she says.

### Practical recommendations

Around the world, research continues to support the value of board diversity. Cass Business School in London surveyed 16,763 public mergers and acquisitions globally over 20 years, and found that boards with female representation of 30% or more outperform all-male boards financially. A recent study, based on six years of research on Australian companies, also found that companies with a female CEO have a higher market value by 5%.

In a pandemic-hit world, diversity has also become more and more important for companies. A report by McKinsey suggests that inclusion and diversity are critical for business recovery, resilience and reimagining after COVID-19. 'Our research and the research of others suggest that when companies invest in diversity and inclusion, they are in a better position to create more adaptive,

## “ a lot of the companies might not have considered board diversity previously, but now it’s on their board agenda

”

Katherine Ng, Chief Operating Officer and Head of Policy and Secretariat Services, Listing Division, Hong Kong Exchanges and Clearing Ltd

effective teams and more likely to recognise diversity as a competitive advantage. Meanwhile, other companies might struggle,’ the report states.

As an integral part of corporate governance, what other practical steps can regulators, professional practitioners and organisations take to improve board

diversity in Hong Kong? Ms Ng says first and foremost, companies need to figure out what board composition works best for their business strategy and risk profile. ‘This is something that no regulator can help them with – it is a journey that they have to go through themselves,’ she says. She adds that HKEX has plans to start tackling listed issuers with single gender boards.

### What are the listing rule requirements?

- The Corporate Governance Code, Appendix 14 of Hong Kong’s Main Board Listing Rules (or Appendix 15 to the GEM Listing Rules), sets out a principle that the board should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer’s business.
- Effective January 2019, Hong Kong Exchanges and Clearing Ltd upgraded Code Provision A.5.6 to Main Board Rule 13.92 (or GEM Rule 17.104) requiring issuers to have a board diversity policy and to disclose the policy or a summary of it in their corporate governance reports. Issuers must also provide information on any measurable objectives that they have set for implementing the policy and progress on achieving those objectives (see Mandatory Disclosure Requirements L(d)(ii)).
- Another amendment effective 1 January 2019 expands Code Provision A.5.5 to require disclosure in the circular to shareholders accompanying a proposed resolution to appoint an independent non-executive director (INED) of the process used for identifying the INED nominee, as well as how the proposed INED may contribute to the board in terms of perspectives, skills and experience, and also to board diversity.

The culture of relying on personal networks to find potential directors is a major obstacle to improving board diversity. To tackle this, Ms Lau suggests that companies should make more use of third-party search firms to find suitable candidates. This incurs a cost, of course, but companies with an awareness of the benefits diversity can bring will see this as money well spent.

Ms Meller believes company secretaries can play a key role in promoting better board diversity. ‘Company secretaries are in a unique position, having a close relationship with both the CEO and the chairman. We can raise the board diversity issue with them, but also with their colleagues on the board and the management team. We can also try to promote a pipeline of women within the company,’ she says.

Ms Meller, as both a director and a company secretary, also believes that female directors can speak out as role models. ‘Female directors in Hong Kong should talk about their roles, encourage other women and be very visible as role models for women in the pipeline,’ she says.

A truly diverse board will include and make good use of differences in the skills, industry experience, family background, race, gender and other qualities of directors. With the right governance policy in place to manage diversity, these differences will be taken into account in determining the composition of the board and businesses can reap the benefits of keeping relevant in this age of new challenges.

**Hsiuwen Liu**  
*Journalist*



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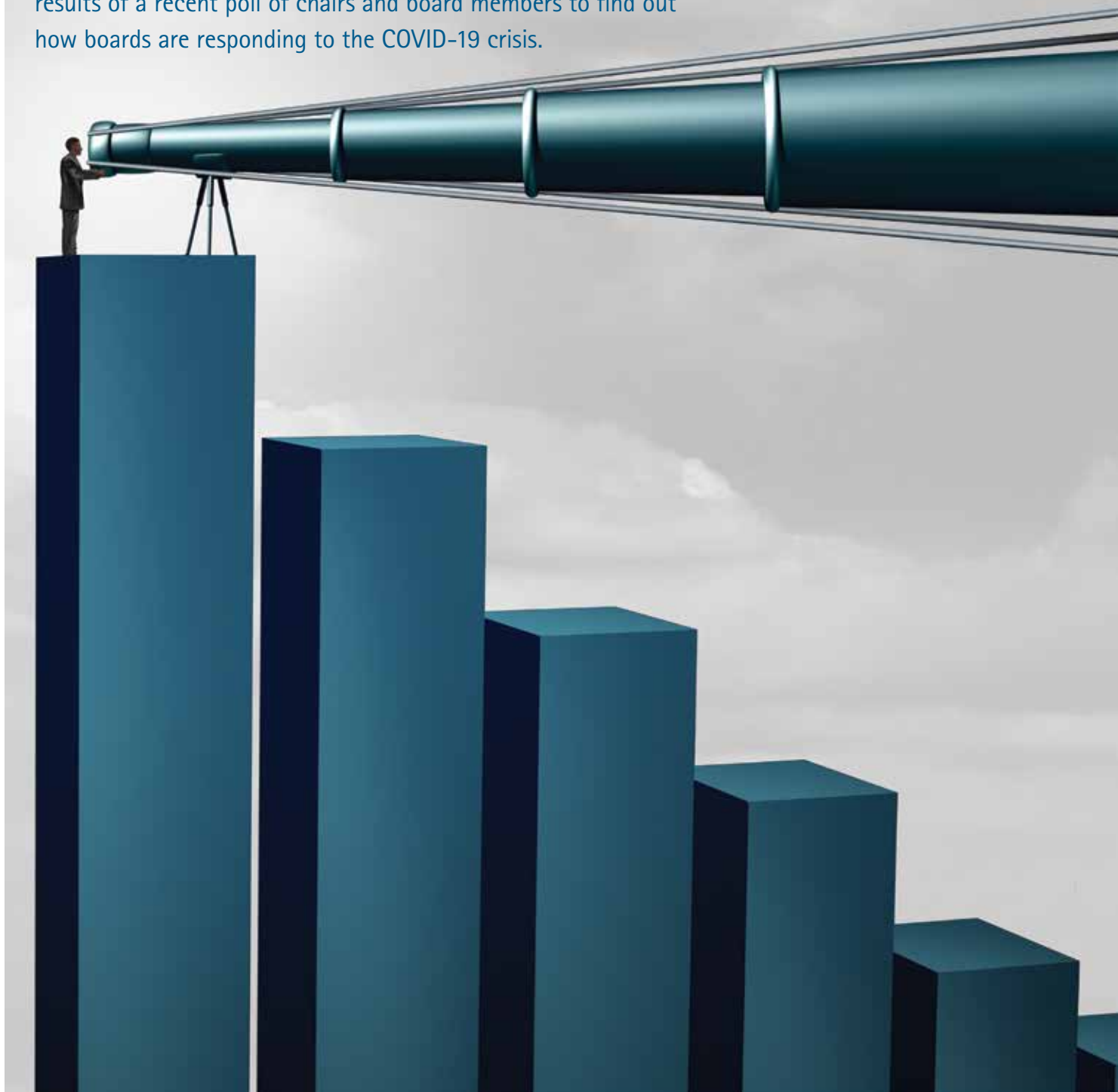
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# Governance in the COVID-19 crisis

Neil Waters and Karoline Vinsrygg, Egon Zehnder, highlight the results of a recent poll of chairs and board members to find out how boards are responding to the COVID-19 crisis.





Like everyone and everything else, boards have had to adapt to a changed world in so many ways. Egon Zehnder recently conducted over 40 different 'community calls' with groups of several hundred chairs and board members around the globe over recent months. In them, a number of common themes appear about how boards are responding to the COVID-19 crisis.

### Improving liquidity

Cash has become the key measure. With uncertainty about the future, companies seek to keep cash in hand. In almost every company, the board has acted to ensure the company has drawn down all open credit facilities. Equity raises are also common, with boards noting that, in general, shareholders are much more open to providing funding than during the global financial crisis. In an operating sense, every business is being managed for cash. Major (and minor) capital expenditure has been deferred.

One bit of good news: the virtue of parsimony is evident. Companies have identified and eliminated costs without any impact on productivity, costs they would not have identified otherwise.

For now, the cost of holding cash in hand is very low. But companies in high-growth economies like Greater China are being forced to answer the 64 million dollar question: how do we balance protecting cash flow now against investing for the future as the economy recovers?

### Strategy

Directors are asking questions such as: what is our forecast, how will consumer behaviour change and how will we be disrupted? There is more uncertainty about the future today, but the board of every company still needs to make strategic decisions. How big should my retail presence be? Should I consider changing my staffing levels? Are we seeing a disruption to our business model that means we will never return to what once was our presence and our route-to-market?

Everyone wants to know what the board thinks. There is pressure on them to form a view and to communicate it. Many directors talked about the shape of the recovery curve, and different curves in different industries and geographies. Sometimes there are debates between

## Highlights

- companies are being encouraged to provide scenarios for different outcomes and more, rather than less, disclosure to allow shareholders to form a better understanding of how they are faring
- major companies will need to think about the reputational elements of their recovery plans as the national mood is going to be different when we come out of the pandemic
- one permanent result may be that boards must think beyond their direct shareholders, and more broadly about wider society and their company's licence to operate

management and the board about those topics, which can be challenging as there are no obvious right answers. In general, management seems to be more optimistic now, while boards are more open to negative outcomes and have slowed down decision-making when they feel management has gone too far. But there are also examples of boards giving management a vote of confidence by encouraging them to take risks and make decisions now rather than waiting for clarity that may not come.

Despite the pressure to form a view or communicate one, many participants have warned about making public statements that are too specific when in reality the future is unknown. Spurious certainty is cold comfort. Some boards try not to estimate but lay out what they know, what they would need to know to make decisions and how to defer the decisions until the unknowns are known. Some other boards are focusing on their own dynamic: being wary of groupthink, seeking and elevating discordant voices and benefiting from having directors who have gone through a crisis during their executive tenures. Overall, the boards doing best are the ones having the most challenging conversations in the boardroom. 'Don't be too comfortable,' as one participant said.

### Operating remotely

The board has quickly learned to operate remotely effectively. As one director put it: 'We are now in different timezones, so some people are more present than others. As well, I have to be more decisive about how and when I make my point. Largely I feel I will only get one shot now, so I have to make it count.'

With the chair acting as a filter between the board and the executive team by

collecting questions and suggestions on how and what to communicate, the board is meeting more often. Especially at the outset of the crisis, we saw boards diving more into operational details than the usual advising and coaching management through the crisis. Boards have been a sounding board for CEOs even more than before.

However, some wonder if the board has become too operational. Are they at risk of overstepping the mark? 'We need to keep noses in, hands out, and not the other way around,' said one director. More broadly, during a very busy time for executives, it can be both difficult and distracting to face persistent engagement from the board. Some boards have taken the hint, acknowledged the distortion and have adopted some practical resolutions. One example: adding 'no need to reply' at the end of emails to management when previously any email from the board demanded a researched and checked response. The chair as 'air traffic controller' has a more important role than ever in balancing the interactions between board members and executives.

### Reputation

Major companies will need to think about the reputational elements of their recovery plans as the national mood is going to be different when we come out of the pandemic. Should we lay people off when their prospects of other employment are so low? Should we accept government subsidies to assist our financial position?

At stake is the question of a company's role in society. Again, the answer is unclear. The best boards play a role in ensuring that companies have a clear view on that role and act accordingly.

They may be judged on their decision, but by which 'jury' and when? For example, we have seen most (now virtual) annual general meetings happen quickly and with few questions. But more recently there has been evidence of greater shareholder dissonance and most boards expect more of that in the year to come.

One permanent result may be that boards must think beyond their direct shareholders, and more broadly about the public, society, and how their roles have changed as a result of the crisis. Directors need to consider why their company has a licence to operate.

### Audit

Audit committees have been in the eye of the storm in recent weeks. Meetings have multiplied as they have been grappling with technical accounting topics, which have the potential to affect the future viability of the business. With no clear blueprint to follow, audit committees have had intense discussions with their auditors on many topics, including how to approach the whole going concern issue, valuing illiquid assets such as real estate, setting triggers for asset impairment and the level of bad debt provisions, plus many other subjects. It has been hard for audit firms and regulators to move as quickly as the crisis has unfolded. It now feels like a more pragmatic approach is being taken with companies being encouraged to provide scenarios for different outcomes and more, rather than less, disclosure to allow shareholders to form a better understanding of how they are faring.

### Risk

Investors are asking for more transparency in assessing the risk implications of the crisis, no surprise there, but with such uncertainty, what should boards do?



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as companies are  
reshaping for the new  
normal, so are boards  
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Many are leaning towards more transparency and allowing investors to shape their own views based on these inputs. Some are offering performance data without giving guidance. This empowers both businesses and investors, and encourages both sides to take accountability: companies disclosing what they feel confident in, and investors being able to interpret that data and synthesise a recommendation from it.

Another consideration around risk is the timeline and the uncertainty of how long the 'off-normal' will continue – and even if normal as we once knew it will return. As a result, transparency on estimates and ranges will be important from the governance perspective, as well as for regulators. Many stock exchanges have offered some relief to boards by not expecting them to forecast in the current environment.

#### Remuneration

There are challenges in setting senior executive remuneration for 2020. Many boards decided to maintain compensation linked to their executives' 2019 performance, although there has been

criticism of this, especially for companies that took other actions like furloughing workers or cutting dividends. The timing of companies' fiscal years meant that this became a bigger topic for companies closing their books after the crisis had hit.

The open question is what we do about 2020 and onwards. Some companies have benefited greatly from the crisis, and the relative outperformance is substantial. But how much of that is a credit to the executives concerned? The same goes for the downside: to what extent does the board choose to penalise management for the performance as a consequence of the crisis, at a time where leaders may have worked harder than ever before? It is very challenging to work out the quantitative framework to end up with a fair outcome. Some boards are turning to a mix of financial and non-financial metrics to better balance remuneration outcomes. Companies may also choose to link bonuses and long-term incentives to relative performance. Some are also choosing to provide a baseline for long-term incentive achievement to retain talent, conscious that so many legacy plans are deeply out of the money. There

is a lively debate between executives and remuneration committees about whether to make new long-term incentive share awards now, at share prices that are deeply discounted, or wait until some future date once share prices have returned to 'normal'.

There is also a rising ethical component to remuneration. Given the major economic impact of the pandemic, remuneration policies will undergo more public scrutiny, which will only add to the difficulty of determining remuneration at both executive and board director level. Even if a bonus, for example, is justifiable from a governance perspective, how will it be viewed by the wider society – not just by investors? Companies are actively looking at cash alternatives such as work flexibility, leave provisions and so on to reward employees for their work, to ensure executives are not attacked for the level of compensation.

#### Dividends

Opinions are divided on the best approach to dividends. Some directors plan to postpone or scrap them amid a rush to preserve resources. On the other hand,

## “ in our lifetime, it has never been a more exciting and more terrifying time to be a director ”

there is also an ethical question as to whether it is appropriate to withhold dividends if they have already been declared. Others argue that cancelling dividends will have adverse effects and may trigger share sell-offs. Shareholders and pension funds that rely on dividend payouts may struggle or default, leading to an extreme financial crisis further down the track.

### Takeovers and consolidation

When companies emerge from the crisis, it is likely that the landscape will be very different. For those who come out stronger, there will be consolidation opportunities to consider. A company may turn aggressor in order to consolidate or 'rescue' a competitor that is failing. However, for those who suffered, their shareholders will undoubtedly ask about survival strategies and how to defend against a hostile takeover. It is also possible that companies risking a hostile bid may seek to take themselves private instead. Private equity intervention is likely in the medium term, considering the war chest available. We have now begun to see some early moves by private equity funds to deploy capital by taking stakes in listed companies. In any case, more transparent communication from the board to shareholders will become critical.

In the near-term, the deal market is closed for now, perhaps with the exception

of Asian private equity firms with a China focus. Financing has become a challenge as banks' appetite to finance acquisitions is at a low. Moreover, it is very difficult to carry out any meaningful due diligence. Last but not least, it is hard to arrive at a sensible valuation, in particular given that the value of equities is so uncertain. There is general agreement that the mergers and acquisitions market has slowed down, and that private equity firms themselves are more focused on improving the performance of their current portfolio companies rather than thinking about potential new acquisitions. What is clear is that deal activity will return. Consolidation will happen. Those with the largest war chests have the luxury of choice.

### Who is my CEO?

Many directors commented that they had never learned as much about their own chief executives as they had in the last few months. Not all of what they learned was good, but they have had an opportunity to see their senior executive teams in crisis, which will undoubtedly help them think through what the future leadership teams might look like.

Boards are also connecting with their chief executives, offering them support with any feelings of loneliness and anxiety, as well as guiding them to think innovatively about keeping people

motivated. The CEO is being watched more closely than ever: those passing the exam can expect total support.

Others have found this all too hard. The road ahead is rocky and steep, and some will be asking themselves whether they have the wherewithal to go on. Boards will need to motivate CEOs as well: CEOs with less than 100% commitment are not welcome.

We are also hearing from boards about a rising alertness to signs of stress and mental health issues amongst senior executives and how to give more focus to well-being and providing support to leadership teams who have now endured many weeks of intense work, with no letup in sight.

### Final words: adapting to a new world

If we have learned anything during this time, it is that change is inevitable and unstoppable. It is taking place in a broad range of fundamentally important areas: liquidity, strategy, operations, risk, remuneration, dividends, takeovers and consolidation, and leadership. Each has financial, human, ethical and reputational implications. We have not even touched on issues such as supply chain restructuring, digital transformation, change in consumer behaviours and the consolidation of real estate footprints, just to name a few. As companies are reshaping for the new normal, so are boards. In our lifetime, it has never been a more exciting and more terrifying time to be a director. We are all, as the Chinese proverb says, 'crossing the river by feeling our way over the stones'.

### Neil Waters and Karoline Vinsrygg

*Egon Zehnder*



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# Dematerialisation – three decades on

CSj looks at the latest proposals for implementing a paperless securities market in Hong Kong.



On 28 January 2019, the Securities and Futures Commission (SFC), Hong Kong Exchanges and Clearing Ltd (HKEX) and the Federation of Share Registrars Ltd (FSR) issued a joint consultation paper on a model for implementing an uncertificated securities market (USM) – a paperless securities market in which investors can hold and transfer securities in their own name without share certificates or other paper documents – in Hong Kong.

The model put forward in the 2019 consultation aims to address the market concerns that sunk the previous model for implementing the USM initiative – the 2010 Model. Feedback on the consultation indicated support for the proposals and, in April 2020, the SFC, HKEX and the FSR released their consultation conclusions. They hope to further develop the Revised Model and the regulatory framework to support it with a view to implementing the USM regime from 2022.

### The new proposals

The Revised Model builds on the 2010 Model but retains some of the existing structures in the market. Currently, most investors in listed securities hold and transfer their securities through the Central Clearing and Settlement System (CCASS) where the securities are held under the name of a single nominee – HKSCC Nominees Ltd (HKSCC). This means that investors only hold and transfer the beneficial interest in the securities and not the legal title to them. Under the Revised Model, investors will continue to be able to hold their securities via the same account types available in CCASS and holdings in these accounts will continue to be registered in the name of HKSCC as they are now.

The Revised Model proposes, however, to create two new account categories – 'USI' accounts for ordinary investors and 'USS' accounts for institutional investors – which will allow investors to hold uncertificated securities in their own names. The USI accounts will be housed in the relevant issuer's share registrar's systems outside the HKEX system. The USS accounts will be sponsored and managed by a clearing or custodian participant (CP) within the HKEX system. The USS account is specifically designed to meet the needs of institutional investors (such as global funds) who, for regulatory or other reasons, may need to hold securities in their own name but also have them managed by a local custodian.

Both USI holders and USS holders will receive regular statements of their registered holdings. In the case of USI holders, these will be provided by the relevant issuer's share registrar that has been approved by the SFC under the new share registrar regime (see below). In the case of USS holders, these will be provided by its sponsoring CP via the HKEX system.

Additionally, the Revised Model proposes to require issuers to send an electronic

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the current settlement system in Hong Kong means that companies don't always know who their actual investors are  
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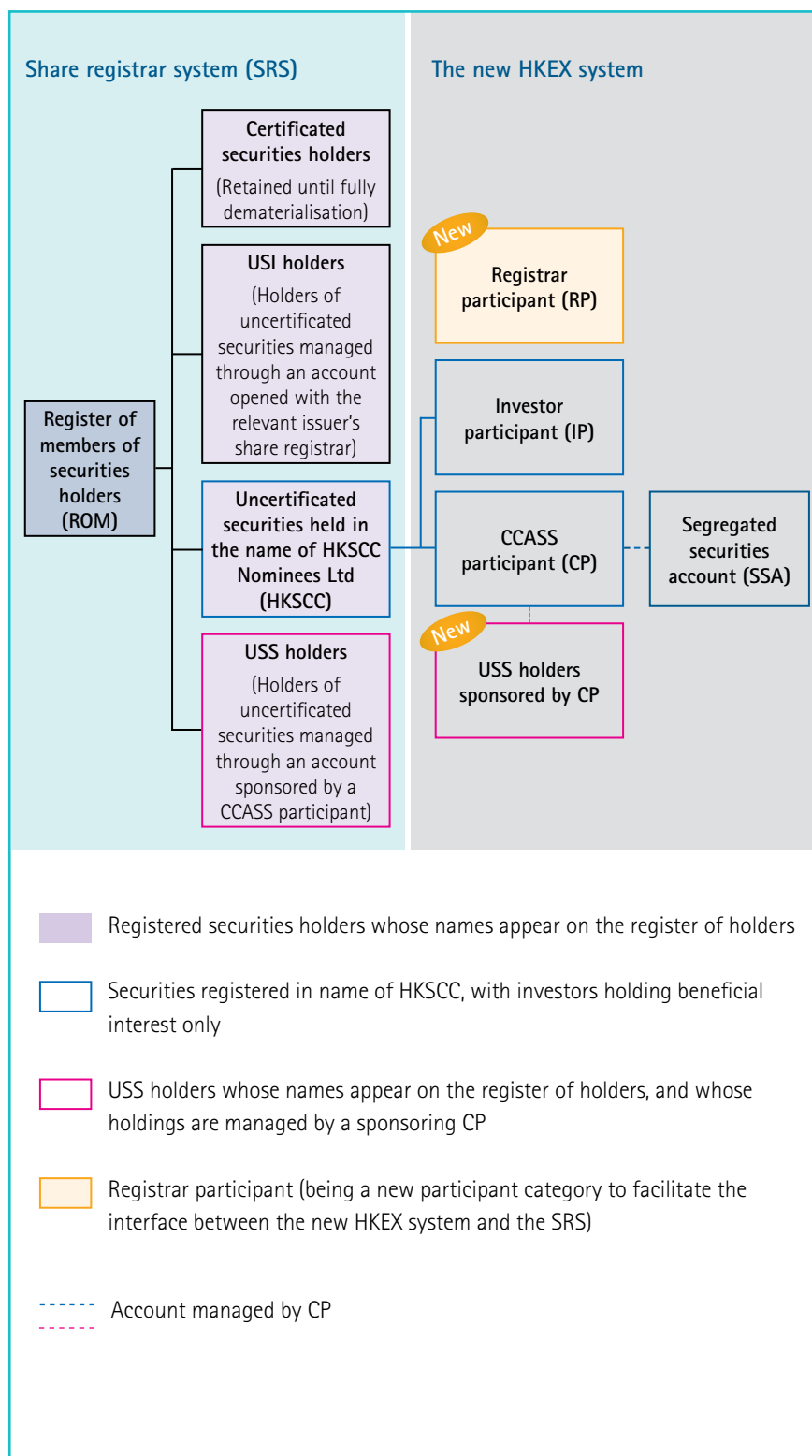
confirmation to investors to whom uncertificated securities have been successfully allotted or transferred in their own name. This requirement is designed to provide added comfort to investors that the allotment or transfer process has been duly completed and that the securities in question have been duly registered in their names.

Under the Revised Model, there will be no need to split the the register of members (ROM) into two parts as was proposed under the 2010 Model. This is because the movement of securities between accounts within the HKEX system will, in most cases, entail no change in legal title, which means there is no need for the

### Highlights

- corporate communications and proxy voting materials often do not reach the actual owners of the shares since they are not the registered holders of the shares
- the Revised Model for the implementation of an uncertificated securities market in Hong Kong will allow investors to hold paperless securities in their own names and manage them through an account opened with the issuer's share registrar
- the Revised Model will also give regulators new powers to regulate share registrars' systems and processes

The Revised Model



records of such movements to constitute part of the ROM. The ROM will therefore continue to be kept and maintained solely by the issuer's share registrar as is the case today.

The new share registrar regime

Under the Revised Model, share registrars will take on the role of evidencing, and effecting transfers of, legal title to listed securities without paper documents. As such, they will be critical to establishing and tracing investors' proprietary rights in such securities. A new participant category will be introduced in the HKEX system – registrar participants. Given that the role and functions of share registrars are very different from those of other clearing or custodian participants, it follows that their rights and obligations within the system will also be very different.

Their systems will also need to interface with the HKEX system. Regulators are therefore keen to ensure that they have sufficient supervisory, investigatory and regulatory powers to be able to monitor the management of share registrars' systems and processes. Currently, there is no requirement for share registrars to be approved by the SFC. Instead, the SFC has only an indirect regulatory handle over them by virtue of Part 4 of the Stock Market (Listing) Rules (SMLR). That Part requires every corporation whose securities are, or are to be, listed to be or employ a share registrar who is a member of an association approved by the SFC. Only one association has been approved by the SFC to date – the FSR.

The Revised Model proposes that the approval and regulation of share registrars be set out in a new piece of subsidiary legislation and that:

- the SFC's investigation and supervision powers under Part VIII of the Securities and Futures Ordinance (Cap 571, SFO) be suitably expanded so as to cover the regulation of share registrars, and
- the rule-making powers under the SFO that provide for the approval and regulation of share registrars be more specifically set out for better clarity and certainty.

### The governance implications


In 1988, the Ian Hay Davison Report proposed 'dematerialisation' – abolishing paper share certificates – for the first time in Hong Kong. Three consultation exercises and a raft of primary law amendments

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**moving to a system where share owners have legal title to their shares will mean that companies will have new opportunities for improving shareholder transparency and corporate communications**  
 ”

later, Hong Kong investors are still denied the ability to hold their shares in paperless or uncertificated form.

The failure to implement this reform has significant governance implications. The current settlement system in Hong Kong means that companies don't always know

who their actual investors are. Shares can be traded electronically, but they are considered to be still in paper form and held by HKSCC in a central depository linked to the settlement system. The paper securities are 'immobilised' in this central depository and do not need to be moved or re-registered every time they are bought or sold. Only the beneficial interest in the securities is transferred when the shares 'change hands' – legal ownership of the securities remains with HKSCC.

This arrangement has been a hurdle to better shareholder engagement. Corporate communications and proxy voting materials often do not reach the actual owners of the shares since they are not the registered holders of the shares. Moving to a system where share owners have legal title to their shares will mean that companies will have new opportunities for improving shareholder transparency and corporate communications. The primary aim of the USM initiative therefore is to make it easier for investors to hold securities in their own names. 

## Timeline

**1988** – The Ian Hay Davison Report proposes 'dematerialisation' – abolishing paper share certificates.

**2002** – The Securities and Futures Commission (SFC) conducts its first consultation on paperless shares.

**2003** – Hong Kong Exchanges and Clearing Ltd (HKEX) conducts its first consultation on paperless shares – both the SFC and HKEX consultations fail to drum up sufficient support from investors and brokers for the operational model proposed.

**2009** – The SFC, HKEX and the Federation of Share Registrars Ltd (FSR) set up a Working Group to put forward new proposals. Public consultations on these proposals are conducted from December 2009 to March 2010.

**2010** – The conclusions to the 2009 consultation are published.

**2015** – Primary law amendments are enacted to support the 2010 Model. These amendments are not subsequently implemented since the 2010 Model fails to be adopted by the market.

**2019** – The SFC, HKEX and the FSR issue a joint consultation paper on a revised operational model for implementing an uncertificated securities market in Hong Kong.

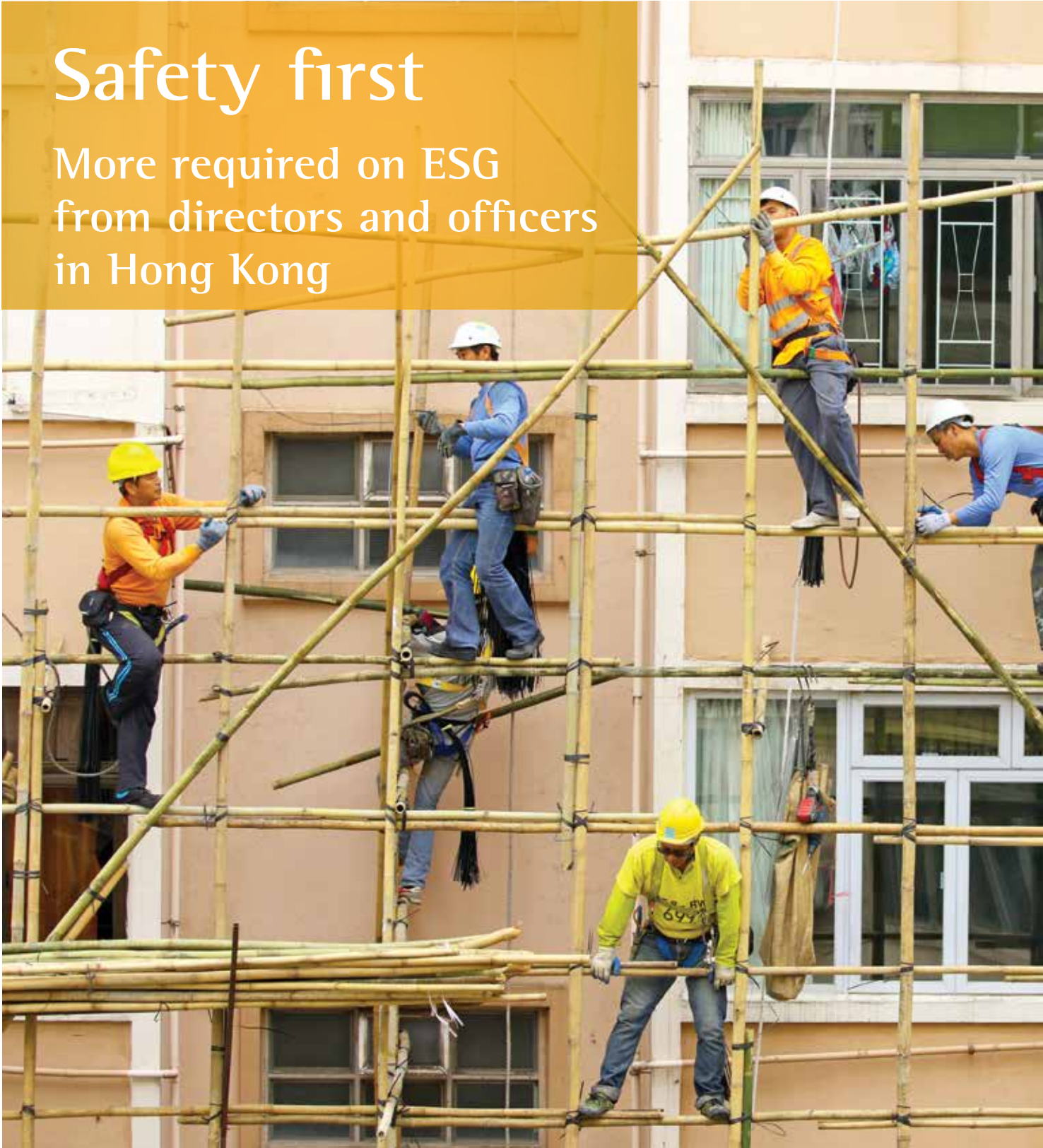
**2020** – The conclusions to the 2019 consultation are published.

**2022** – Proposed implementation date for the USM regime.

*More information is available on the websites of the Securities and Futures Commission ([www.sfc.hk](http://www.sfc.hk)), Hong Kong Exchanges and Clearing Ltd ([www.hkex.com.hk](http://www.hkex.com.hk)) and the Federation of Share Registrars Ltd ([www.fedsr ltd.com](http://www.fedsr ltd.com)).*

# Safety first

More required on ESG  
from directors and officers  
in Hong Kong







Angela SY Yim, Partner, and Phoebe MC Fok, Senior Associate, Mayer Brown, evaluate recent amendments to health and safety regulations in Hong Kong, and suggest a number of practical measures to prioritise workplace safety.

Amendments to the Hong Kong Exchanges and Clearing Ltd (HKEX)'s Environmental, Social and Governance (ESG) Reporting Guide took effect on 1 July 2020. Under the revised rules, the board of a listed company is required to make certain health and safety disclosures. This change reflects the increasing scrutiny of occupational health and safety (OH&S) compliance in Hong Kong.

In 2019, a total of over 42,000 industrial accidents and occupational injuries were officially reported to the Labour Department of the HKSAR Government. That said, labour activists estimate that over half of work-related injuries go unreported each year. This is often due to loopholes in multilayered subcontracting practices that enable employers to avoid liability. In a top-down approach, the new ESG reporting requirements will impose a more active duty on directors and officers

to improve safety governance and risk management in listed companies. It is hoped that the move will enhance the transparency of board-level reporting, triggering a 'race to the top' to improve the quality of corporate governance in Hong Kong.

#### A comparative view on health and safety laws

Under the Occupational Health and Safety Ordinance, every employer must ensure the health and safety at work of all his or her employees so far as reasonably practicable. An employer who breaches this duty could be liable to a maximum fine of HK\$500,000 and up to six months' imprisonment. If a director or officer consents to or connives with the employer's offence, they can be personally liable for the same offence.

Compared with other common law jurisdictions such as Australia, however,

### Highlights

- amendments to Hong Kong's Environmental, Social and Governance (ESG) Reporting Guide took effect on 1 July 2020, and reflect the greater scrutiny of occupational health and safety compliance
- the new reporting requirements place overall responsibility for an issuer's ESG strategy and reporting with the board, while directors and officers now have a more active duty to improve safety governance and risk management in listed companies
- certain disclosures on social matters that were previously recommended are now compulsory, and a number of health and safety aspects have been upgraded to 'comply or explain'

## “ directors and officers should always take reasonable steps to make workplace safety a priority ”

Hong Kong's safety laws are relatively lenient on directors and officers. Most Australian jurisdictions impose a positive and continuous obligation on directors and officers to exercise due diligence for OH&S, ensuring that companies comply with safety-related duties and obligations. This duty prevails even where directors leave decision-making to management.

In Hong Kong, the supervisory duty for OH&S largely falls upon employers. As labour unions and the media continue to question the adequacy of the territory's safety laws and penalties, we expect regulatory bodies to further scrutinise the accountability of directors and officers. So far, there have been no reports of directors being prosecuted, nor has any employer been imprisoned for safety violations. Nevertheless, the revised ESG disclosure requirements are a positive step toward enhancing workplace safety in Hong Kong.

### Upgraded disclosure requirements for health and safety

Many listed companies face additional OH&S risks that are increasingly important to stakeholders. For instance, companies employing contractors in high-risk occupations may face serious reputational and operational damage from incidents such as employee fatalities.

As the board has an overall responsibility for the company's ESG strategy and reporting, directors should be aware that the revised reporting requirements make previously recommended disclosures on social matters compulsory. In relation to health and safety governance, listed companies are required to identify and disclose the following aspects under the health and safety key performance indicator (KPI):

- the number and rate of work-related fatalities that have occurred in each of the past three years, including the reporting year
- the number of lost days due to work injury, and
- a description of occupational health and safety measures adopted, and how they are implemented and monitored.

This disclosure obligation will be upgraded to a 'comply or explain' level, meaning that listed companies must report on the above-mentioned KPI aspects or provide considered reasons otherwise. For example, where the board is unable to make the required disclosures due to legal restrictions, this should be explained in the ESG report. For ESG reports published separately from the company's annual report, the deadline for publication will be shortened to five months after the end of the financial year.

We expect that compulsory disclosure OH&S track records will increase board-level oversight of workplace safety and hopefully mitigate occupational risks over time. Apart from reporting on 'comply or explain' provisions, the board is encouraged to disclose other OH&S-related KPIs.

Doing so will enhance transparency in the company's operations, helping stakeholders and investors make informed decisions.

### Other key changes to note

Concerning ESG reporting generally, the amendments also require the board to issue a mandatory statement of disclosure containing the following:

- disclosure of the board's oversight of ESG issues
- the ESG management approach and strategy, including the processes used to evaluate, prioritise and manage material ESG-related issues, and
- how the board reviews progress made against ESG-related goals and targets, explaining the relevance to the company business.

When preparing an ESG report, the board will need to explain in detail how the reporting principles of 'materiality', 'quantitative' and 'consistency' have been applied.

### The next steps

The outcomes of poor OH&S measures can be detrimental to the company's reputation and overall interests. As good practice, directors and officers should always take reasonable steps to make workplace safety a priority. The following steps can be taken:

1. **Communicate:** establish a culture of constructive dialogue between the board and employees on OH&S matters. Actively obtain reports and inquire into any suspicious or missing information.
2. **Review:** regularly assess whether internal policies and measures adequately discharge the risks of workplace accidents

“  
as labour unions and  
the media continue to  
question the adequacy  
of the territory’s safety  
laws and penalties, we  
expect regulatory bodies  
to further scrutinise  
the accountability of  
directors and officers  
”



and injury. If necessary, seek expert opinion on the proper protections that should be implemented and allocate sufficient resources to address these concerns.

3. **Monitor:** if management decisions are delegated, make consistent enquiries to ensure that supervisory work is done competently and responsibly in compliance with safety laws.

4. **Educate:** put rigorous training in place to ensure that employees and contractors understand all inherent risks to the company's business operations. Make sure appropriate tools and resources are provided to tackle workplace hazards.

With the revised reporting guide in mind, it is hoped that enhancing board-level oversight will ultimately promote a culture of good corporate governance in Hong Kong.

Angela SY Yim, Partner, and  
Phoebe MC Fok, Senior Associate  
Mayer Brown

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### Online resources in order of appearance

- Labour Department of the HKSAR Government, Occupational Safety & Health: 'Summary of Occupational Safety and Health Statistics 2019': [www.labour.gov.hk/eng/osh/content10.htm](http://www.labour.gov.hk/eng/osh/content10.htm)
- Elaine Yau, 'How Hong Kong employers cut corners on safety and hide workplace injuries' SCMP (29 April 2016): [www.scmp.com/lifestyle/article/1939447/how-hong-kong-employers-cut-corners-safety-and-and-hide-workplace-injuries](http://www.scmp.com/lifestyle/article/1939447/how-hong-kong-employers-cut-corners-safety-and-and-hide-workplace-injuries)
- Cap 509, Occupational Safety and Health Ordinance, Sections 6 and 33: [www.elegislation.gov.hk/hk/cap509](http://www.elegislation.gov.hk/hk/cap509)
- Cap 59, Factories and Industrial Undertakings Ordinance, Sections 6A and 14: [www.elegislation.gov.hk/hk/cap59](http://www.elegislation.gov.hk/hk/cap59)
- Safe Work Australia, Model Work Health and Safety Act, Section 27: [www.safeworkaustralia.gov.au/doc/model-work-health-and-safety-act](http://www.safeworkaustralia.gov.au/doc/model-work-health-and-safety-act)
- Australian Institute of Company Directors, 'Work health and safety: Duties of Directors': [https://aicd.companydirectors.com.au/-/media/cd2/resources/director-resources/director-tools/pdf/05446-6-9-duties-directors\\_work-health-safety\\_a4-web.ashx](https://aicd.companydirectors.com.au/-/media/cd2/resources/director-resources/director-tools/pdf/05446-6-9-duties-directors_work-health-safety_a4-web.ashx)
- HKEX, ESG Reporting Guide (update 128), Appendix 27, Sections 10 and 3(2)(d): <https://en-rules.hkex.com.hk/node/2>

# Offshore fund exemption regime for Hong Kong-domiciled funds

Henry Kwong, Tax Partner, Cheng & Cheng Taxation Services Ltd, analyses the latest Inland Revenue Department guidance on offshore fund exemptions for Hong Kong-domiciled funds.

On 30 June 2020, the Inland Revenue Department (IRD) published its long-awaited Departmental Interpretation and Practice Note (DIPN) 61 to provide clarification on its view on offshore fund exemptions for Hong Kong-domiciled funds. While the offshore fund exemptions initially only applied to non-resident funds, effective from 1 April 2019 these profits tax exemptions also became applicable to Hong Kong-domiciled funds.

Four main areas of exemption are covered in DIPN 61, as listed below.

1. Definition of fund: a person has to be qualified as a 'fund' in order to enjoy the offshore fund exemption.
2. Exemption provisions: fund, special purpose entities and private companies.
3. Anti-round tripping provisions: deeming provisions.
4. Incidental transactions.

In this article we will mainly focus on the first two areas, since radical changes

have been implemented in comparison with the previous provisions, while only limited changes have been made to the latter two areas.

## Definition of fund

The definition of 'fund' is similar to that of 'collective investment scheme' under the Securities and Futures Ordinance (SFO). The fundamental principle behind the definition is to prevent the abuse of offshore fund exemptions when investors are making the investment on their own, rather than relying on asset management services from external service providers, as the exemptions are intended to

promote the development of the asset management industry in Hong Kong.

The IRD will look at all relevant decisions in judging whether a person is a fund or not (a detailed definition of 'fund' is given in Section 20AM of the Inland Revenue Ordinance (IRO)). Before providing some insights, we must stress that a person has to fulfil the definition of fund *at all times* during the year of assessment in order to qualify for any profits tax exemption.

The central tenet is that the investors (that is, participating persons) do not

## Highlights

- the Inland Revenue Department has recently published its Departmental Interpretation and Practice Note 61, setting out its interpretation of the profits tax exemption for funds that took effect on 1 April 2019
- the two areas of greatest change are the definition of 'fund' and certain specified exemption provisions, including the broadening of exemptions to include Hong Kong-domiciled funds
- transactions in private company shares are attracting the most attention, as exemptions are now applicable to investments in Hong Kong private companies, subject to certain additional requirements

# TAX

have day-to-day control over the management of the fund, as a fund should be managed as a whole by a fund operator (for example, a corporation licensed by the Securities and Futures Commission) that has overall responsibility for the management of the fund, including investment advice and operational services. A securities broker, for instance, is unlikely to be considered a fund operator as it merely carries out the investment decisions of its clients, instead of providing investment advice.

On the other hand, an arrangement intended to have only one investor would not normally be considered a fund as it is unlikely to fulfil the 'pooling' requirement. For some complex structures, such as parallel funds or a master-feeder structure, it is important to look at all the relevant facts – including whether such funds constitute separate funds or not – before determining if the structure falls under the definition of fund as set out in Section 20AM of the IRO.

Lastly, the IRD has also highlighted that group schemes or employee share schemes, in which the operations are in the same group of companies, would not

generally fall under the definition of fund, as the taxability of employee remuneration in Hong Kong cannot be exempted under a fund structure.

## Exemption provisions

To begin with, Table 1 highlights the four main requirements for a fund to be qualified for an offshore fund exemption under the Inland Revenue (Amendment) (No 2) Ordinance 2015 (2015 Ordinance) and what amendments, if any, were made to those requirements in the Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Ordinance 2019 (2019 Ordinance).

We will now go through each requirement in turn.

## Non-resident in Hong Kong

Under the 2015 Ordinance, a fund had to be a non-Hong Kong resident in order to qualify for an offshore fund exemption. Under the 2019 Ordinance, Hong Kong-domiciled funds are now also eligible for offshore fund exemptions but are subject to additional requirements, which will be further discussed below in the section on specified transactions.

The tax residency of a fund generally refers to the location in which the central

**Table 1: Requirements for offshore fund exemption qualification**

Exemption requirements under the 2015 Ordinance	Amendments made in the 2019 Ordinance
The fund has to be non-resident in Hong Kong	Abolished
Only specified transactions are exempted	Amended
Specified persons or qualified investment fund	No change
The fund does not carry out any other trade, profession or business in Hong Kong	No change

“  
**failure to comply with any one of the requirements, even for a short period of time during the year, may render the fund ineligible to enjoy the exemption benefits**  
 ”



management and control of the fund is exercised – the place of incorporation is not the deciding factor when determining tax residency. Rather, when examining the location of management and control, the IRD will look at a number of other factors, including the location of directors and where the board of directors' meetings take place. Obtaining a Certificate of Resident Status in Hong Kong demonstrates that the IRD confirms an entity is a Hong Kong tax resident. For further details about Hong Kong tax residency, please refer to our article in the December 2019 edition of CSj.

**Specified transactions**

Specified transactions include, amongst others, transactions in public securities, private company shares, futures contracts and foreign currencies. Of these, transactions in private company shares are attracting the most attention in the market, particularly those relating to the private equity industry.

For transactions in private companies, it is common practice for a fund to set up one or more special purpose entities (SPEs) to hold the investments in the investee private company (PE). In the following section, we will discuss the exemption requirements for SPEs and PEs.

**Special purpose entities.** The requirements for SPEs remain substantially the same as those in the 2015 Ordinance. An SPE must be established for the sole purpose of holding and administering a private company and is not allowed to carry out any other trade or activity after incorporation. In particular, an SPE is only permitted to conduct the following business activities:

- reviewing the financial statements of portfolio investment companies
- attending shareholder meetings of the portfolio investment companies
- opening bank accounts to enable the receipt of dividends and investment disposal proceeds, and
- appointing a company secretary and auditor.

**Private companies.** Under the 2015 Ordinance, offshore fund exemptions were not granted to funds investing in a private company incorporated in Hong Kong. These exemptions were extended in the 2019 Ordinance to include investment in Hong Kong private companies, but such investments are subject to additional requirements.

In contrast, the limitation on investment in Hong Kong immovable property still applies. In particular, whether considering the private company itself or the companies in which the private company has invested, the aggregate market value of the holding of immovable properties in Hong Kong cannot account for more than 10% of the total asset value of the respective company.

Despite the fact that market value will be applied in the 10% threshold, the IRD will first make reference to the book value in the audited financial statements of the private company. As such, it is recommended to limit both the book value and the market value of any Hong Kong immovable properties to the 10% threshold.

As mentioned above, offshore fund exemption has been extended to Hong Kong private companies. However, as the intention is to encourage the fund to hold private companies for long-term investment purposes, Hong Kong private companies are subject to one of the following additional requirements:

- the fund has to hold the private company for at least two years

- the fund does not have a controlling shareholding of the private company, and
- no more than 50% of the market value of the assets of the private companies are short-term assets (that is, the holding period of the relevant assets is less than three years).

As long as one of the above three conditions is satisfied, the exemption will apply to private companies in Hong Kong.

#### **Specified persons or qualified investment fund**

Exemptions are made available to a fund if that fund is carried out or arranged by a specified person in Hong Kong, or if the fund qualifies under the definition of a qualified investment fund. The term 'specified person' generally refers to a licensed corporation under the SFO, while to be classified as a 'qualified investment fund', the following conditions must be met.

- the number of investors (excluding the originator and the originator's associates) exceeds four at all times after the final closing of sale of interests
- over 90% of the aggregate capital commitment is made by investors (excluding the originator and the originator's associates) at all times after the final closing of sale of interests, and
- net proceeds to be received by the originator and the originator's associates cannot exceed 30% (after deducting the portion that is

attributable to them based on their capital contribution).

Paragraphs 82 to 94 of DIPN 61 provide more detailed definitions of some of the specific terms mentioned above.

#### **Anti-round tripping provisions**

Anti-round tripping provisions are substantially the same as the deeming provisions defined in the 2015 Ordinance. Even when a fund meets all the above exemption requirements, a deemed taxable income will be imposed on Hong Kong investors of the fund in the following situations:

- if the Hong Kong investors jointly hold 30% or more of the beneficial interest in the fund, or
- if Hong Kong investors who are associated with the fund hold any beneficial interest in the fund.

Having said the above, anti-round tripping provisions do not apply under the following situations:

- when, at all times during the year, 50 or more persons hold all the units of the fund
- when, at all times during the year, 21 or more persons are entitled to 75% or more of the income or property of the fund, or
- by special concession by the IRD's assessor.

#### **Incidental transactions**

Incidental transactions represent transactions incidental to the carrying out of specified transactions. Typical examples of incidental transactions are

interest or dividend income on securities and custody of securities.

If the trading receipts from incidental transactions do not exceed 5% of the total trading receipts (both specified transactions and incidental transactions), the incidental transactions could still be exempted. On the contrary, if the trading receipts from incidental transactions are over the 5% threshold, the total amount of the trading receipts from incidental transactions is subject to Hong Kong profits tax.

Having said the above, it is worth noting that some of the trading receipts from incidental transactions (for example, dividend income or offshore interest income) are non-taxable in Hong Kong even without the exemption.

#### **Last piece of advice**

While the HKSAR Government is dedicated to promoting both the asset management industry in Hong Kong and Hong Kong-domiciled funds, the IRD has expressed concern about the potential abuse of offshore fund exemptions, especially on short-term trading of Hong Kong securities, as capital gains from long-term investments – as well as income from overseas securities – are likely to be non-taxable in Hong Kong.

It is therefore important for the fund administrator to pay close attention to all the above requirements, as failure to comply with any one of the requirements, even for a short period of time during the year, may render the fund ineligible to enjoy the exemption benefits.

#### **Henry Kwong, Tax Partner**

*Cheng & Cheng Taxation Services Ltd*

# Virtual assets funds





As the first cryptocurrency fund licensed by the Securities and Futures Commission is launched in Hong Kong, Richard Keady, Partner, and Henry Li, Associate, Dentons Hong Kong, give an overview of the regulatory regime applicable to such funds.

Technology is changing the landscape of the Hong Kong financial services industry. On 20 April 2020, Venture Smart Asia launched its cryptocurrency fund in Hong Kong that purchases, holds and tracks the price of Bitcoin. This is the first time a pure cryptocurrency fund has been licensed to trade virtual assets in Hong Kong since the Securities and Futures Commission (SFC) introduced its regulatory framework for management and distribution of virtual assets on 1 November 2018.

The fund launch is certainly a welcome development in the Hong Kong financial services industry and is expected to spur interest from industry players to join the market. Those who wish to follow in the footsteps of Venture Smart Asia will have to meet the SFC's licensing conditions, which are designed to mitigate the inherent risks associated with investing in virtual assets at both the fund management and distribution levels.

#### The requirements for fund managers

Generally speaking, the SFC's current approach is that all licensed portfolio managers investing or intending to invest in virtual assets (subject to a *de minimis* threshold) should be required to observe essentially the same existing requirements that are applicable to licensed institutions dealing in 'securities' or 'futures contracts' as defined under the Securities and Futures Ordinance (Cap 571) (SFO) (such as the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission and the Fund Manager Code

of Conduct), subject to elaborations and amendments catering for the virtual asset portfolio managers' particular business models.

The exact principles and requirements with which the manager of a virtual asset portfolio may need to comply are set out in the Proforma Terms and Conditions for Licensed Corporations which Manage Portfolios that Invest in Virtual Assets (the Proforma T&Cs) published by the SFC on 4 October 2019. These terms and conditions, if accepted by a virtual asset portfolio manager, would be imposed by way of a licensing condition, as in the case of Venture Smart Asia.

Below is a summary in broad terms of some of the key conditions.

#### Type of investors

Only professional investors (as defined in Schedule 1 to the SFO) should be allowed to invest in any virtual assets funds. As such, if a fund is distributed through distributors, the fund manager

is expected to implement measures to ensure that it will only be distributed to professional investors.

#### Disclosure to investors

Licensed virtual asset portfolio managers are required to make adequate disclosure of information (as well as any material changes to that information) on the funds that is necessary for fund investors to make an informed decision about their investment. This includes information about the distributors appointed for distribution of the virtual assets funds, as well as the associated risks with investment in the virtual assets.

#### Safeguarding of assets

Licensed virtual asset portfolio managers are under a duty to ensure that any fund assets entrusted to them are properly accounted for and adequately safeguarded. When choosing which custodial arrangement (or combination of custodial arrangements) to adopt for holding the fund's virtual assets (such as independent custodian or self-custody,

### Highlights

- the Securities and Futures Commission's licensing conditions for virtual assets funds are designed to mitigate the inherent risks at both the fund management and distribution levels
- only professional investors (as defined in Schedule 1 to the Securities and Futures Ordinance) should be allowed to invest in any virtual assets funds
- a licensed firm should regularly review the status of its regulatory compliance and the adequacy of its internal controls

“  
**the fund launch is certainly a welcome development in the Hong Kong financial services industry and is expected to spur interest from industry players to join the market**  
 ”



host locations, use of 'hot' or 'cold' wallets), the Proforma T&Cs mandate the virtual asset portfolio managers to assess each arrangement with reference to the accessibility of the assets and security of the custodial facility, and exercise due skill, care and diligence in the selection, appointment and ongoing monitoring of custodians.

#### **Fund portfolio valuation**

All fund assets managed by a virtual asset portfolio manager shall be valued on a regular basis. In doing so, a virtual asset portfolio manager should select valuation principles, methodologies, models and policies which are reasonably appropriate and in the best interests of the investors of the portfolios under its management.

#### **Risk management**

Effective risk management measures should be implemented and maintained to manage and monitor risks to which each fund is or may be exposed, which may be related to market conditions, liquidity of the assets of the funds, creditworthiness of the fund's counterparty and cybersecurity. The Proforma T&Cs provide that appropriate position limits should be set in respect of each product and market the portfolios invest in, and each

counterparty to which the portfolios have exposure, including the trading platforms and custodians. Other suggested practices include setting a cap on the portfolios' investment in illiquid or hard-to-value virtual assets, conducting periodic stress testing to determine the effect of abnormal and significant changes in market conditions on these portfolios, implementing procedures to assess reliability of the fund's counterparties, and setting operating controls to protect the confidentiality and integrity of information used in the operation of the fund.

#### **Auditors and audited accounts**

It is a requirement that an independent auditor should be appointed to perform an audit of the financial statements of the funds under management. The virtual asset portfolio manager will need to understand the steps taken by which the auditor proves the existence and ownership and ascertains the reasonableness of the valuation of the virtual assets.

#### **Liquid capital**

A licensed virtual asset portfolio manager should at all times maintain a liquid capital of not less than HK\$3 million or its variable required liquid capital (whichever

is higher), if it holds virtual assets on behalf of the funds it manages.

#### **The requirements for distributors**

As for distributors of virtual assets funds, apart from complying with their existing requirements for Type 1 regulated activities (dealing in securities), they are expected to exercise due diligence when making a recommendation and solicitation to a client, to ensure that the recommendation or solicitation is suitable and reasonable having regard to the available information about the client. When distributing virtual assets funds which are not authorised by the SFC (subject to a *de minimis* threshold), the distributors should conduct proper due diligence on the fund; only target clients who are professional investors; provide sufficient information for the clients to make informed investment decisions; and ensure that such clients would not invest an unreasonable amount in the funds in light of their net worth.

#### **The compliance challenge**

The SFC has made it clear that contravention of these conditions is likely to be considered as misconduct under the SFO, which will reflect adversely on the fitness and properness of a virtual asset portfolio manager/distributor to remain licensed and may result in disciplinary action by the SFC. As such, a licensed firm should regularly review the status of its regulatory compliance and the adequacy of its internal controls. Ultimately, for virtual assets to be widely accepted, there needs to be proper oversight and risk management.

**Richard Keady, Partner, and Henry Li, Associate**

*Dentons Hong Kong*

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# HKICS



# Online CPD seminars

## CS Practical Training Series:

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Enquiries: 2830 6011 / 2881 6177 / [cpd@hkics.org.hk](mailto:cpd@hkics.org.hk)



“  
being humble regardless of our  
seniority in the company makes  
us always ready to learn and  
find new ways of coping with  
the ever-changing environment  
”

*Crystal Lee ACIS ACS, Company Secretarial Officer,  
Tencent Holdings Ltd*

# Careers in Governance

## Crystal Lee ACIS ACS

### What is your role as a governance professional?

'As a company secretarial officer working for a listed company, my role is to ensure regulatory compliance within the listed company and its subsidiaries. I also assist in the holding of board meetings and annual general meetings, preparing resolutions, statutory forms and announcements, reviewing annual and interim reports, and maintaining statutory records.'

### What was your career path to your current role?

'My Master of Corporate Governance degree at CityU gave me a good foundation for my career. Upon graduation, I was admitted by The Hong Kong Institute of Chartered Secretaries (the Institute) as an Associate member and that got me started on the current stage of my career. I have also learned a lot from my seniors at my listed company – they have opened up my view of the company secretarial field.'

### What value does governance bring to organisations and to wider society?

'Corporate governance is of the utmost importance to a listed company. Following the law, as well as the market rules and regulations, is of fundamental importance, but we also have to go beyond minimum compliance. Since shareholders invest in the company and entrust its day-to-day management to the officers of the company, they cannot be kept in the dark about the actions of management. Officers of the company have to act in the best interests of the company and the investors. In addition, we need to be aware of other stakeholders. Since our company is an internet and mobile value-added services provider, we have to be mindful of our customers and the interests of the community as a whole. Our company has participated in various corporate social responsibility activities. To sum up, corporate governance is essential to drive the success of a business. An organisation that can maintain strong governance can increase its value to stakeholders and benefit society as a whole.'

### What qualities do you think are needed to be a successful governance professional?

'I think governance professionals should have three essential qualities – we need to be detail-minded, we need to be able to multitask and we need to be humble. As the gatekeepers of organisations, being detail-minded helps to ensure against any compliance breaches. We are often required to handle several

tasks at the same time – hence the need to be able to multitask without losing clarity of mind. Finally, being humble regardless of our seniority in the company makes us always ready to learn and find new ways of coping with the ever-changing environment.'

### How do you think governance will evolve in the future?

'To be equipped for the future, governance professionals should participate in the Institute's CPD programme and the work of the Institute's committees. This will benefit the organisations we serve, helping to establish a good governance culture, but it will also promote the importance of good governance more widely in all sectors of the economy.'

### What inspires you in your life and work?

'My family has played a key role in inspiring me in my career. My parents are members and my father is a Past President of the Institute and both he and my mother have good careers in the company secretarial field. They are my role models in terms of their commitment and passion for the work.'

### How do you fill your time outside work?

'I have started to pick up some new hobbies during the COVID-19 pandemic, for example baking cakes and muffins, and cooking lunch or dinner for family and friends. I have also been exercising by following workout videos on YouTube. To serve the profession and community, I also attend the meetings of the Institute's membership committee four times a year and take part in activities of the Institute on a regular basis.'



## Professional Development

### Seminars: June 2020

19 June

**Governance, risk & compliance series: incident or crisis management – lifecycle & practices in our daily business resilience**



*Chair: Desmond Lau ACIS ACS, Institute Professional Development Director*

*Speakers: Mike Chan FCIS FCS, Institute Professional Development Committee member, and Fraud Control Officer, Head of Operational Risk Management; and Vicky Wong, Assistant Vice President, Operational Risk Management Department; CMB Wing Lung Bank Ltd*

22 June

**Doing business in Hong Kong – compliance and regulations**



*Chair: Jenny Choi FCIS FCS(PE), Institute Professional Services Panel member, and Associate Partner, Ernst & Young Company Secretarial Services Ltd*

*Speakers: Amy Ho, Executive Director of Corporate Services; and Peter Tung, Head of Personal Tax; Tricor Services Ltd*

26 June

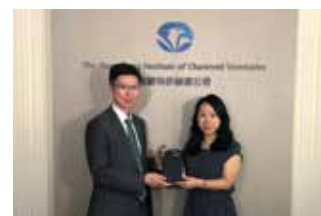
**Company secretarial practical training series: connected transactions – practice and application**



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

29 June

**摒弃歧视 同心抗疫  
Togetherness, instead of labelling, will help us fight the virus**



*Chair: Ernest Lee FCIS FCS(PE), Technical Partner, Deloitte China*

*Speaker: Beverley Cheung, Training Officer, Equal Opportunities Commission*

30 June

**Governance, risk & compliance series: what you need to know about IT governance, cybersecurity and cloud computing**



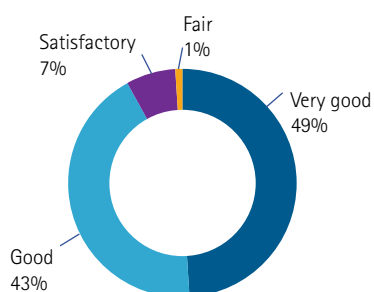
*Chair: Eric Chan FCIS FCS(PE), Chief Consultant, Reachtop Consulting Ltd*

*Speakers: Ricky Ho CPA, FCCA, CIA, CISA, CTA (HK), Director, Risk Advisory Services; and Rafael Wong, CISSP, CISM, CISA, CCSP, CCSK, CEH, GPEN, GWAPT, GCFA (ISC)<sup>2</sup> and CSA Authorized Instructor, Security Consultant, Risk Advisory Services; AVISTA Group*

## Feedback on webinars

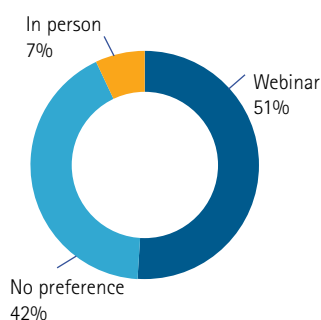
Due to COVID-19, and to safeguard the health and safety of our members, graduates and students, the Institute has converted all Enhanced Continuing Professional Development (ECPD) seminars into webinars from February 2020. Between 2 April and 30 June 2020, 21 webinars were held with a total of 10,381 participants. As a professional body established by members and for members, the Institute surveyed the participants about the webinars, to which a total of 1,595 (15%) responded. A summary of their feedback is as follows.

### Quality of the webinars



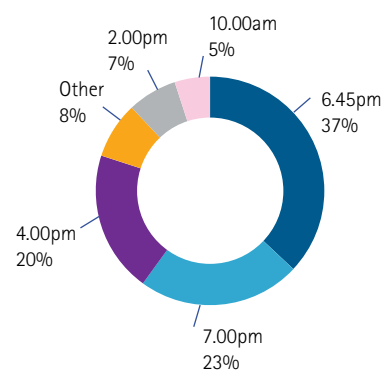
99% of respondents were satisfied with the quality of the webinars.

### Preference for physical seminars or webinars



51% of respondents preferred webinars to physical seminars, whilst 42% did not have any preference.

### Preferred starting time of future webinars



60% of respondents preferred the webinars to start at or after 6.45pm.

Other comments received about the webinar format include:

- easy and convenient to attend
- Q&A session is good – participants can post their questions on the platform for speakers to address, and
- audio improved a lot, clear throughout the webinar.

Suggestions for improvement:

- send out webinar links one or two days earlier
- send out webinar materials one day before
- Q&A sessions are too short
- add more polling questions
- better lighting
- volume of speaker may become too low sometimes, such as when the speaker turns away from the mic, or because of the face mask

*The Institute would like to thank all respondents for their feedback, which will help shape the format of future ECPD seminars.*

## Professional Development (continued)

### ECPD forthcoming webinars

Date	Time	Topic	ECPD points
24 August 2020	6.45pm–8.15pm	Mainland company secretarial practice series: setup procedure – wholly foreign owned enterprise	1.5
8 September 2020	2.30pm–4.00pm	Governance, risk & compliance series: understanding modern risk management	1.5
9 September 2020	3.00pm–4.30pm	The role of governance professionals in influencing the board	1.5

For details of forthcoming seminars/webinars, please visit the CPD section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

### Online CPD seminars

Some of the Institute's previous ECPD seminars/webinars can now be viewed from the Online CPD seminars platform of The Open University of Hong Kong.

For details of the Institute's online CPD seminars, please visit the CPD section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

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

## Membership

### Membership/graduateship renewal for the financial year 2020/2021

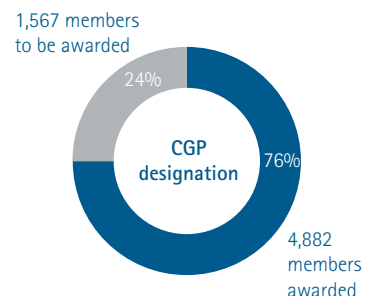
The renewal notice, together with the debit note for 2020/2021, was sent to all members and graduates by email in July 2020 to the email address registered with the Institute. In view of the challenges brought by the COVID-19 pandemic, and to economise on time and effort, all members and graduates are strongly recommended to settle their annual subscription online via their HKICS user account on or before Thursday 31 December 2020.

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

For enquiries, please contact the Membership Section: 2881 6177, or email: [member@hkics.org.hk](mailto:member@hkics.org.hk).

### Grandfathering of the Chartered Governance Professional designation

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



As at 30 June 2020, 4,882 (76%) out of a total membership of 6,449 had been awarded CGP designations.



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## New Fellows

The Institute would like to congratulate the following Fellows elected in June 2020.

### Chan Kwong Chi FCIS FCS

Mr Chan is a qualified accountant in Australia and Hong Kong, Chartered Secretary, Chartered Governance Professional, Project Management Professional, Certified Six Sigma Black Belt and a member of the Business Continuity Institute and the Institute of Internal Auditors. He obtained a master's degree in Accounting from Monash University.

With over 18 years experience in auditing and risk management, he currently holds the position of Fraud Control Officer and Head of Operational Risk Management of CMB Wing Lung Bank, a wholly owned subsidiary of China Merchants Bank. Mr Chan is responsible for leading effective implementation of the Bank's operational and fraud risk management, overseeing and serving as subject matter expert for the Bank's business continuity management (BCM) and incident management by implementing the BCM lifecycle. He also serves as a member of the Banking Regulatory Advisory Panel of the Hong Kong Institute of Certified Public Accountants, the Institute's Professional Development Committee and the Hong Kong Financial Services Business Continuity Forum, and is an on-list member of the Market Misconduct Tribunal.

### Mok Chun Wah FCIS FCS

Mr Mok is the Company Secretary and Chief Financial Officer of eprint Group Ltd (Stock Code: 1884). He is responsible for financial planning, management, regulatory compliance and corporate governance. Mr Mok obtained a bachelor's degree in Business (Accountancy) from Hong Kong Baptist University in 2010, and a master's degree in Corporate Governance from The Hong Kong Polytechnic University in 2019. Mr Mok has been a member of the Hong Kong Institute of Certified Public Accountants since 2015.

### Wong Kwok Hong FCIS FCS

Mr Wong is currently a Director of Aoba CPA Ltd and Jonten Hopkins CPA Ltd. He has over 28 years professional experience in Hong Kong and the Mainland. Being a qualified accountant, he specialises in business consulting by assisting local, overseas and multinational clients to resolve commercial, financial, taxation or legal issues in Hong Kong and the Mainland, as well as providing services in the international tax advisory, group restructuring, due diligence, and mergers and acquisitions areas. He is a practising certified public accountant in Hong Kong.

Mr Wong is a fellow member of the Hong Kong Institute of Certified Public Accountants, the Association of Chartered Certified Accountants and the Institute of Chartered Accountants in England and Wales. He is also a fellow member and Certified Tax Advisor of The Taxation Institute of Hong Kong. He attained a bachelor's degree in Professional Accounting (China) and master's degree in Corporate Governance in June 2005 and August 2007, respectively.

### Leung Yuk Yi FCIS FCS

Deputy Company Secretary, Tai Hing Group Holdings Ltd (Stock Code: 6811)

### Li Hiu Ling FCIS FCS(PE)

Company Secretary, 51 Credit Card Inc (Stock Code: 2051)  
Company Secretary and General Manager of Company Secretary Department, China Netcom Technology Holdings Ltd (Stock Code: 8071)

### Li Xiaowen FCIS FCS

Compliance Director, Fosun International Ltd (Stock Code: 656)

## Membership (continued)

### Forthcoming membership activities

Date	Time	Topic
22 August 2020	3.00pm-4.30pm	Fun & Interest Group – cartoon mochi-making workshop (webinar)

For details of forthcoming membership activities, please visit the Events section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

### Membership activities: July 2020

3 July

Employment market trend and financial reporting considerations after COVID-19 (webinar)



17 July

香港精英运动团队分享 - 与体院一起对抗新冠肺炎的战役(webinar)



18 July

Mentorship Programme Mentors' Training – goal setting, feedback, handling difficult conversations (webinar)



## Advocacy

### Virtual Governance Professionals Career Day 2020

On 27 June 2020, the Institute held its Governance Professionals Career Day 2020 (Career Day) in virtual mode for the first time, due to the COVID-19 pandemic. This event received an overwhelming response, with over 140 local university undergraduates, Institute students and student ambassadors taking part. The Career Day was designed to provide an overview of who Chartered Secretaries and Chartered Governance Professionals are, as well as their roles and the career opportunities that both professions offer. The event began with welcoming remarks from Institute President Gillian Meller FCIS FCS who highlighted the importance of governance professionals in today's challenging business environment and the extensive career prospects.

The Institute was honoured to welcome Ada Chung JP, Registrar of Companies of the Companies Registry, as Guest of Honour. Ms Chung shared her insights on good corporate governance issues and practices with the participants.

The first session – Dialogue with Chartered Secretaries and Chartered Governance Professionals – was facilitated by Institute member Alice Yiu ACIS ACS(PE). Institute members Mike Chan FCIS

FCS, Willa Chan ACIS ACS, Edmund Ng FCIS FCS and Emily Ng ACIS ACS shared their career paths and working experience with the participants. This was followed by an interview with Wendy Ho FCIS FCS(PE), Executive Director, Corporate Services, Tricor Services Ltd, which was facilitated by Institute Registrar Louisa Lau FCIS FCS(PE). The participants also had a chance to e-meet and live-chat with Institute Chief Executive Samantha Suen FCIS FCS(PE). Oliver Williams, an experienced Executive Coach, provided communication tips at work, while Kristy Li from Michael Page, a leading professional recruitment consultancy, gave practical tips for preparing a successful interview. Last but not least, Ms Suen delivered the closing remarks to conclude this meaningful event.

*The Institute would like to thank the Companies Registry and Tricor Services Ltd for being the platinum sponsor, as well as all the supporting universities and higher educational institutions. The Institute would also like to thank all helpers (including Institute members, students and undergraduates) for their contributions to the Virtual Governance Professionals Career Day 2020, as well as Alex Fung Ho Yin, undergraduate from The Hong Seng University of Hong Kong, for his role as MC at this event.*



## Advocacy (continued)

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### Virtual Governance Professionals Information Session

The Institute held a virtual Governance Professionals Information Session for potential students in the Mainland on 2 July 2020, with 48 participants. Institute Registrar Louisa Lau FCIS FCS(PE) and Chief Representative of the Institute's Beijing Representative Office Kenneth Jiang FCIS FCS(PE) introduced the Institute's dual qualification of Chartered Secretary and Chartered Governance Professional. The speakers also shared the routes to membership and the career prospects for Institute members in Hong Kong and the Mainland.

Two Institute members, Zhong Yan ACIS ACS, Board Secretary, Shenzhen SED Industry Co Ltd, and Zhu Yongmin ACIS ACS, Assistant Board Secretary, Hongkong and Shanghai Banking Corporation Ltd, joined as guest speakers to share their study and career experiences with the participants.

*The Institute would like to thank the two guest speakers for their informative and inspiring sharing, as well as everyone who participated in the Virtual Governance Professionals Information Session.*

### Media interviews

The Institute is dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies in Hong Kong and throughout the Mainland. Institute President Gillian Meller FCIS FCS was interviewed in June 2020 by Sing Tao Daily to share her views on gender diversity in boardrooms and the governance challenges in an increasingly regulated society. Ms Meller was also interviewed by Human Resources Online to share her perspective on the growing demand for Chartered Governance Professionals.

In addition, also in June 2020, the then International President, The Chartered Governance Institute, and Institute Past President, Executive Director and Company Secretary of CK Hutchison Holdings Ltd, Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE); Council member Wendy Ho FCIS FCS(PE); Institute Chief Executive Samantha Suen FCIS FCS(PE); and various other members spoke to Economic Digest, CTgoodjobs and Hong Kong Economic Times, to share useful information in relation to the route to becoming a qualified Chartered Secretary and Chartered Governance Professional, as well as the wide range of career opportunities open to these professionals.

*For details of the interviews, please visit the News section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).*

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### The Good Employer Charter 2020

In recognition of its ongoing commitment to cultivating a good human resource management culture in the workplace, the Institute has been accredited with the Good Employer Charter 2020, organised by the Labour Department of the HKSAR Government.

## Chartered Governance Qualifying Programme (CGQP)

### November 2020 examination diet timetable

#### Week one

Session	17 November Tuesday	18 November Wednesday	19 November Thursday	20 November Friday
Morning	Corporate Governance	Hong Kong Company Law	Interpreting Financial and Accounting Information	Corporate Secretaryship and Compliance

#### Week two

Session	24 November Tuesday	25 November Wednesday	26 November Thursday	27 November Friday
Morning	Hong Kong Taxation	Risk Management	Strategic Management	Boardroom Dynamics

Examinations enrolment period: 1 August 2020 to 15 September 2020.

For enquiries, please contact the Education and Examinations Section: 2881 6177, or email: [student@hkics.org.hk](mailto:student@hkics.org.hk).

### Student learning support activities: June and July 2020

#### 29 June and 6 July

Virtual student seminar on 'An Alternative Introduction to Company Law – Session 1: Key Players in Company Law and Corporate Governance', and virtual student seminar on 'An Alternative Introduction to Company Law – Session 2: Interesting Questions about the Corporate Personality'



#### 2 July

Virtual Governance Professionals Information Session (Putonghua)



#### 21 July

Briefing session for CCA new graduates 2020



## Chartered Governance Qualifying Programme (CGQP) (continued)

### Forthcoming student activities

Date	Event
31 August 2020	Student Gatherings: Session 5 – Updates on CGQP examinations
10 September 2020	Virtual Student Seminar: Corporate Secretaryship and Compliance – Shares and Share Capital (Part 2)
19 September 2020	Corporate Governance Paper Competition and Presentation Awards 2020
21 September 2020	Governance Professionals Information Session (Cantonese session)

For details of forthcoming student activities, please visit the Events section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).



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For enquiries, please contact HKICS Secretariat at [marketing@hkics.org.hk](mailto:marketing@hkics.org.hk), or (852) 2881 6177.

## Corporate Governance Paper Competition and Presentation Awards 2020

The annual Corporate Governance (CG) Paper Competition and Presentation Awards organised by the Institute aims to promote the importance of good governance to local undergraduates and provide them with an opportunity to research, write and present their findings and opinions on the selected theme.

This year's CG Paper Competition received a record-high number of enrolments from the 10 universities set out below (in alphabetical order):

City University of Hong Kong  
 Hong Kong Baptist University  
 Hong Kong Shue Yan University  
 Lingnan University  
 The Chinese University of Hong Kong  
 The Hang Seng University of Hong Kong  
 The Hong Kong Polytechnic University  
 The Hong Kong University of Science and Technology  
 The Open University of Hong Kong  
 The University of Hong Kong

The submitted papers will be reviewed and assessed by a panel of judges comprising the following academics and practitioners (in alphabetical order of family name):

Reviewer's name	University/institution
Professor Dennis Chan	The Hong Kong University of Science and Technology
Dr Derek Chan	The University of Hong Kong
Professor David Donald	The Chinese University of Hong Kong
Mr Ian Drew	The Hongkong and Shanghai Banking Corporation Ltd
Dr Lisa Goh	The Hang Seng University of Hong Kong
Ms Carmen Lam	The Open University of Hong Kong
Dr Shirley Law	Hong Kong Shue Yan University
Dr Raymond Wong	City University of Hong Kong
Mr Tommy Wong	Caritas Institute of Higher Education
Dr Davy Wu	Hong Kong Baptist University
Dr KP Yuen	The Hong Kong Polytechnic University

Six finalist teams will be selected by the panel judges by late August 2020. These teams will then be invited to present their papers to compete for the Best Presentation Award on Saturday 19 September 2020. Members, graduates and students who are interested in observing the presentation competition are welcome to attend.

<b>Theme:</b>	<b>ESG Reporting: A Value Proposition? Yes or No?</b>
Date:	Saturday 19 September 2020
Time:	10.00am–1.00pm
Fee:	Free of charge
CPD points:	2

For details of the competition, please visit the Events section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).

## Chartered Governance Qualifying Programme (CGQP) (continued)

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### Student Ambassadors Programme 2020/2021 – calling for members to act as mentors

Our Student Ambassadors Programme (SAP) is an effective platform for introducing the dual qualification of Chartered Secretary and Chartered Governance Professional to local undergraduates. One of the key features of SAP is the Mentorship Programme, which gives our student ambassadors the opportunity to learn from our experienced members. The programme gives mentors the opportunity to give back to the profession and society, and to stay in touch with the younger generation's current trends.

The Institute would like to invite members who are willing to commit their time, and who wish to actively participate in the Institute activities, to take part in the Mentorship Programme. Your participation as mentors is important as you can be a good role model for our profession by sharing your working experience and professional knowledge, as well as by providing career guidance to the SAP mentees.

*Interested members please contact Alex Chan: 2830 6001, or email: [student@hkics.org.hk](mailto:student@hkics.org.hk) for details.*

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### Notice:

#### Policy – payment reminder

#### Studentship renewal

Students whose studentship expired in June 2020 are reminded to settle the renewal payment by Sunday 23 August 2020.

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### Featured job openings

Company name	Position
CLP Holdings Ltd	Company Secretarial Assistant
Harneys Corporate Services (Asia) Ltd	Corporate Services Assistant Manager

*For details of job openings, please visit the Job Openings section of the Institute's website: [www.hkics.org.hk](http://www.hkics.org.hk).*



## Paperless listing

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The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), has published a consultation paper seeking public feedback on proposals to introduce a paperless listing and subscription regime, online display of documents and a reduction in the types of documents on display.

The listing rules currently require all issuers of equities, debt securities and collective investment schemes (CIS) to issue listing documents in physical printed form. Under the law, an application form must be issued with, or accompanied by, the listing document. This has led to the issue of application forms in the same medium, that is in physical printed form.

Issuers are also required to place various printed documents on display, such as material contracts, directors' service contracts, experts' consents and statements of adjustments, for physical inspection.

'The listing rule requirements for printed-form physical listing documents and the physical display of documents are out of step with modern practices. The widespread availability and use of the internet, and our support for sustainable and environmentally friendly practices, coupled with our ongoing commitment to lower costs and improve efficiencies, have prompted these proposals. In addition, particularly in respect of IPOs, market statistics have shown that the electronic submission of applications is preferred,' says Bonnie Chan, HKEX's Head of Listing.

The Exchange's proposals include:

- requiring all listing documents in a 'new listing' (see below) to be published solely in an electronic format and new listing subscriptions, where applicable, to be made through online electronic channels only
- replacing the requirement for certain documents to be physically displayed with a requirement for those documents to be published online, and
- with respect to notifiable transactions and connected transactions, reducing the types of documents that are mandatory for an issuer to display.

'New listing' refers to an application for listing of equities (including stapled securities and depositary receipts), debt securities and CIS on the Exchange by a new applicant where a listing document is required under the listing rules, but excludes a 'mixed media offer'. A mixed media offer is an offer process whereby an issuer or a CIS offeror can distribute paper application forms for public offers of certain securities without a printed prospectus, so long as the prospectus is available on the HKEX website and the website of the issuer/CIS offeror, and it makes printed prospectuses publicly available free of charge upon request at specified locations (which do not have to be the same locations as where the printed application forms are distributed).

In addition to the consultation paper, the Exchange has also published an updated IPO Guidance, which highlights the importance to an IPO applicant's board of ensuring that the necessary corporate governance and environmental, social and governance (ESG) mechanisms are built into the listing processes.

The updated Guidance Letter HKEX-GL86-16 for IPO applicants also requires additional disclosures in the prospectus in the following areas:

- compliance culture of the IPO applicant, and
- appointment of an independent non-executive director who will be holding their seventh (or more) listed company directorships, if applicable.

'The promotion of sustainability, good corporate governance and diversity are key focuses for the Exchange, as we seek to further enhance the quality of our listed issuers and of our market. Compliance with corporate governance and ESG matters must start on day one as a listed company, and we believe the updated IPO Guidance will be a useful reference tool for new issuers. We are conducting a review of our corporate governance framework this year with a view to public consultation,' says Katherine Ng, Chief Operating Officer and Head of Policy and Secretariat Services, Listing Division, HKEX.

*The consultation and IPO Guidance are available via the HKEX website: <https://www.hkex.com.hk>. The deadline for responding to the consultation paper is 24 September 2020.*

## Legislative update

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### Insurance (Amendment) (No 2) Bill 2020

Insurance (Amendment) (No 2) Bill 2020 was passed by the Legislative Council on 17 July 2020. The Ordinance seeks to amend the Insurance Ordinance (Cap 41) to enhance the regulatory framework for the regulation and supervision of insurance groups where a holding company for the group is incorporated in Hong Kong. The Ordinance intends to align Hong Kong's insurance regulatory regime with international standards and practices, reinforce Hong Kong's status as an international financial centre and establish Hong Kong as a preferred base for large insurance groups in Asia Pacific.

### Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Bill 2019

The Inland Revenue (Amendment) (Profits Tax Concessions for Insurance-related Businesses) Bill 2019 was passed by the Legislative Council on 15 July 2020. The Ordinance seeks to amend the Inland Revenue Ordinance (Cap 112) to reduce the profits tax rate by 50% for all general reinsurance businesses of direct insurers, selected general insurance businesses of direct insurers and selected insurance brokerage businesses. The new Ordinance intends to promote the development of the marine and specialty risk insurance businesses of Hong Kong and enhance the development of high-value-added maritime services. The new Ordinance also intends to assist the insurance industry to seize new opportunities, including those arising from the Belt and Road Initiative.

### Next steps

The government and the Insurance Authority will proceed with the next stage of preparatory work on the two amendments Bills described above. This will include the formulation of implementation details and drafting of subsidiary legislation. The target is to commence the new regime for the regulation

and supervision of insurance groups, as well as to give effect to the tax concessions for insurance-related businesses, by the end of 2020 or early 2021.

### Limited Partnership Fund Bill

The Limited Partnership Fund Bill was passed by the Legislative Council on 9 July 2020. The Bill establishes a limited partnership fund regime that enables funds to be registered in the form of limited partnerships in Hong Kong. The new Ordinance will come into operation on 31 August 2020.

Christopher Hui, Secretary for Financial Services and the Treasury, said that as Hong Kong strives to develop into an international asset and wealth management centre, the new Ordinance has made impressive strides on this front in attracting investment funds (including private equity and venture capital funds) to set up and operate in Hong Kong. He believes this will further promote Hong Kong's private equity market and drive demand for local related professional services, and in turn strengthen Hong Kong's position as an international financial centre.

The limited partnership fund regime is an opt-in registration scheme administered by the Companies Registry. Limited partnership is a common constitution form for private funds such as private equity funds. In a limited partnership, the general partner (that is, the operating person) with unlimited liability in respect of the debts and liabilities of the fund and the limited partner(s), who are essentially investors with limited liability, will have freedom of contract in respect of the operation of the partnership.

*More information is available on the Financial Services and the Treasury Bureau website: [www.fstb.gov.hk](http://www.fstb.gov.hk).*

# A bird's eye view

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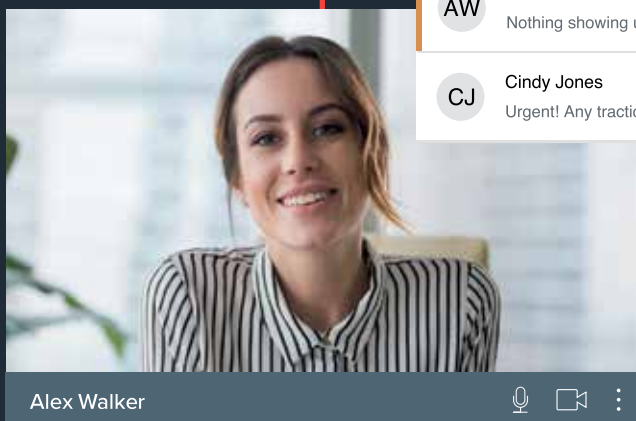
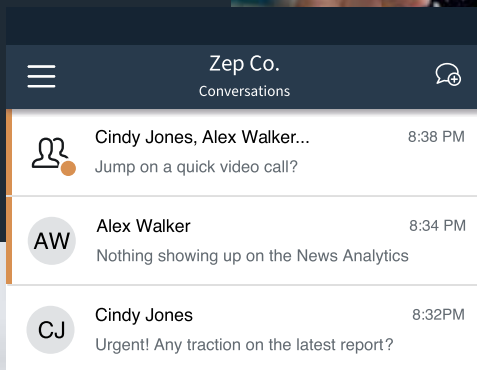
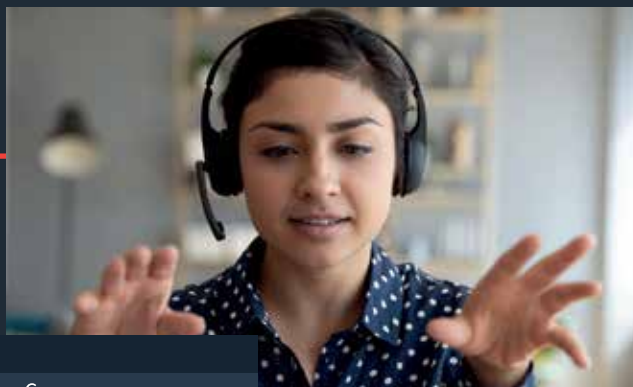
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