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December 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

Back to basics

Reframing corporate purpose

Stakeholder governance
ESG reporting
LP funds

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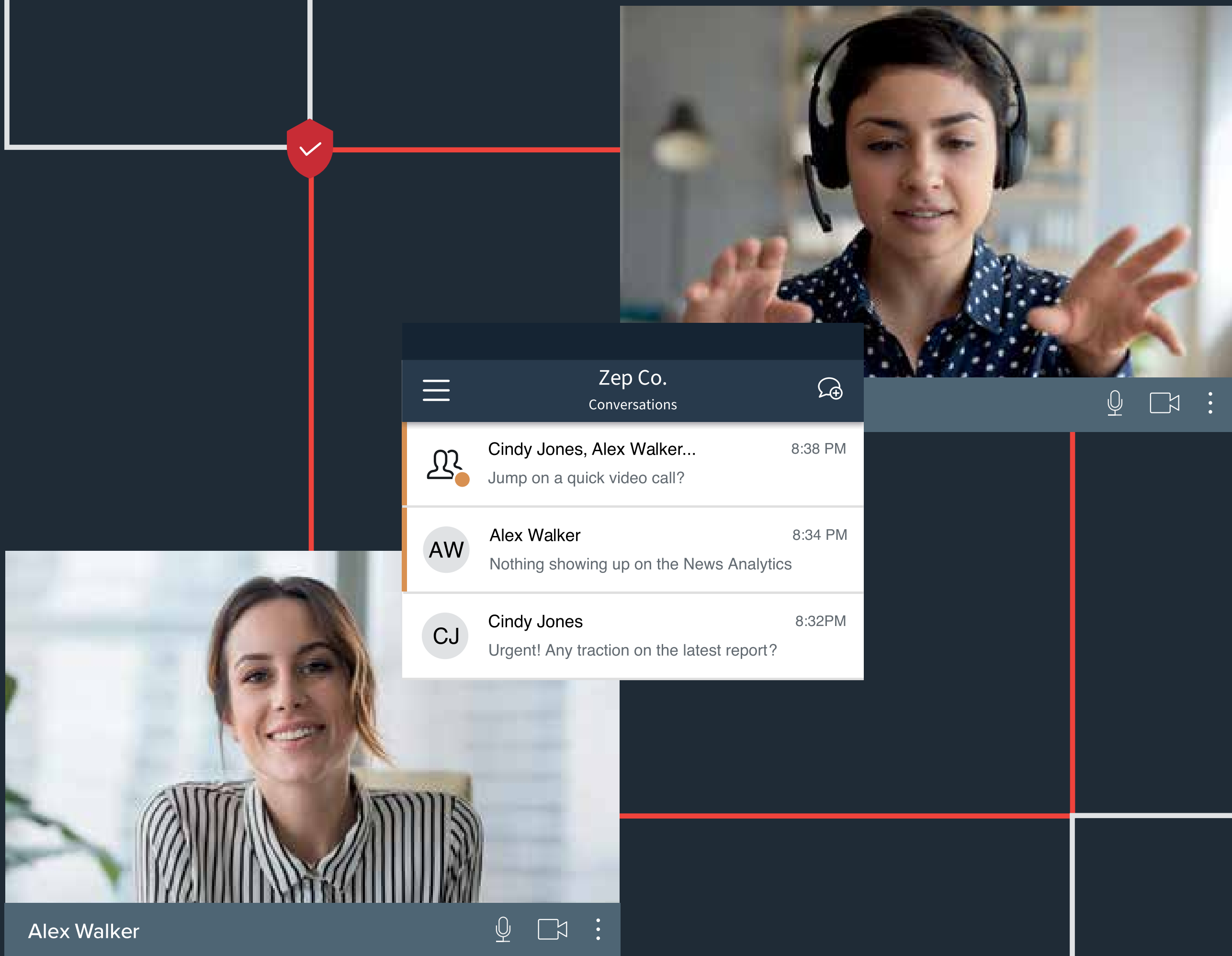

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Online Annual Celebration 2021 Mask-uerade Parade

Guest of Honour

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Monday 25 January 2021 | 7.00-8.00pm

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For enrolment, please contact Vicky Lui: 2830 6088 or email: member@hkics.org.hk.

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The Hong Kong Institute of Chartered Secretaries 香港特許秘書公會 (Incorporated in Hong Kong with limited liability by guarantee)

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CHARTERED SECRETARIES 特許秘書

Good governance comes with membership

About The Hong Kong Institute of Chartered Secretaries

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of Chartered Secretary and Chartered Governance Professional in Hong Kong and throughout the mainland of China (the Mainland). HKICS was first established in 1949 as an association of Hong Kong members of The Chartered Governance Institute (CGI) – formerly known as The Institute of Chartered Secretaries and Administrators (ICSA) of London. It was a branch of CGI in 1990 before gaining local status in 1994 and has also been The Chartered Governance Institute's China Division since 2005. HKICS is a founder member of Corporate Secretaries International Association Limited (CSIA), which was established in March 2010 in Geneva, Switzerland. In 2017, CSIA was relocated to Hong Kong where it operates as a company limited by guarantee. CSIA aims to give a global voice to corporate secretaries and governance professionals. HKICS has over 6,000 members and 3,200 students.

Membership and studentship statistics update

As of 31 October 2020, the statistics were as follows:

Students: 3,190 **Associates**: 5,782
Graduates: 523 **Fellows**: 726

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Back to basics

In addition to covering the technical aspects of practitioners' work, our Institute also seeks to highlight the broader issues we need to address to be effective in our roles. *CSj* this month looks at one such issue – the shift towards a stakeholder-responsive and 'purposeful' approach to governance.

In many ways, this theme takes us back to basics – what is the purpose of companies and whose interests do they serve? This is clearly no small matter to get right. Having a good consensus on the purpose of a company will determine its strategy, culture and, yes, its governance values. This is one of the reasons our Institute has been keen to broaden awareness of the implications of the shift away from shareholder primacy – the view that a company's primary duty is to maximise profit for its shareholders – and towards taking into account relevant stakeholder interests via a stakeholder engagement process, for the practice of governance.

I was fortunate to be able to play a part in exploring this topic at the webinar our Institute held on 30 October 2020 (Purposeful Governance – An Applied Stakeholder-Responsive Approach to Governance) and our cover story this month provides a useful summary of the key issues covered in the webinar. All of these issues are of relevance to us as governance practitioners, but I would like to highlight one in particular – the implications for our board support and advisory work.

Our cover story this month makes it clear that directors have a duty to act in the interests not solely of shareholders, but of the company as a whole for sustainable operations. Shareholders, in other words, are one among many key stakeholder groups, including customers, employees, supply chains and the wider community, whose interests need to be considered. Nevertheless, shareholder primacy still has a surprisingly tenacious grip on the way companies, not only in Hong Kong but globally, are run. Ultimately, I don't believe there is a conflict between addressing long-term shareholder value and taking other key stakeholder concerns into account, but in the short term the interests of different stakeholder groups will not always be aligned. Board decisions such as those relating to executive pay, employee benefits and welfare, and, during the COVID-19 pandemic, the question of whether dividends should be paid to shareholders, potentially advantage one group of stakeholders over another.

Above and beyond these concerns are the wider social and environmental issues such as greenhouse gas emissions, energy use strategy, biodiversity impacts, community investment, equal opportunities and anti-discrimination, where companies are increasingly expected to harmonise the commercial success of the business with their wider environmental and social responsibilities under their social licence to operate. The 'corporate purpose' movement that has been gaining momentum globally in the last decade emphasises the competitive advantage for companies that are prepared to take the lead in this area. Nevertheless, as this month's cover story points out, the board needs to consider the level of priority to give to all of these different concerns and ultimately act in the interests of the company as a whole. This adds greatly to the complexity of the director's role, but acknowledging that the board has expanded accountability for stakeholder and environmental, social and governance (ESG) issues is simply part of the business environment in which we work.

In this context, the value we bring to companies as governance professionals, particularly in our board support and advisory roles, is more crucial than ever. It is in our remit to ensure that the board is well informed and gives full consideration to the ESG and stakeholder issues most material to the business. Highlighting these issues for the board does not gurarantee, of course, that the board will prioritise one particular stakeholder interest over another – it is the job of directors to make the decisions, but governance professionals play an important role in ensuring that directors are well informed of the changed landscape in which those decisions are made.

Finally, I would like to wish everyone a safe and merry Christmas and a happy New Year!

Gillian Meller FCIS FCS

回归本源

除了从业者专业技术方面的问题，公会同时还致力于自身需要解决的更广泛的问题，以有效地发挥我们的作用。本期*CSj*月刊关注的一个议题是：向利益相关者响应型和“目的型”治理方式的转变。

在很多方面，这一主题将我们带回到最基本的问题上——企业存在的目的是什么？它们服务于哪些人的利益？这显然不是一件小事。就企业宗旨达成良好共识，将决定企业的战略、文化，当然，还有治理价值观。因此，公会一直热衷于推动企业充分认识到这种治理方式转变的影响，这种转变指的是从认为企业的主要职责是实现股东利润最大化的“股东至上”的做法，为了治理实践而转变为充分考虑到有关利益相关者的利益，这一转变可通过引入利益相关者参与流程实现。

我很荣幸能在公会于2020年10月30日举办的题为“有为治理——利益相关者响应型治理方式的运用”网络研讨会上参与该主题的探讨，而我们本月的封面故事恰好对这场网络研讨会所涉及的重要问题进行了有益的总结。作为治理实践者，所有这些问题都与我们息息相关，但我想特别强调的一点是，这些问题对我们为董事会提供支持和谘询工作的影响。

我们本月的封面故事明确指出，董事有责任为企业整体的可持续经营而行动，而不仅仅是为了股东的利益。换言之，股东只是众多关键利益相关者群体（包括客户、员工、供应炼和更广泛的社区在内）中的一个群体，而企业需要兼顾到各关键利益相关者群体的利益。然而，令人惊讶的是，在香港乃至全球，大多数企业仍然在采用股东至上的治理方式。从根本上来讲，我不认为关注长期股东价值和考虑其他关键利益相关者的利益之间存在冲突；但在短期内，不同利益相关者群体的利益并不总是一致的。董事会的决定，例如与高管薪酬、员工利益和福利有关的决定，以及在新冠肺炎疫情期间是否应向股东支付股息的问题，可能会更有利于利益相关者中的某个群体。

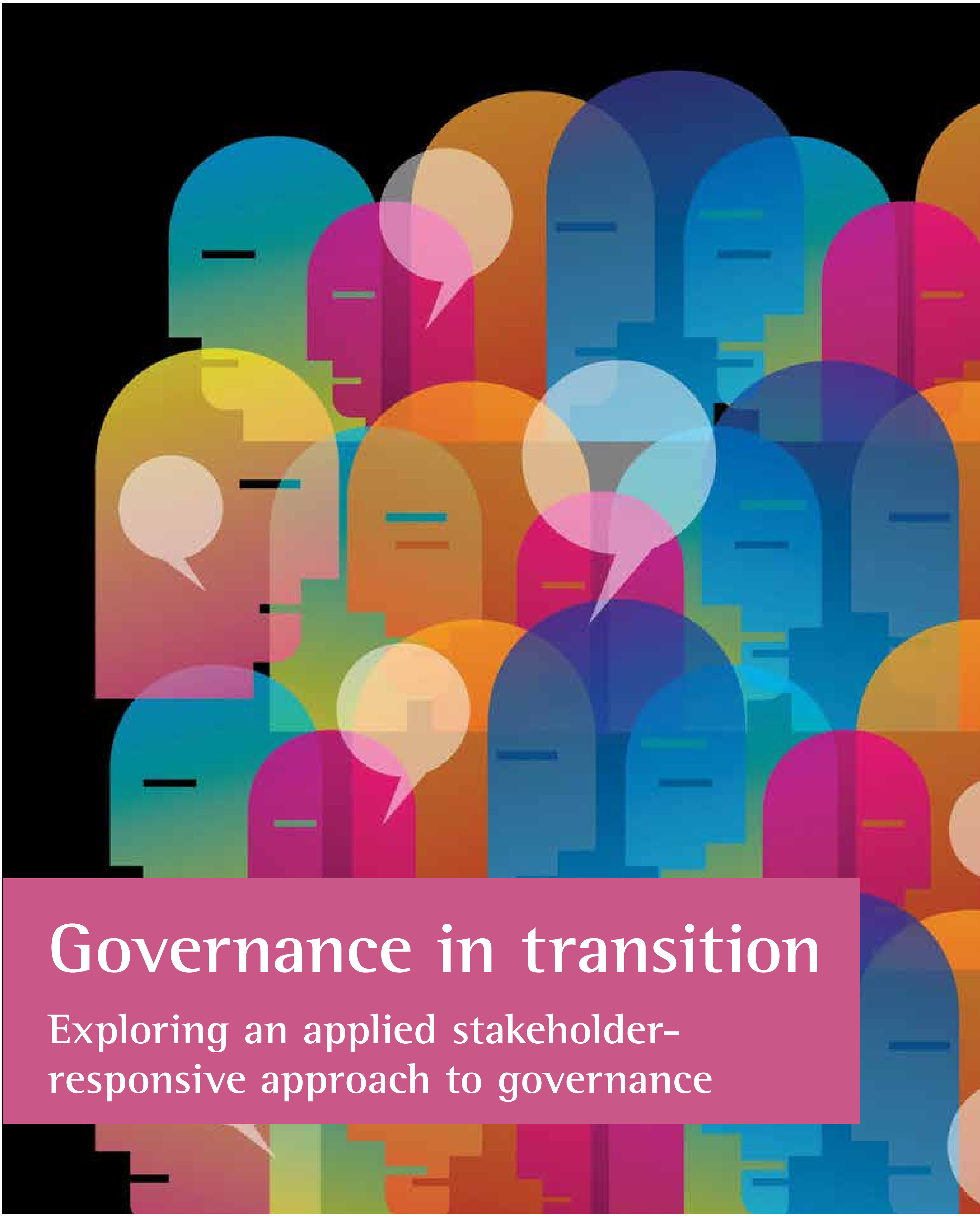
除上述问题外，还有诸如温室气体排放、能源使用战略、生物多样性的影响、社区投资、平等机会和反歧视等更广泛的社会和环境问题，因此企业越期望能够在取得商业成功的同时，兼顾其社会许可运营范围内的更广泛的环境和社会责任。过去十年，“企业宗旨”运动在全球范围内的发展势头日益强劲，它强调那些准备在各自领域占据领先地位的企业所具有的竞争优势。然而，正如本月的封面故事所指出，董事会需要考虑所有这些不同问题的优先等级，并最终从企业整体利益出发采取行动。这大大增加了董事职责的复杂性，但这承认了董事会对于利益相关者的更大的责任，以及环境、社会和治理(ESG)问题只是我们所处的商业环境的一部分。

在这种情况下，我们作为治理专业人士为企业带来的价值，特别是我们在董事会支持和谘询方面的角色，比以往任何时候都更加重要。我们的职责是确保董事会信息畅通，使其充分考虑ESG和对企业至关重要的利益相关者问题。当然，向董事会强调这些问题，并不能保证董事会将优先考虑特定利益相关者的利益——这需要由董事作出决定，但是治理专业人士的重要职责在于确保董事在制定决策时充分了解已经发生变化的环境。

最后，祝大家身体安康，圣诞快乐！新年快乐！

Gill Heller

马琳 FCIS FCS



Governance in transition

Exploring an applied stakeholder-responsive approach to governance

This article reviews a recent webinar held by The Hong Kong Institute of Chartered Secretaries (the Institute) exploring the implications of the shift away from shareholder primacy as an underpinning philosophy of corporate governance.

In August 2019, the Business Roundtable, a grouping of 181 CEOs representing about one-third of US market cap, published a new Statement on the Purpose of a Corporation. The statement mentions 'generating long-term value for shareholders' as one of the purposes of corporations, but at the end of a list that commits to delivering value to all stakeholders – including customers, employees, suppliers and communities. While the shift towards a more stakeholder-responsive approach to governance is nothing new, it is significant that such a staunch defender of shareholder primacy – the Business Roundtable has been promoting this approach since 1978 – has signed up for the principle that shareholder returns are only one among many stakeholders' interests that directors need to consider.

What are the implications of this trend for the governance profession? 'Agency theory' – which used to provide the theoretical framework underpinning corporate governance – was based on the idea that it is the duty of managers to maximise returns to shareholders and it is the duty of directors to oversee managers in their performance of that duty. Are we in need, then, of a revised governance model? As you might expect on an issue so fundamental to the future of governance, the Institute has been keen to take part in this debate and this article reviews the webinar, Purposeful Governance – An Applied Stakeholder-Responsive Approach to Governance, which was held on 30 October 2020 as part of the Institute's Enhanced Continuing Professional Development (ECPD) programme.

What legal mandate do directors have?

Gillian Meller FCIS FCS, Institute President and Legal and European Business Director of MTR Corporation Ltd, acted as the moderator and speaker at the webinar. At the outset, she highlighted the business case for the stakeholder-responsive

Highlights

- directors are increasingly expected to balance the interests of broad stakeholder groups, and ultimately the interests of society at large, with shareholder returns
- many companies, however, are still run on the assumption that the overriding duty of directors remains to shareholders
- the gradual convergence of the various metrics used to rate environmental, social and governance performance will lead to clearer guidelines for companies reporting non-financial information

> the long-term sustainability of the company and its social licence to operate depends on it meeting at least the basic requirements of a good corporate citizen

approach. 'Ultimately, I don't believe there is a conflict between addressing long-term shareholder value and taking stakeholder concerns into account, because the long-term sustainability of the company and its social licence to operate depends on it meeting at least the basic requirements of a good corporate citizen,' she said. She added that companies that don't address the needs of their employees and their impact on the environment, that fail to meet the expectations of customers and don't have the support of the communities in which they operate, don't tend to be around for very long and will not therefore be a good value proposition for shareholders.

Webinar speaker, Peter Brien, Senior Partner, Slaughter and May Hong Kong, and Chairman of the Listing Committee of the Main Board and Growth Enterprise Market of The Stock Exchange of Hong Kong Ltd (the Exchange), pointed out however, that many companies are still run on the assumption that the overriding duty of directors remains to shareholders. 'If you look at the way they behave, companies still generally put shareholders at the top of the line,' he said. He followed this up with a look at the extent of the legal mandate directors have to address stakeholder concerns.

Many jurisdictions around the world, Hong Kong included, have sought to give expanded scope to directors to consider stakeholder interests, as well as long-term environmental, social and governance (ESG) factors. This has largely been through corporate governance codes, but the primary legal requirement in Hong Kong, as in many other jurisdictions, is for directors to act in good faith for the benefit of the company as a whole. Mr Brien therefore took issue with the Business Roundtable commitment to act in the interests of all stakeholders – requiring directors to deliver value to all stakeholders would be tantamount to 'moving the goalposts of corporate governance', he said.

Mr Brien also emphasised the benefit for companies of having clear guiding principles regarding the purpose of the company. This makes it clearer what mandate the board has to make decisions to realise the company's purpose.

Getting the balance right

Getting the balance right between the competing interests of different stakeholder groups, including shareholders, is no easy task, and both Ms Meller and Mr Brien offered guidance on this difficult question.

'Everything, I think, is about getting the balance right. Directors clearly have a duty to ensure their company is around for the next 50 years and to do that companies need to give more regard to their stakeholders and the societies in which they operate. There is nothing wrong in seeking to benefit a wider society, but where does this stop?' Mr Brien asked.

Deciding the level of priority to give to ESG concerns is a case in point. Most companies recognise that making money to the detriment of the society in which they operate contravenes their licence to operate, but how far should companies be responsible for affirmative action on issues such as ending poverty, reducing inequality and promoting gender equality? The United Nations' Sustainable Development Goals (SDGs) were set up

to encourage the private sector to play a part in addressing these and other global problems.

'Companies can't fix all of the issues in the SDGs,' Ms Meller pointed out, adding that this is where a consideration of materiality becomes crucial. Materiality has been a central theme of the latest ESG frameworks published locally by the Exchange and globally by standard-setters such as the Global Reporting Initiative (GRI). Ms Meller gave recommendations on how companies can go about identifying their material issues. She shared the MTR Materiality Matrix, which grades issues via an assessment of what is most material to stakeholders and what is most material to the MTR.

The roles of governance professionals

Directors and the governance professionals advising them are in the front line when it comes to the changes discussed above. Both Ms Meller and Mr Brien pointed out that the advice of governance professionals is all the more important in a context where board decisions cannot be made simply by looking at a company's legal obligations. In particular, advice concerning the expectations of stakeholders and the ethical issues relevant to board decisions can make a huge difference to outcomes.

Ms Meller cited the example of the dilemma companies in Hong Kong have had regarding whether to apply for the various forms of financial support the government has made available to help companies through the COVID-19 pandemic. Not applying for these funds could be seen as contrary to the directors' duty to act in the best interests of the company – what company would not benefit from an infusion of free cash? But some companies have actually done well out of the pandemic – should they also apply for this support? The intention behind the government's handouts, after all, are to help firms in financial difficulties. Ms Meller suggested that this is the type of ethical dilemma that governance professionals should be highlighting for the board.

Mr Brien acknowledged the work of the Institute in promoting business ethics. Through its research reports, continuing professional development services and guidance notes, the Institute has made business ethics and high professional standards a central theme. 'This is where the Institute can make a difference,' Mr Brien said. He acknowledged, however, that being the guardian of corporate ethics is not an easy role to play. While company secretaries, general counsels and in-house lawyers have a role to play in ensuring that ethical issues are considered by the board, this will not always guarantee that the right ethical decision will be made.

The hardest assignment for governance professionals will be where lax ethics are part of the culture of the organisation. Mr Brien cited the 2015 Volkswagen emissions scandal as an example of this. Developing diesel engines to activate their emissions controls only during laboratory emissions testing requires numerous engineers, not to mention managers, to sign off on. Stopping this kind of entrenched lax ethics requires a culture change and this is where having clear ethical guidelines set by the board can make a huge difference, he said.

The art of listening

The investors' perspective on these issues was provided at the webinar by Pru Bennett, Partner, Brunswick, and formerly Managing Director at BlackRock and Head of BlackRock's Investment Stewardship team for the APAC Region based in Hong Kong. She highlighted the trend towards incorporating risks around ESG issues into the investment process. She pointed out that as ESG factors are increasingly considered by asset managers in their investment decisions, this should be a powerful argument in favour of companies going beyond minimum disclosure compliance with ESG requirements. 'Sticking to compliance won't be helpful in the long term since companies will need to stay ahead of the ESG screening process,' she said.

Institutional investors in particular have been increasingly ready to screen out companies with poor records in stakeholder engagement and ESG performance. Ms Bennett emphasised that improving performance in these areas should not be regarded as coming at the expense of profit. On the contrary, good stakeholder engagement and ESG performance leads to long-term sustainable returns.

> good stakeholder engagement and ESG performance leads to long-term sustainable returns

She also highlighted the gradual convergence of the various global ESG reporting frameworks. Many standard-setters – including the Sustainability Accounting Standards Board, GRI, CDP (formerly the Carbon Disclosure Project), the Climate Disclosure Standards Board and the International Integrated Reporting Council – have been working to develop standardised frameworks. 'I hope in the next few years, this will lead to clearer guidelines in terms of reporting non-financial information,' Ms Bennett said. She added that there are also moves to merge many of the different standard-setting organisations themselves. 'I think we will eventually see the creation of a single organisation for ESG disclosures similar to the International Accounting Standards Board, called something like the International Non-financial Reporting Standards Board, which will make life easier for companies,' she said.

Finally, Ms Bennett cited a recent scandal involving the mining firm Rio Tinto as a good example of just how damaging being on the wrong side of these trends can be. Despite not doing anything illegal, the mining firm destroyed ancient caves that were highly important to first nation groups in Australia. The subsequent outcry from first nation groups and institutional investors was only made worse when the board sought to placate these stakeholders by reducing the bonuses of senior executives. The poor response to the issue eventually led to the resignation of the CEO and two senior executives.

'We have moved away from a world where CEOs are king,' Ms Bennett said, adding that listening to stakeholders has become an essential part of doing business. Rio Tinto chose to ignore stakeholder objections to its proposed destruction of the caves. The subsequent fallout demonstrates that companies and executives that don't listen to their stakeholders will be held to account.

The webinar reviewed in this article was held on 30 October 2020 as part of the Institute's Enhanced Continuing Professional Development (ECPD) programme. Information on forthcoming webinars is available on the Institute's website: www.hkics.org.hk.

What impact is COVID-19 having?

The webinar also addressed the question of whether COVID-19 helped or hindered the shift to stakeholder-responsive governance. Companies in financial difficulties, Mr Brien pointed out, will be primarily focused on the survival of the company. 'At the end of the day, the directors' guiding light is to ensure long-term survival of the company; that is their job. Sometimes that may require them to take decisions against the interests of certain of the company's stakeholders,' he said.

He cited the examples of companies having to make job cuts or changes to employment terms, or taking the decision to suspend the payment of dividends to shareholders. These decisions will be understandably unpopular with employees and shareholders but may need to be made in the long-term interests of the company.

Ms Meller pointed out that COVID-19 has also brought into sharper relief some of the environmental and social concerns that companies were already aware of before the pandemic struck. Cities around the world have been enjoying cleaner air, for example, as economic activity has been reduced. Moreover, on a social level, the pandemic has highlighted the value of human capital.

'When times get tough, the people we really need are the cleaners, the nurses, the carers and so on, so issues like the need for a living wage to ensure that these people are fairly paid given their contribution to society have gained more attention. So I'm hoping COVID-19 has accelerated the trend towards taking broader stakeholder concerns into account,' Ms Meller said.

HKICS
Face Mask Design Competition

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'Face Mask Becomes a Fashion Statement'

There's no reason that a mask should be boring! Be creative and show us your best homemade design for a face mask.

All HKICS members, graduates and students are welcome to join.

Face masks are procured for the first 50 participants from Les Beatitudes (www.lesbeatitudesfoundation.org), a social enterprise whose mission is to 'connect different groups to positively address social issues and support the underprivileged, environment and women through arts and crafts.'

Enrolment deadline extended to:
Wednesday 30 December 2020

For enrolment, please contact Vicky Lui: 2830 6088 or email: member@hkics.org.hk.
For enquiries, please contact Eva Cheung: 2830 6019 or email: event@hkics.org.hk.

ESG reporting: a value proposition?

Corporate Governance Paper Competition Champion Paper – part one

This first part of the Champion Paper of the latest Corporate Governance Paper Competition held by The Hong Kong Institute of Chartered Secretaries (the Institute) provides a cost-benefit analysis of environmental, social and governance (ESG) reporting.

Gone are the days when financial results are the only indicator of a company's value. Advocates believe that ESG reporting benefits the company, stockholders, stakeholders and the community as a whole, as it promotes open communication, facilitates social trust and increases social capital. Moreover, globally and in Hong Kong, ESG disclosure requirements are becoming increasingly stringent. While it is generally accepted that connecting ESG metrics with financial performance produces a more holistic view of a company's productivity and performance, compiling such a report does not come without a cost. This paper sets out to conduct a cost-benefit analysis of ESG reporting and to shed light on how reporting creates value in the long run.

Does ESG reporting enhance value?

Top-line growth

A well-established ESG reporting framework encourages companies to embrace sustainable business practices, which is a key to growth. According to research conducted by Accenture, 80% of surveyed CEOs treat ESG reporting as a means to gain competitive advantage. Moreover, a study conducted by McKinsey in 2019 revealed that 70% of customers are willing to pay an additional 5% for a green product if it performs as well as a non-green alternative. Given that ESG could drive customer preference, it is possible for firms to 'do well while doing good'. ESG is thus a significant driver for strategic product and business model innovation. ESG initiatives represent opportunities for value creation and profit maximisation, and mandatory reporting incentivises companies to incorporate sustainability into their business strategy.

Additionally, ESG reports provide investors with useful insights. ESG reports outline how the company's business model is affected by ESG-related issues and how the company is responding to those challenges. Companies with superior ESG reporting are valued positively by the financial market in the following ways. First, eco-efficient firms have been shown to have higher stock market valuations. Second, from a social perspective, employee satisfaction contributes to better stock market performance.

Furthermore, thanks to the growing importance of ESG issues, ESG reports are frequently used by various stakeholders to assess companies' strengths. Different stakeholders, especially government authorities, prefer to cooperate with companies that demonstrate superior sustainability performance. For instance, the Californian government selected for-profit companies to participate in a massive public-private infrastructure project in Long Beach on the basis of their prior performance in sustainability, believing that companies with better ESG performance also possess greater product and process innovation. By improving the relationship with the government and gaining public confidence, companies with strong ESG performance are more likely to be granted access, approval and licences, which translates to new opportunities for growth.

Cost reduction

ESG reporting is also a path to lower costs. The collection and disclosure of data in areas such as emissions and the use of resources are essential for enabling companies to review their efficiency and for developing reduction initiatives accordingly. A study conducted by McKinsey suggests that companies can increase their operating profits by as much as 60% as a result of reducing expenses after integrating ESG initiatives into their businesses. As the reporting process involves careful calculation and

Highlights

- issuers should view environmental, social and governance (ESG) reporting as an opportunity to expand access to capital and to identify risk and potential ways to reduce costs
- the collection and disclosure of data in areas such as emissions and the use of resources helps companies review their efficiency and develop cost-reduction initiatives
- a company's ESG reputation is an important factor in an employee's choice of employer

> gone are the days when financial results are the only indicator of a company's value

data extraction, it helps the reporting company to identify gaps and formulate future strategies to allocate capital more efficiently.

Risk management

Legal risk mitigation and ESG objectives often go hand in hand. To date, over 35 stock exchanges around the world have issued or committed to issuing ESG reporting guidance for their listed companies. In some jurisdictions, such as Hong Kong, the UK, the European Union, the US and the Mainland, certain companies (usually state-owned or listed corporations) are mandated to provide reports disclosing some ESG matters. As more governments are making ESG disclosure compulsory, non-compliance would effectively bring dire legal, reputational and financial consequences.

Companies can greatly enhance their risk management and control by fulfilling the reporting requirements. The process of reporting acts as a catalyst that prompts companies to access and elevate environmental and social risks that may impact their businesses. By complying with the disclosure rules, companies are better prepared to manage those risks. Recent research also suggests that firms which undertake ESG reporting fare better in terms of mitigating ESG risks and maintaining a positive public perception. It is well recognised that if non-financial risk is not properly managed, it can deteriorate into financial risk. There is an abundance of examples demonstrating how environmental and social risks may affect a company's financial performance, namely share price and cost of capital.

Share price. To begin with, a lack of sound ESG management may lead to substantial damages and a slump in share price. For instance, British Petroleum (BP) was charged with criminal manslaughter and environmental crimes, and was ordered to pay US$20.8 billion as a result of the 2010 Deepwater Horizon oil spill in the Gulf of Mexico. On top of the hefty fine, the clean-up and compensation cost an additional US$65 billion. BP's share price fell by 51% on the New York Stock Exchange between 20 April 2010 and 29 June 2010 as the catastrophe unfolded and its long-term share price remained lower than other oil majors in 2010–2015. As stock price represents the investors' vote of confidence, it is not hard to understand why ESG-related scandals (especially those which warrant scrutiny from legal enforcement) have an adverse effect on stock prices.

Cost of capital. A company's failure to mitigate ESG risks may also result in a declining cost of capital (CoC). CoC is the cost of the company's funds and such a metric is used internally to evaluate whether a capital project is worth the expenditure. Depending on the mode of financing used, CoC can include either one or both of (i) cost of debt (CoD) and (ii) cost of equity (CoE). MSCI research suggests that companies with high ESG scores experience lower levels of CoC compared with those scoring poor ESG ratings, in both developed and emerging markets. A joint study conducted by Arabesque Partners and Oxford University reported that 90% (26 out of 29) of empirical studies from 1974 to 2012 show that sound ESG standards lower the CoC.

If a company finances through debt, its credit rating would determine the effective interest rate of any loans borrowed from financial institutions (that is, the CoD). Similarly, an issuer's creditworthiness plays a key role for investors to assess how much they would demand in exchange for owning a share (that is, the CoE). The credit ratings of a firm can be influenced by a number of macro factors (such as policies, technological advancement, geopolitical disputes) and micro factors (such as corporate governance, compliance, balance sheet figures and reputation).

Mandatory ESG reporting increases the transparency of corporate governance and provides some basis for investors and banks to assess a company's ESG performance and initiatives. Better ESG disclosure contributes to a reduction in CoE, as it provides a more precise and accurate valuation of the company. In accordance with disclosure theory, a better ESG disclosure practice can significantly reduce the estimation risk in the market and lower the information asymmetries between managers and investors. Research also suggests that the negative relationship between the quality of ESG disclosure and CoC is particularly pronounced for companies in environmentally sensitive industries. As such, firms with decent sustainability standards enjoy significantly lower CoC.

Reputation

Thanks to the rising awareness of environmental and social issues, ESG reporting contributes significantly to an improvement in a company's reputation, which may, in turn, lead to greater profitability. In light of a survey published by Ernst & Young and Boston College Centre for Corporate Citizenship in 2013, most of the companies that published ESG reports recognised that those reports helped improve their reputation.

Customer perception. ESG reporting has a significant impact on customer perceptions. A company's failure to manage ESG risks, for example, may lead to a customer backlash. For instance, customers initiated a boycott campaign and staged several protests against L'Oreal S.A., as the company was considered to be unethical for conducting cosmetic tests using animals.

Partnerships with suppliers and distributors. ESG reporting is also crucial for effective supply chain management, and this in turn has great implications for suppliers. For example, Boohoo, the UK fast-fashion giant, was slammed for paying £3.50 an hour (£5.20 below the minimum wage) and failing to take protective measures against the coronavirus in its Leicester factory in the UK. In response to that, some of the biggest e-commerce retailers, including Amazon, ASOS and Zalando, announced they were dropping the brand. Disassociation with unethical producers and penalising wrongdoers on behalf of the public are good indicators that these online retailers are managing ESG risk and that they hope to introduce transparency into their production systems.

Talent acquisition and retention. Talent acquisition is another significant benefit of ESG reporting. A company's ESG reputation is an important factor in an employee's choice of employer. A recent study has shown that a sustainable business model which engages proactively with environmental and societal dimensions taps into the higher sense of purpose that many employees yearn for. As human capital is one of the most important company assets, a good standing would help companies to acquire talent, which in turn translates to better product and service delivery.

Volunteer Canada conducted one of the largest studies to date, in terms of sample size (66,000 employees from over 300 companies), on employee perspectives and company community investment. About half the respondents stated that they would feel proud and valued if their employing company made significant contributions to the community. It can therefore be concluded that reporting on environmental and social aspects fosters a sense of belonging among employees, thereby helping to retain employees.

In another study on the relationship between employee satisfaction and corporate financial performance, Alex Edmans, Professor of Finance, London Business School, observed that companies listed on Fortune's 100 Best Companies to Work For generated between 2.3% and 3.8% higher stock returns per year than their peers over a 25-year study period. This indicates that workplace satisfaction can create value beyond talent attraction; it can also contribute to higher financial performance. An inferior ESG reputation can compromise productivity with labour actions such as strikes, complaints and disunity between different departments.

Recommendations

In response to the new ESG reporting requirements in Hong Kong (summarised in part two of this paper), issuers should familiarise themselves with all relevant amendments, and start their preparation as early as possible to allow fine-tuning and adjustments. Moreover, to facilitate the integration of ESG issues into key governance processes, the board could establish a new ESG committee or expand the roles of an existing committee. An executive-level ESG working group with authority and expertise would help the company to better assess and manage ESG issues. The board should conduct the materiality assessment systematically and adjust the list of material ESG issues accordingly.

In response to the trend towards greater reporting standardisation, issuers should look for new ways to differentiate their ESG reports. For instance, issuers can devote resources to internally validating the data collected to ensure that data obtained is of high quality. Another major way that an issuer can signal its credibility is through assurance. Third-party assurance increases stakeholders' perception of the reliability of ESG reporting and is particularly valuable where investors rely on ESG ratings in their decision-making.

Conclusion

Mandatory ESG disclosure represents a pivotal change in the sustainability reporting landscape, with authorities and standard-setters beginning to realise the complex nature of today's business model and the potential value of non-financial metrics. Introducing stringent reporting requirements has helped Hong Kong Exchanges and Clearing Ltd attract eco-friendly investors and enhance Hong Kong's competitiveness as a market and as a stock exchange. Issuers should view this as an opportunity to develop innovative approaches to boost performance, expand access to capital, and identify risk and potential ways to reduce costs.

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This article is a summary of the 2020 Champion Paper – Does Investment in ESG Values Generate Investment Value? A Cost-Benefit Analysis of ESG Reporting in Hong Kong. More information on the annual Corporate Governance Paper Competition is available on the Studentship section of the Institute's website: www.hkics.org.hk. Part two of this article will be published in next month's CSj.

Corporate investigations and monitoring

Are businesses falling behind in the use of big data?

Jeremy Birch, Hannah Cassidy and Kyle Wombolt, Herbert Smith Freehills, warn that the private sector is at risk of failing to prioritise modernising compliance and investigations functions just as regulators become increasingly technologically sophisticated.

Businesses are lagging behind regulators and law enforcement in their use of big data when it comes to monitoring for misconduct, investigations and enforcement. Just 9% of all businesses in Herbert Smith Freehills' recent survey said that they 'relied extensively' on data analytics to monitor employee conduct. Only another 25% said that they were 'in the early stages' of implementing employee supervision through data analytics.

With regulators and law enforcement increasingly relying on advanced data analytics for monitoring and surveillance, the risk is growing that they detect misconduct by employees or customers that has gone undetected by a company's own internal systems.

This exposes businesses to two significant risks. First, the loss of an opportunity to self-report and secure cooperation credit. Secondly, regulators may, with the benefit of hindsight, consider that a firm with adequate internal controls would have detected such misconduct, bringing a firm's systems and controls themselves under scrutiny. These risks are particularly problematic in an era in which businesses have encountered a significant increase in the volume of data and data sources requested by regulators and law enforcement.

Despite this, nearly 65% of respondents to our recent survey said that their budgets for collecting data to satisfy regulators or law enforcement had stayed the same despite massive data volume increases.

Such data-heavy investigations are no longer restricted to the financial services sector. Hong Kong's Securities and Futures Commission (SFC) has focused enforcement resources on listed companies for many years now. Initially focused on IPOs, investigation of individual misconduct by company directors has grown steadily.

This raises the key question of what businesses should learn from regulators' increasingly sophisticated use of big data in monitoring – and how can businesses that are grappling with the use of big data in monitoring best adapt to this new reality.

Data use focused on commercial not compliance concerns

In February 2020, Herbert Smith Freehills surveyed a number of clients in general counsel, senior legal, compliance and risk roles in organisations across multiple sectors and jurisdictions. Organisations clearly recognised the commercial benefits of data. Almost 80% of respondents said that data featured in their current commercial strategy and over 66% had a data governance strategy in place. According to survey respondents, data analytics or artificial intelligence was not only used to improve efficiency and operations, but also featured heavily in research and reporting, and for data collection, analysis and business strategy.

Increased commercialisation of big data also has upsides for compliance. Its use will ultimately improve the data quality within an organisation and, over time, allow that data to be used for compliance purposes. However, data analytics or AI does not appear to be used much currently for investigations or for surveillance purposes. This may indicate that the private sector is at risk of failing to prioritise modernising compliance and investigations functions just as regulators become increasingly technologically sophisticated.

Quality over quantity?

Data quality, for some organisations, may be preventing greater adoption of data as a monitoring and compliance tool.

Highlights

- regulators and law enforcement are increasingly relying on advanced data analytics for monitoring and surveillance
- where regulators detect misconduct by employees or customers that has gone undetected by a company's own internal systems, the company's systems and internal controls may come under scrutiny
- a failure to maintain a sound approach to data governance creates problems when the business is facing the prospect of an investigation

> managing the challenge of big data in digital forensics is made easier by having in place an effective data governance framework at the start

One in five of respondents reported concerns over the quality of their organisation's data. While respondents didn't note this as their main concern, it still demonstrates that not all organisations have the right data sources to implement monitoring for misconduct in a meaningful way.

The sophistication of monitoring systems and issues around how data is collected and used are part of the problem. While corporate goliaths, big tech and some governments have the resources to collect and analyse massive amounts of data, that level of sophistication in employee monitoring is still relatively rare in the private sector.

Many private organisations do not have access to the right data, or the quality of data they can access isn't sufficient to conduct sophisticated analytics with useful output. An increase in resources may help to manage this, but businesses need to agree their data gathering aims before implementing an appropriate IT infrastructure to create the data pool they need and will find valuable.

If a business needs to monitor a certain type of misconduct or a specific product area, it is better to focus their efforts around those goals. This has the added advantage of allowing them to better manage the risks of complying with privacy, employment and discrimination law.

Investigations: 'collect everything' is no longer an option

The approach to digital forensics in investigations is constantly evolving to keep pace with the increasing volume, velocity and variety of data within organisations. Almost every action we take leaves a digital trail and the type of information businesses are collecting, both internal and external, is expanding. It is vital that businesses are alert to the challenges arising in an investigations context of how they acquire, hold and manage their data. With more data comes the need for more careful planning, both before and after the commencement of an investigation.

In our recent survey, over 60% of respondents said that the volume of data and the number of data sources used for internal investigations (or requests from regulators or law enforcement) had grown noticeably over the past two years, requiring more time and resources. Managing the challenge of big data in digital forensics is made easier by having in place an effective data governance framework at the start. A

Survey insights: data

Data is front of mind....

Almost
80%
say data features in their organisations' current commercial strategy

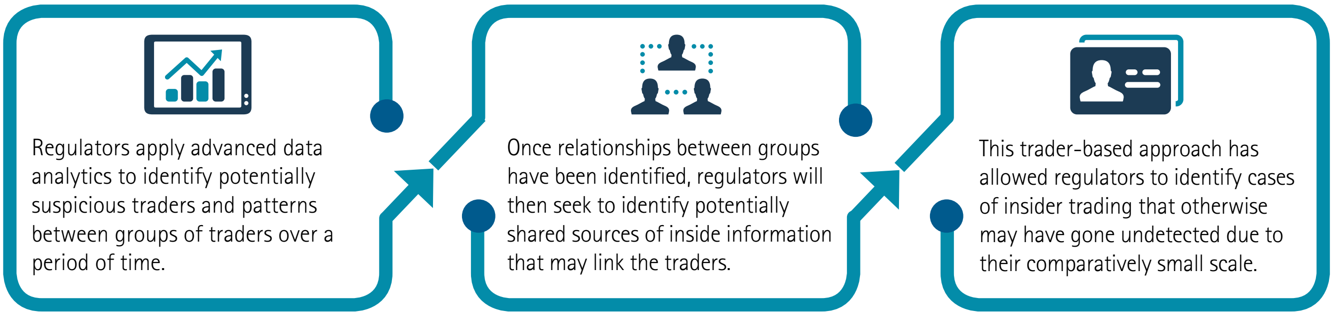
Almost
67%
indicate their organisations have a data governance strategy

...but challenges to its use remain

Over
50% cited regulation (both data regulation & the compliance burden outside data regulation) and the threat of enforcement as the biggest challenges to developing and using AI or data analytics within organisations

Data quality (having data that is not reliable or sufficiently structured/consistent) is also a significant challenge

Trader-based approach



robust framework has a number of broad-based benefits, including strengthening the usability and reliability of its data assets.

A failure to maintain a sound approach to data governance creates problems when the business is facing the prospect of an investigation. First, it may expose businesses to risks, where keeping irrelevant, outdated or erroneous data may potentially hinder the analysis process of investigations and increase unnecessary costs. Second, businesses often run into problems with data integration, where the data needed for investigations comes from diverse sources, meaning that the need to remove duplicate documents and contradictory data may frequently arise.

Regulators' use of big data targets detection and prosecution

Two prominent areas in which regulators have historically had great success in using big data to detect and prosecute misconduct are insider dealing and tax evasion. Historically, it has been easy to predict the catalysts for insider trading investigations – namely, unusual spikes in the prices of securities shortly prior to the disclosure of material non-public information such as the announcement of a takeover bid or unexpected profit results.

These types of 'security-based' investigations have traditionally been reactive, in that they rely on large movements of the market being reported publicly, or matters being reported to regulators (for example, brokers reporting potentially unusual trades by their clients).

However, in recent years, the US Securities and Exchange Commission (SEC)'s Market Abuse Unit has pioneered a 'trader-based' approach to insider dealing enforcement which has been quickly emulated by other regulators, including the Hong Kong SFC and the Australian Securities and Investment Commission.

The use of big data has also allowed tax authorities globally to adopt an increasingly sophisticated approach to the detection of tax evasion, generally through the use of data matching protocols. Tax authorities compel the production of data from third parties or request data from other government agencies, and then match that data against records held by tax authorities. In Australia, for example, the Australian Taxation Office (ATO) uses a wide variety of data matching protocols, including:

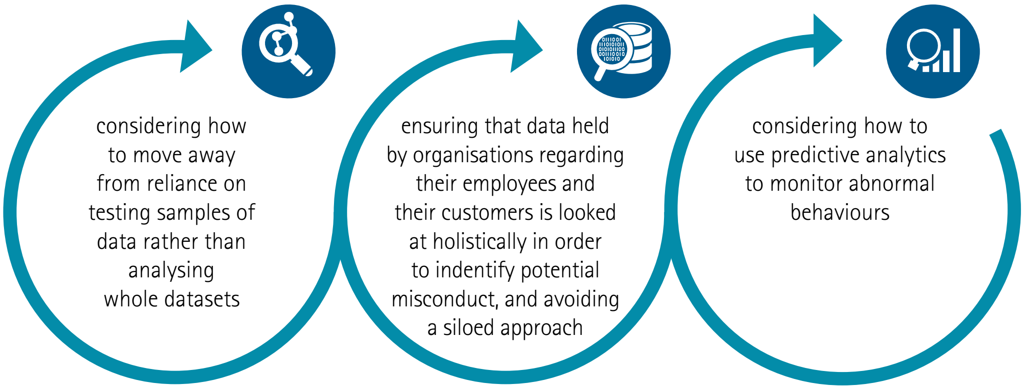
- matching of credit and debit card records against income reported

Trader-based approach: a case study

In May 2019, the Securities and Exchange Commission (SEC) in the US announced that its Market Abuse Unit's work in detecting patterns of suspicious trades had led to the filing of insider dealing charges against an investment banker and his plumber, who the SEC alleged had made US$76,000 in illicit profits by trading on tips passed to him by the banker (www.sec.gov/news/pressrelease/2016-96.html).

Similarly, the SEC has credited the Market Abuse Unit's work as helping identify repeated trades by a Silicon Valley executive prior to his employer's announcements of missed profit forecasts, through which the executive realised profits of US$120,000 and avoided losses of US$76,000 (www.sec.gov/litigation/admin/2018/33-10525.pdf).

Using data for internal surveillance and monitoring



to the ATO to identify businesses trading as 'cash only', and

- analysis of insurance records to identify owners of lifestyle assets, such as luxury boats and racehorses, whose assets are inconsistent with the income they have reported to the ATO.

Incorporating big data into monitoring processes

As businesses start to grapple with the challenges of incorporating big data and data analytics into their monitoring and surveillance processes, they should consider how they can use the data sources already available to them, alongside data analytics, in their own internal surveillance and monitoring capabilities. This approach is outlined below.

For example, it may not be possible for a bank to detect an employee trading on inside information if the trades are executed through accounts held with other institutions that have not been reported by the employee. However, the use of predictive analytics should increasingly make it possible for organisations to predict how frequently employees in particular parts of their business need to access confidential information – and identify employees who may be accessing such information more frequently than would be expected.

Data matching: a case study

While this sort of data matching – particularly when combined with predicative analytics to identify the types of taxpayers most likely to commit tax evasion – has been used to identify potential cases for investigation, tax authorities have also sought to use big data to build their cases. Most notably, in December 2018 the US Internal Revenue Service (IRS) released a Request for Information for a social media scraping tool that would be used to both advance their ongoing investigations as well as identify potential areas for audit.

However, the regulation of data use and collection may slow broader adoption of AI-based compliance monitoring. 50% of survey respondents cited regulation as a challenge around the use of big data and AI, though 75% believed the development and use of AI should be subject to regulation.

Certain monitoring activities may raise issues under data protection laws, surveillance laws, telecommunications laws, cybercrime laws, industry-specific requirements or a combination of these. Organisations should understand what they are aiming to achieve and consider the types of monitoring undertaken of the risks the business faces. There is also an increasing focus on the ethics of AI and other sophisticated data analytics when applied to monitoring people or processing personal data. This makes a thorough analysis of use cases from all angles critical before implementation.

Jeremy Birch, Hannah Cassidy and Kyle Wombolt
Herbert Smith Freehills

The Mainland unveils new draft data privacy law

Hoi Tak Leung, Counsel, Digital Economy, and Patrick Phua, Practice Head, Asia Global Loans and Global Markets, Ashurst, outline some key points of the first draft of the Mainland's Personal Information Protection Law.

On 21 October 2020, the National People's Congress (NPC) of the People's Republic of China released a first draft of the Personal Information Protection Law (Draft PIPL) for public comment. This consultation closed on 19 November 2020.

In this update, we set out some of the key points of the Draft PIPL, along with brief comments from us on those points.

Introduction

The Mainland has historically had a patchwork of different laws – both in effect and in draft (but influential) form – containing different data protection requirements, including:

- ***Cybersecurity Law:*** effective on 1 June 2017.
- ***E-Commerce Law:*** effective on 1 January 2019.
- ***Personal Information Security Specification:*** updated on 6 March 2020 and effective on 1 October 2020 (note these are technical standards rather than mandatory regulations, though they are considered 'best practice' and are regularly considered by Mainland authorities in any action).
- ***Data Security Law:*** a draft was released on 3 July 2020, with public consultation having closed on 16 August 2020. This was the first law in the Mainland aimed at regulating the collection, processing, control and storage of data involving national security, business secrets and personal data.

The Draft PIPL attempts to consolidate various existing data protection obligations under those different laws

Highlights

- the Mainland's new draft Personal Information Protection Law (Draft PIPL) consolidates various existing data protection obligations, without replacing those current laws
- under the Draft PIPL, certain best practice obligations will become binding law, while potential penalties related to liabilities and regulatory enforcement have been increased
- the Draft PIPL will be applicable outside the Mainland to protect the interests of data subjects in the Mainland, and aims to establish a more unified cross-border data transfer legislative framework

and is particularly important given that, as the NPC noted, the Mainland had (as of March 2020) more than 900 million internet users, 4 million websites and 3 million mobile applications. However, it is important to note that the Draft PIPL does not replace those different laws, and therefore organisations will need to continue being cognisant that, while the Draft PIPL will be extremely important, it will also be just one element of that wider patchwork of laws.

Liu Junchen, deputy director of the Legal Affairs Committee of the Standing Committee of the NPC, noted the importance of the protection of personal information (our translation): '... the formulation of a personal information protection law is an objective requirement to further strengthen the legal protection of personal information protection; is a practical requirement for maintaining a healthy cyberspace; and is an important step in promoting the healthy development of the digital economy'.

The Draft PIPL, in its consolidation of those existing obligations, also means that various best practice obligations will become binding law. It is influenced in significant parts by the General Data Protection Regulation (GDPR) in the European Union, while retaining a significant Mainland flavour.

We expect that the Draft PIPL – even in draft, unimplemented form – will be effectively treated as law by the relevant government regulators. In that light, it is important that businesses understand what it requires – and we will continue to closely monitor developments, including any further drafts (given that many consultation responses have been received).

An important qualification to this update is that, given the Draft PIPL is in draft and consultation form, and given the importance of implementing regulations and regulator guidance to the interpretation of laws in the Mainland, there will remain a degree of uncertainty regarding how the Draft PIPL will be implemented (if and when it is implemented) until such regulations and guidance are released. For example:

- as discussed above, the relationship between the Draft PIPL and other relevant laws (and how any overlap or conflict will be interpreted) is to be confirmed, and
- from experience in other jurisdictions, some of the areas discussed below will require significant further details. As examples, we will be looking for further details regarding:
    - the definition of 'separate consent'
    - how any personal information risk assessment (PIRA) will be carried out, and
    - how data breach notifications will occur in practice (this has been a key issue in overseas jurisdictions that have implemented data breach notification requirements).

Clarification of the above areas may require further regulations or guidance from regulators.

Data protection principles and key terms

The Draft PIPL is based on seven data protection principles – legality, explicit purpose, minimum necessity, transparency, accuracy, accountability and data security. This is important for framing the wider effects arising from the Draft PIPL.

'Personal information' under the Draft PIPL refers to the various types of information recorded in electronic or other formats related to identified or identifiable individuals, and includes both information that can identify data subjects or which is related to the data subjects.

The Draft PIPL uses the term 'data processor' to reference what many other data privacy laws would describe as 'data controller' (the Draft PIPL does not use the term 'data controller'). For clarity, we have used 'organisation' to describe the data processor (data controller) under the Draft PIPL.

Responsible governmental departments for the Draft PIPL

The departments responsible for the Draft PIPL include the Cyberspace Administration of China (CAC), the relevant department of the State Council and the relevant department of local government at county level or above.

One of the challenges that many multinational organisations face in complying with data privacy laws in the Mainland are the various regulatory authorities that may have oversight of (and power to enforce) those laws. This will likely continue under the Draft PIPL.

Extraterritorial effect

The Draft PIPL proposes to be applicable outside the Mainland to the extent necessary to protect the interests of data subjects in the Mainland.

In particular, and with a significant nod to the GDPR, the Draft PIPL will:

- apply to data processing activities outside the Mainland, where their purpose is to provide products or services to individuals in the Mainland, or to analyse and make assessments about the behaviour of individuals in the Mainland, and
- require organisations located outside the Mainland, but governed by the Draft PIPL, to establish entities or appoint representatives in charge of personal information protection, and that those representatives' or entities' details are registered with the relevant government department.

“the Draft PIPL is based on seven data protection principles – legality, explicit purpose, minimum necessity, transparency, accuracy, accountability and data security”

Cross-border transfer and data localisation

The Cybersecurity Law and the Personal Information Security Specification both specify significant cross-border data transfer restrictions. For example, as part of the Personal Information Security Specification, the Mainland government proposed mandatory security assessment obligations on all businesses in the Mainland operating networked IT systems.

Cross-border transfer restrictions remain one of the key issues that multinational organisations face in their compliance with data privacy obligations under Mainland law, and this issue has been a key contributor to many multinational organisations effectively segregating their Mainland IT systems from the rest of their international network.

The Draft PIPL attempts to prepare a more 'unified' cross-border data transfer legislative framework for organisations to follow. Broadly speaking, and subject to various restrictions as set out below, it proposes that an organisation will generally be permitted to access and transfer most personal data outside the Mainland, if it complies with all of the following:

- the organisation has obtained explicit consent from the relevant data subject for the access/transfer
- the organisation has undertaken a PIRA on such access/transfer (see the section on Personal information risk assessment, below), and
- the access/transfer satisfies one of the following requirements:
    - o contractual obligations have been undertaken with the offshore data processor that satisfy relevant requirements under the Draft PIPL
    - o a security impact assessment has been conducted that has been approved by the CAC (Security Assessment), or
    - o a personal information protection certification has been obtained via a certification body accredited by the CAC.

There are some notable exceptions/qualifications to the above:

- the following organisations will only be able to access or transfer personal information outside the Mainland if they have conducted a CAC security assessment:
    - o critical information infrastructure operators, and
    - o data processors meeting certain data processing volume thresholds (to be specified).
- the Draft PIPL does not indicate whether, when personal data is transferred outside the Mainland, retaining a local copy in the Mainland is also required, and
- the above framework does not override industry-specific data localisation rules, nor prohibitions of overseas transfers of certain other restricted (personal and non-personal) data, such as state secrets and 'important data'.

Consent and lawful bases for data processing

The Draft PIPL continues to rely on consent as being one of the key bases for data processing. However, and in line with the GDPR, the Draft PIPL also references various lawful bases under which personal information can be processed without consent, including:

- the necessity for entering into/ performance of agreement with the data subject
- complying with legal obligations or as required by law
- publication of news/public interest, and
- responding to public health incidents or protecting the safety of an individual's life or property.

Separate consent will be required for processing of sensitive personal information (see below), overseas transfers (see above), disclosures to third parties, public disclosures and collection of biometric information.

We expect that organisations will need to update their data privacy policies to account for the above.

Sensitive personal information

The Draft PIPL sets out specific restrictions on the processing of sensitive personal information, defined as 'information that once leaked or abused may cause damage to personal reputation or seriously endanger personal and property safety', and includes race, nationality, religion, biometric information, health, financial accounts, personal whereabouts and other information.

Under the Draft PIPL, processing of sensitive personal information:

- will be only permitted if it is for a specific purpose and is sufficiently necessary, and if separate consent (or if required by law, separate written consent) from the data subject has been obtained, and
- requires the organisation to inform the data subject of the necessity of processing that information and such processing's impact on the data subject. This requirement is in addition to the basic information that must be provided to the data subject under Article 18 of the Draft PIPL.

Personal information risk assessment

The Draft PIPL requires organisations to make a PIRA before conducting any of the following actions:

- processing of sensitive personal information
- using personal information to conduct automated decision-making
- providing personal information to any third party (to be confirmed whether such third parties will include group companies)
- appointing a third-party data processor
- disclosing any personal information publicly
- cross-border transfer of personal information, and
- any other processing activities that may have 'significant impact on an individual'.

A national authority will only be able to transfer personal information outside the Mainland if it has conducted the PIRA (either by itself or with the assistance of other authorities).

Such an assessment report must be kept for at least three years. The Draft PIPL further sets out what content is required to be in a PIRA.

Data breach notifications

If there is a data breach, the organisation shall take remedial measures immediately and notify the relevant government department and data subjects. The Draft PIPL provides specific content to be included in the notification.

The Draft PIPL also specifies that the organisation will not be required to notify data subjects of a data breach if it has taken measures to effectively avoid damages caused by the disclosure of personal information, unless the relevant government department determines the disclosure may result in damage.

Liabilities arising from a breach of the Draft PIPL

The Draft PIPL significantly increases potential penalties beyond those provided in the Cybersecurity Law.

The Cybersecurity Law provides for various penalties, including rectification, confiscation of illegal gains, warnings, penalties under RMB1 million, business suspensions, business halts for rectification and the revocation of relevant permits or business licenses.

The Draft PIPL has added a few significant points in relation to liabilities and regulatory enforcement.

- ***Significant increase of the financial penalties:*** by reference to a maximum of 5% of the organisation's previous financial year's annual turnover, or RMB50 million. It is unclear whether the turnover reference is to the organisation's global turnover (such as under the GDPR) or their local turnover (such as under the proposed Singapore Personal Data Protection (Amendment) Bill).

- ***Increase of regulators' powers of investigation and enforcement:*** including if an organisation's non-compliance impacts multiple data subjects.

- ***Prior regulatory approval:*** is required if an organisation is asked or required to disclose personal data overseas 'to assist international enforcement or litigation' – this will be a key point for multinational organisations, who may feasibly find themselves 'between a rock and a hard place'. We will keep a close eye on how this point develops going forward.

> "one of the challenges that many multinational organisations face in complying with data privacy laws in the Mainland are the various regulatory authorities that may have oversight of... those laws"

Other key points of the Draft PIPL

The Draft PIPL also introduces other key points that organisations should be aware of.

Third-party data processors and subprocessors

In line with international trends, the Draft PIPL inserts specific obligations on third-party data processors. We note the following:

- broadly speaking, the obligations for appointing third-party data processors are similar to the current framework and international practices

- the Draft PIPL prohibits third-party data processors from appointing subprocessors without the prior consent of the data processor

- joint data processors are acknowledged. If multiple data processors process personal information together, the coprocessors shall bear joint liability for any infringements, and

- where an organisation appoints a third party to process personal information, both parties are required to execute a data processing agreement that includes the purpose of data processing, the processing mode, the types of personal information processed, protection measures and both parties' rights and liabilities. The organisation will be responsible for supervising the data processing activities. After completion of the relevant data processing, the personal information must be returned or deleted.

Data subject rights

In addition to existing rights of access, correction, deletion and withdrawal of consent, data subjects' rights are expanded to include (under certain circumstances) the right to request deletion of their personal information, the right to withdraw consent and the right to request that the organisation explain how any processing is to be conducted.

Data privacy officers

Organisations will be required to appoint a data privacy officer (DPO) if they meet certain data processing volume thresholds (to be confirmed), with the DPO to be registered with the relevant government department.

Hoi Tak Leung, Counsel, Digital Economy, and Patrick Phua, Practice Head, Asia Global Loans and Global Markets

Ashurst

With special thanks to Yeqi Fei (Trainee Solicitor) and Louisa Wang (Intern) for their contributions.

Note: The full text of the DIPL is available from www.npc.gov.cn/englishnpc/index.shtml.

The Hong Kong Limited Partnership Fund Ordinance

Xavier Garralda, Associate, Vistra Hong Kong; and Effie Vasilopoulos, Partner, and David Kalani Lee, Counsel, Sidley Austin, highlight the features of Hong Kong's new Limited Partnership Fund Ordinance designed to boost Hong Kong's standing as an asset management and private equity investment centre in Asia.

As of 31 August 2020, the long-awaited Limited Partnership Fund Ordinance (Cap 637) (LPFO) came into effect in Hong Kong, replacing the outdated Limited Partnerships Ordinance (Cap 37) (LPO) that was enacted back in 1912. Under the LPO, onshore funds could be established in the form of a unit trust or an open-ended fund company, which are not the preferred vehicles for most strategy types adopted by private fund managers including private equity, venture capital, real estate, infrastructure, credit and special situations. Private funds that adopt these strategies are typically structured as limited partnerships. For this reason, it had become the norm for Hong Kong–based private fund managers to set up funds in offshore jurisdictions such as the Cayman Islands. However, with the introduction of the new LPFO, a modern and effective legal regime has been introduced that can facilitate the establishment of funds onshore in Hong Kong in the form of limited partnerships. This development is expected to cement the city's position as a leading centre for asset management and private equity investment in Asia.

Features of the LPFO

Limited partnership funds that are registered under the new regime all share certain characteristics. Firstly, they must have a General Partner (GP) who is ultimately responsible for the management and control of the fund, and who will assume unlimited liability for the debts and obligations of the fund. The GP can be a natural person, private company, limited partnership or a limited partnership fund. The GP can also simultaneously act in the capacity of an investment manager and assume the responsibility for carrying out the day-to-day management of the fund. Otherwise, the GP must appoint a separate person or company to act as the investment manager.

Secondly, the fund must have at least one Limited Partner (LP) at the date of registration. LPs have no day-to-day management rights or control over the assets of the fund, but rather they have the right to participate in the income and profits arising from the fund. As their name suggests, the liability of LPs for the debts and obligations of the fund is limited to the extent of their agreed contributions. However, if an LP engages in an activity that amounts to managing the fund (not being one of the safe harbour activities that are specified in Schedule 2 of the LPFO), both the LP and the GP may be jointly and severally liable for debts and obligations incurred while the LP takes part in such management activities.

Thirdly, every fund must be governed by a written Limited Partnership Agreement (the Agreement) that is mutually agreed upon by the partners. The Agreement may dictate among other things:

- the admission and withdrawal of partners
- the transfer of interests by LPs
- the governance and decision-making procedures of the fund
- the investment scope and strategy of the fund
- the powers, rights and obligations of the partners
- the scope of the GP's fiduciary duties and the remedies for the breach or default thereof
- capital contributions, withdrawals of capital contributions, distribution of proceeds and clawback obligations, and
- the procedure for the voluntary dissolution of the fund (as a convenient alternative to the right of any partner or creditor to petition the Court to dissolve the fund on just and equitable grounds, or to wind up the fund as an unregistered company pursuant to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)).

Funds that are established under the LPFO are subject to uniquely advantageous fiscal arrangements. For instance, they may be exempt from profits tax provided they meet the definition of a 'fund' under Section 20AM of the Inland Revenue

Highlights

- the Limited Partnership Fund Ordinance (LPFO) came into effect on 31 August 2020, replacing the outdated Limited Partnership Ordinance that was enacted in 1912
- prior to the introduction of the LPFO, it was the norm for Hong Kong-based private fund managers to set up funds structured as limited partnerships in offshore jurisdictions such as the Cayman Islands
- the introduction of the LPFO is expected to cement Hong Kong's position as a leading centre for asset management and private equity investment in Asia

Ordinance (Cap 112) and satisfy certain conditions under the Unified Funds Exemption regime. In addition, funds registered under the LPFO have the benefit of not having any capital duty and/or stamp duty imposed on proceeds arising from the distribution of profits, as well as on the contribution, transfer or withdrawal of a partnership interest to and from a fund. On 7 August 2020, the government announced it will implement a 'highly competitive' concessional tax rate with respect to carried interest for private equity funds, which is expected to take effect retroactively from 1 April 2020.

To ensure transparency in the structure of funds, all funds must continuously update the Registrar of Companies (the Registrar) with basic information that will be publicly available for a prescribed fee. Such information includes the name of the fund, its registered office address and principal place of business, its investment scope and the name and contact details of the GP, investment manager and/or authorised representative. However, the register will not contain information as to the identity or background of LPs. This information is instead maintained on a private and confidential basis at the registered Hong Kong office of the fund.

Other features of the LPFO include:

- the requirement to end the name of the fund with 'Limited Partnership Fund', 'LPF' and/or '有限合夥基金'
- the obligation to maintain a registered office in Hong Kong
- the GP's role in ensuring proper custody of the fund's assets (whether through the appointment of a custodian or otherwise)
- the GP's duty to appoint an independent auditor for the purpose of auditing the financial statements of the fund annually
- the GP's responsibility to appoint either an authorised institution, a licensed corporation, or a legal or accounting professional to conduct required anti-money laundering measures, and
- the need to have a Hong Kong law firm or solicitor submit the application to register the fund to the Registrar.

> "with the introduction of the new Limited Partnership Fund Ordinance, a modern and effective legal regime has been introduced that can facilitate the establishment of funds onshore in Hong Kong in the form of limited partnerships"

As of yet, the LPFO does not allow funds registered in offshore jurisdictions such as the Cayman Islands to re-domicile to Hong Kong. However, funds registered under the LPO may migrate to the LPFO upon the satisfaction of certain eligibility requirements. This process will not result in the creation of a new separate legal entity and thus the pre-existing rights and liabilities of the fund will remain unaffected.

The LPFO regime aims to create a new onshore regime for investment funds while avoiding potential disruption to the businesses and structures of investment funds. For example, no new licensing requirements have been imposed for limited partnership funds, general partners or investment managers under the LPFO regime. These players will continue to be subject to the current licensing regime of the Securities and Futures Commission of Hong Kong. In most cases where the primary discretionary investment management functions are undertaken from Hong Kong, a Type 9 (Asset Management) licence will be required.

The response so far

The investment community's impression of the new LPFO has been overwhelmingly positive, with especially strong interest and support from investors and asset managers in the Greater China region. The industry eagerly awaits further guidance in relation to the proposed tax concessions on carried interest income streams which are expected to be backdated to take effect from 1 April 2020.

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Photographer: Michael Kistler

Paul Stafford FCIS FCS

What is your role as a governance professional?
'I am the Corporation Secretary of The Hongkong and Shanghai Banking Corporation Ltd and Regional Head of Corporate Governance for HSBC in Asia-Pacific.'

What was your career path to your current role?
'I joined a management trainee programme with a UK bank in 1987. After the end of the programme I applied for an internal vacancy in the company secretarial department because I could see the personal skills that were desired aligned to my strengths. I was also attracted to the role because it offered the opportunity to study for a professional qualification. The international portability of the professional qualification subsequently became of value for my move from the UK to Hong Kong in 2010.'

What value does governance bring to organisations and to wider society?
'Good governance provides a flexible framework that drives accountability and transparency to balance the interests of all stakeholders for the benefit of individuals, corporates and society. It underpins the application of positive behaviours and values by individuals.'

What qualities do you think are needed to be a successful governance professional?
'Personal integrity and the strength to speak up and do the right thing; problem solving while ensuring compliance with technical requirements; thinking ahead and anticipation of issues; stakeholder management and diplomacy; clear and concise written communication skills; a deep understanding of the business and its operating model; and the ability to prioritise.'

How do you think governance will evolve in the future?
'The advisory role of governance professionals will continue to grow, which will place greater emphasis on people and influencing skills to supplement the core technical skills of governance professionals. A greater emphasis on end-to-end governance will require governance professionals to have a broader perspective of and greater connection with the business. Also, I expect there will be further integration of technology into governance meetings and supporting processes.'

What inspires you in your life and work?
'The aim to continuously improve what I do, support my family as best I can and pass on my experience to others.'

> "the advisory role of governance professionals will continue to grow, which will place greater emphasis on people and influencing skills to supplement the core technical skills of governance professionals"

Paul Stafford FCIS FCS, Corporation Secretary, The Hongkong and Shanghai Banking Corporation Ltd

How do you fill your time outside work?
'Spending time with family and friends. I also enjoy hiking, the gym, reading, trying to play golf and going to the cinema.' CS

“

I am proud to represent a sector playing a pivotal role in the nurturing of governance professionals, current and future

”

Alan Au FCIS FCS, PhD (Waikato), MBA (Massey), MMS (Waikato), Institute Education Committee member and Dean, Lee Shau Kee School of Business and Administration, The Open University of Hong Kong

What is your role as a governance professional?

'As an educator, I guess my role is like a time traveller, bridging the past and the present and taking the present into the future. Please allow me to explain. What is knowledge, and in this particular context, business knowledge? In a nutshell, it is the summing up of wisdom and experiences into concepts and models. University is where not only the transfer but also creation of knowledge happens. When we educate students, we are passing on the baton of knowledge to the next generation. When we do research, we are conquering the frontier of the unknown and extending our knowledge into the future. As such, while I do not carry fancy titles, I am proud to represent a sector playing a pivotal role in the nurturing of governance professionals, current and future.'

What was your career path to your current role?

'My academic career started in New Zealand. I joined The Open University of Hong Kong (OUHK) as a lecturer in 1995 and gradually moved up in rank to full professor in 2008. I assumed the role of Associate Dean of the Lee Shau Kee School of Business and Administration in 2010, and was appointed Dean in 2015. I

Photographer: Michael Kistler

Alan Au FCIS FCS

initiated the production of a number of television programmes on corporate governance, management and marketing for the university's "Open for Learning" programme, which was broadcast on the-then two major public broadcasting channels in Hong Kong to promote lifelong learning. In particular, the "Corporate Governance in Action" programme was a collaboration with The Hong Kong Institute of Chartered Secretaries, which received excellent feedback from the public and within the profession. As an academic, I have published widely in international refereed journals, covering areas such as business ethics, global management and marketing. Serving as a specialist for the Hong Kong Council for Accreditation of Academic and Vocational Qualifications (HKCAAVQ), I am regularly invited to chair, or be an expert member, on panels for the accreditation of both local and overseas degree programmes offered in Hong Kong.'

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

'Governance is as old as time. Governance issues were relevant to the priests in 18th-century BC Babylon who created the world's first recorded banking system. At its core, governance comes into play where someone is the manager of other people's money rather than their own, as Adam Smith points out in Book 5, Chapter 1 of his masterpiece *The Wealth of Nations*. The core value of governance is imposing checks and balances to steer the convergence of the many interests among stakeholders. In fact, the shift away from a shareholder primacy to a multi-stakeholder approach, emphasising the need to serve the common good, actually brings us back to Adam Smith's view. In Book 1, Chapter 8 of *The Wealth of Nations*, he writes that – "No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It is but equity, besides, that they who feed, clothe, and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, clothed and lodged." This is food for thought for everyone against the backdrop of globalisation.'

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

'Since I was talking about Adam Smith, I think the virtues he outlined in another of his masterworks, *The Theory of Moral Sentiments*, can be a useful guide. He mentions that a virtuous person has four qualities: prudence, justice, beneficence and self-command. I think these are also the quintessential qualities that make a successful, or more importantly, good governance professional.

Prudence allows us to moderate our excesses, while justice motivates us to be accountable for our actions. As such, both are imperative in the pursuit of corporate social responsibility. Corporate scandals harm not just the companies involved, but also the lives of those who placed their trust in those companies. Meanwhile, beneficence inevitably promotes the fulfilment of the happiness of others. This reassembles the "creating shared value" concept whereby the purpose of a company should be to satisfy social needs. Finally, self-command contains our passions and reins in our destructive actions, thereby performing a crucial aspect of governance – risk management.'

How do you think governance will evolve in the future?

'A silver lining of the current crisis is the unique opportunity for all of us to develop new perspectives. "Conscious capitalism" is perhaps an area which will get more attention in the future. In short, this suggests that profit-seeking should not be the only purpose of businesses – they should use their resources to address the economic, social and environmental challenges confronting society. Clearly, the practice of governance will need to adapt in turn to this new focus on the common good.'

What inspires you in your life and work?

'It may sound clichéd, but if it is not for nurturing youth, why else would I have become a business educator?'

How do you fill your time outside work?

'Nothing much. Since my schedule is packed with engagements most of the time, I either spend time with family or become a couch potato whenever I can afford to.' CSj

Professional Development

Seminars: October 2020

5 October

Mainland company secretarial practice series: alteration in corporate structure – wholly foreign owned enterprise

Speaker: Desmond Lau ACIS ACS, Institute Professional Development Director

7 October

Data privacy and cybersecurity – compliance & case studies

Chair: Mohan Datwani FCIS FCS(PE), Institute Deputy Chief Executive

Speakers: Frankie Tam, Technology Lawyer, Eversheds Sutherland; Emil Chan, FinTech Committee Chairman, Smart City Consortium; and Helina Lo, Head of Risk and Regulatory Compliance, and Stefano Fois, CIO Advisory Practice Lead, Sia Partners

9 October

Company secretarial practical training series: non-Hong Kong company and dormant company: practice and application

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

12 October

Hong Kong Limited Partnership Fund Ordinance

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

Speakers: Anson Law, Senior Manager, Market Development Division, Hong Kong Monetary Authority; and Jingjing Jiang, Partner, King & Wood Mallesons

13 October

Company secretarial practical training series: annual reports of listed companies

Chair: Desmond Lau ACIS ACS, Institute Professional Development Director

Speakers: Carina Foo ACIS ACS(PE), Director, Sam Lo ACIS ACS, Company Secretarial Manager, and Joyce Cheung, Corporate Finance, Legal & PR translations, CS Legend Corporate Services Ltd; and Peter Chan, Partner, Unicorn Financial Company Ltd

21 October

People oversight: what boards should be doing? Practical sharing for the governance professional

Speakers: Oliver Ziehn, Partner, and Philip Mackie, Senior Associate, Lintstock Ltd; and Gillian Meller FCIS FCS, Institute President, and Legal and European Business Director, MTR Corporation Ltd

23 October

Governance, risk & compliance series: digital transformation of regulatory risk management and corporate governance compliance (from a lawyer's perspective)

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

Speaker: David Tiang, Partner, Tiang & Partners

28 October
Redefining AGMs amid COVID-19

Speakers: Lee Wan Lik, Managing Director, and Michael Yap, Executive Director, Azeus Systems Ltd; Michael Ling, Deputy Company Secretary, CLP Holdings Ltd; and Gillian Meller FCIS FCS, Institute President, and Legal and European Business Director, MTR Corporation Ltd

30 October
Purposeful governance – an applied stakeholder responsive approach to governance

Speakers: Pru Bennett, Senior Advisor, Brunswick Group; Peter Brien, Partner, Slaughter and May; and Gillian Meller FCIS FCS, Institute President, and Legal and European Business Director, MTR Corporation Ltd

Video-recorded CPD seminars

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

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

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
11 January 2021	4.00pm–6.00pm	Embark on a journey to next generation entity governance and compliance	2
14 January 2021	6.45pm–8.15pm	Subsidiary governance	1.5
18 January 2021	6.45pm–8.15pm	Company secretarial practice training series – formation and ongoing corporate secretarial compliance of companies limited by guarantee for charitable purpose in the era of the pandemic	1.5
21 January 2021	6.45pm–8.45pm	Purposeful governance: a stakeholder responsive approach to surviving/flourishing under a new economic order – to learn and respond to where practical governance is heading and attract investor interests	2

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

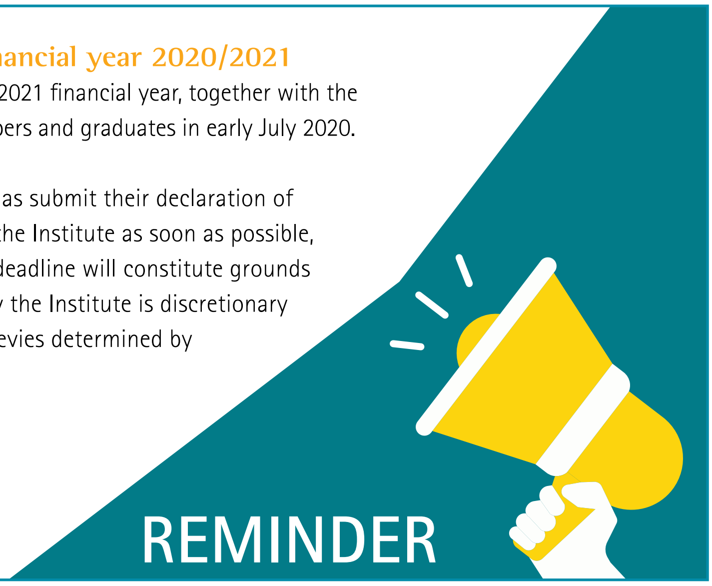
Membership

Membership/graduateship renewal for the financial year 2020/2021

The membership/graduateship renewal notices for the 2020/2021 financial year, together with the debit notes, were sent to registered email addresses of members and graduates in early July 2020.

Members and graduates should settle the payment, as well as submit their declaration of character and standing, online via their user account with the Institute as soon as possible, but no later than 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 Rose Yeung: 2830 6051, or email: member@hkics.org.hk.



New graduates

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

Au Yeung Hung Yuen, Steve	Hui Cheuk Ying	Lau Hei Man	Tang Xiaojiao
Chan Ka Yi	Ip Hok Hin	Lau King Ho	Tse Chung Man
Chan Wai Chung, Agatha	Jiang Bin	Lau Nga Ting	Wan Chi Hei
Chan Wai Lun	Kam Nam Ngan	Lee Yee Ting	Wong Kit Leung
Cheng Yuk Mei	Ko Yat Fei	Lin Sze Ning, Elaine	Wong Lok Yiu
Chu Man King, Grace	Kwok Wan Ying	Lo Chun Ki	Wong Wai Kiu
Fong Mei Yin	Lai Ching Wah	Lo Michael Chitung	Woo Yuen Ping
Fong Oi Yan	Lai Wai Hang	Mui Ying Han, Angela	Yeung Pui Ying
Fung Hon Wa	Lai Wing Ki, Vicki	Ng Shi Kwan	Yin Hang
Fung Yan Yi	Lam Kam Na	Tam Tsz Yan	Yu Lap Pan
Ho Man Shuen	Lam Suk Man	Tang Wing Sze	Zhong Yingxin

Forthcoming membership activities

Date	Time	Event
28 January 2021	4.30pm–6.00pm	Member's Networking – Invest HK Visit (Members only)

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

Membership activities: November 2020

17 November

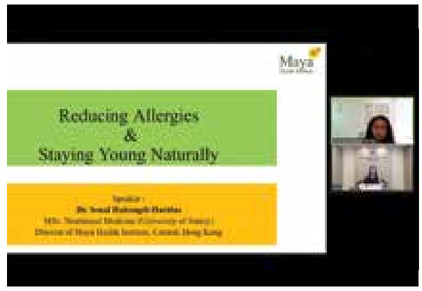
Financial planning for retirement – introduction of annuity plan (free webinar)

23 November

CGI/HKICS international governance qualification – from enhancement to excellence (free webinar)

26 November

Fun & Interest Group – reducing allergies and staying young naturally: a nutritional approach (free webinar)



Advocacy

Fireside Chat Series with Governance Professionals over Lunch Hours

Since mid-November 2020, the Institute has been hosting a series of webinars – the Fireside Chat Series – with governance professionals from among the ranks of the Institute's membership, of all ages and in different phases of their career development. Speakers shared different areas of their life, from work, family, hobbies and community to personal well-being.

In the first session, held on 13 November, Institute President Gillian Meller FCIS FCS shared tips on how to deal with challenges at work. Institute Past President Neil McNamara FCIS FCS discussed the qualities involved in being a governance professional in the second session, held on 19 November, while Institute members Crystal Lee ACIS ACS and Emily Ng ACIS ACS shared their study and work experience in the third session, on 27 November 2020. Institute Chief Executive Samantha Suen FCIS FCS(PE) served as moderator for all sessions.

Please stay tuned for the Fireside Chat Series in 2021.

Advocacy (continued)

The 54th Affiliated Persons ECPD seminars in Guilin

The Institute held its 54th Affiliated Persons Enhanced Continuing Professional Development (ECPD) seminars, under the theme 'Annual performance reporting and information disclosure', in Guilin from 25 to 27 November 2020. Institute Vice-President Dr Gao Wei FCIS FCS(PE) delivered the opening remarks. The seminars attracted over 200 participants, who were mainly board secretaries and equivalent personnel, directors, supervisors and other senior executives from companies listed or to-be-listed outside and in the Mainland.

Twelve speakers and panellists shared their knowledge and experience on the following topics:

- Hong Kong capital market governance and regulatory architecture
- Overview of the Hong Kong information disclosure regulations and the management and control responsibility of directors and senior management
- New perspectives: board secretary and fund manager perspectives on current affairs
- Summit conversation: board secretary versus fund manager
- Analysis on the focus and traps of listed companies' compliance practices
- Perspectives on hot issues of current capital operations
- Discussion on financial auditing and performance reports – the changes of 2020 performance reports
- Case study: ESG report practices of Ping An Insurance (Group) Company of China, Ltd

At the final session of the group discussion, participants learned from and were inspired by one another through exchanging their views on the topic 'Annual report preparation and information disclosure under the current situation'.

The Institute would like to express its appreciation to the associate organiser, ShineWing CPA; and event partners, Herbert Smith Freehills, Clifford Chance and Shenzhen Mingda Capital Management Co, Ltd; as well as all speakers and participants, for their generous support and participation.

Institute Past President attends MAICSA annual conference

The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) held its 2020 Annual Governance Conference on the theme 'New Decade Governance – Influence, Strategy, Impact' on 2 and 3 December 2020 in virtual format. Institute Past President and Council member Natalia Seng FCIS FCS(PE), attended the conference as one of the panellists in the panel discussion on 'Beneficial Ownership: Practical Sharing'. Institute Chief Executive Samantha Suen FCIS FCS(PE) also joined the conference.

Dr Gao Wei serves on the Panel of Judges for the ESG Leading Enterprise Awards 2020

Institute Vice-President Dr Gao Wei FCIS FCS(PE) was invited by the Chinese edition of Bloomberg Businessweek to serve as a member of the Panel of Judges for the ESG Leading Enterprise Awards 2020. The event is designed to recognise exemplary enterprises that excel in incorporating environmental, social and governance (ESG) goals and activities in their development strategies with outstanding business performance and growth.

Online guest lecture at The Hong Kong Polytechnic University

On 16 November 2020, Institute Council member and Vice-Chairman of the Education Committee Wendy Ho FCIS FCS(PE) conducted an online guest lecture on the 'Role of Company Secretaries in Hong Kong' to Bachelor of Business Administration students (majoring in Accounting, or Accounting and Finance) of The Hong Kong Polytechnic University. The dual qualification of Chartered Secretary and Chartered Governance Professional was introduced to the students.

HKBEDC 25th anniversary event

Hong Kong Business Ethics Development Centre (HKBEDC) organised its first-ever online anniversary event, on 19 November 2020, to commemorate its silver jubilee. Institute Chief Executive Samantha Suen FCIS FCS(PE) was invited to join the event as a representative of the Institute to congratulate HKBEDC for its hard work over the past 25 years.

A Work-Hard Play-Hard Governance Professional photo competition

The Institute has organised a photo competition, entitled: A Work-Hard Play-Hard Governance Professional, to showcase how governance professionals live life to the fullest.

An online photography skills workshop was conducted by professional photographer Michael Kistler on 24 November 2020 for those interested in participating in the competition.

The photo submission deadline closed on 20 December. The judging panel selected the top 10 photos, based on the judging criteria. These photos will be posted on the Institute's Instagram page, @HKICS_official, for public voting during the period from 29 December 2020 to 15 January 2021.

Prizes will be awarded to the top three finalists selected by the judging panel. The photo on the Institute's Instagram page with the highest number of likes will receive the Most Popular Photo award. Prizes will be presented at the Institute's Online Annual Celebration, to be held on 25 January 2021. Please follow the Institute's Instagram page and vote for your favourite photo!

The Institute would like to thank Mr Kistler for conducting the workshop, as well as all members, graduates and students who have participated in the photo competition, and the members of the judging panel for their time and expert views.

Advocacy (continued)

Face Mask Design Competition

The Institute is organising a Face Mask Design Competition entitled: Face Mask Becomes a Fashion Statement. The Institute will provide a reusable face mask to each of the first 50 participants who register in the Face Mask Design Competition. These 50 participants will be asked to submit their designed face mask to the Institute.

The face masks were procured from Les Beatitudes, a social enterprise whose mission is to 'connect different groups to positively address social issues and support the underprivileged, environment and women through arts & crafts'.

A judging panel will select and announce the top five masks on 18 January 2021, based on the following criteria: creativity, aesthetic quality, craftsmanship and environmental friendliness. Either the Institute's logo or name must be displayed on the submitted face mask. The use of eco-friendly or reusable materials in designing the face mask is preferred. The competition for face mask design submission is now open, with an extended enrolment deadline of Wednesday 30 December 2020.

Each of the top five finalists will have up to two minutes to individually showcase their ideas on stage at the Institute's Online Annual Celebration on 25 January 2021. The judging panel will rate their presentations and then select one winner. In addition, participants at the Online Annual Celebration will vote via internet to select the Audience's Favourite Mask.

Attractive prizes will be awarded.

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

Chartered Governance Qualifying Programme (CGQP)

Update of CGQP syllabus and recommended study materials

The syllabus and the relevant sections of the online study materials of the CGQP modules – Hong Kong Company Law and Corporate Secretaryship and Compliance, as well as the recommended readings for the Corporate Governance module – have been updated. With effect from the June 2021 examination diet and onwards, the new syllabus will be incorporated into the examinations.

A summary of the updates is listed below.

CGQP module	Updated syllabus	Recommended study materials
Hong Kong Company Law	Topic area 'Business structures' under Section A: sources of law, business structures and company formation: Additional learning areas • Limited Partnership Fund • Open-ended Fund Company	The relevant sections of the online study materials have been updated to include the new syllabus: • Limited Partnership Fund Ordinance (Cap 637) • Securities and Futures Ordinance (Cap 571) Part IVA
Corporate Secretaryship and Compliance	Topic area 'Members' under Section A: the role of the company secretary, the board and other stakeholders: Revised learning areas where a typo was found in the areas of 'Unfair prejudice' • members' rights must **not** be prejudiced Topic area 'Company compliance' under Section B: regulatory requirements for companies: Additional learning areas • Limited Partnership Fund • Open-ended Fund Company	
Corporate Governance	N/A	The following recommended readings have been included in the online study materials: • UK Stewardship Code 2020 • HKICS Ethics, Bribery and Corruption Guidance Notes

For details, please visit the Syllabus page under the Studentship section of the Institute's website: www.hkics.org.hk.

Chartered Governance Qualifying Programme (CGQP) (continued)

Studentship activities: November and December 2020

17 November

Governance Professionals Information Session

3 December

Governance Professionals Information Session (Putonghua session)

Notice:

Policy – payment reminder

Studentship renewal

Students whose studentship expired in October 2020 are reminded to settle the renewal payment by Wednesday 23 December 2020.

Featured job openings

Company name	Position
CHHK Medical Centre Ltd	Manager, Company Secretariat
Union Season Holdings Ltd	Assistant Company Secretary
Tiptop Energy Ltd (Sinopec International Petroleum E&P HK Overseas Ltd	Legal Advisory
Mazars CPA Ltd	Associates – Corporate Secretarial

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

SFC consults on investor identification

On 4 December 2020, the Securities and Futures Commission (SFC) launched a consultation on proposals to introduce investor identification for the securities market in Hong Kong. Introducing an investor identification regime for the Hong Kong market was one of the SFC's strategic priorities outlined in its Annual Report 2018-19 released in June 2019. Investor identification measures are in place in other major overseas markets including the US, Europe, Australia and Singapore.

Under the proposed investor identification regime, licensed corporations and registered institutions would submit clients' names and identity document information to a data repository. Before submission, licensed corporations and registered institutions must comply with the Personal Data (Privacy) Ordinance by obtaining the client's express consent to do so and ensuring that the client is fully aware of the purposes for which the personal data is to be used. Clients who have not provided the required consent could continue to sell or withdraw their securities but would not be able to make further securities purchases or deposits.

Currently, the trading system used by The Stock Exchange of Hong Kong Ltd (the Exchange) only captures information about exchange participants and not the identities of the clients instructing securities orders. Under the proposed regime, each on-exchange securities order and off-exchange trade reported to the Exchange will be tagged with a Broker-Client Assigned Number (BCAN) which is unique to each client. Where necessary, this will enable the SFC to map the order or trade to the client identity information stored in a data repository together with the BCAN.

The proposed requirements would apply at the trading level to on-exchange orders for securities listed or traded on the Exchange, as well as reportable off-exchange trades of these securities. A separate securities transactions reporting regime is proposed for over-the-counter securities transactions in ordinary shares and real estate investment trusts listed on the Exchange.

The proposed regime is expected to be implemented in 2022 at the earliest. Market participants and other interested parties are invited to submit their comments to the SFC on or before 4 March 2021.

More information is available on the SFC website: www.sfc.hk.

SFC concludes consultation on changes to the REIT Code

On 27 November 2020, the Securities and Futures Commission (SFC) released consultation conclusions on proposals to provide Hong Kong Real Estate Investment Trusts (REITs) with more flexibility in making investments.

On 9 June 2020, the SFC launched a two-month Consultation on Proposed Amendments to the Code on Real Estate Investment Trusts (REIT Code). Key proposals included:

- allowing REITs to make investments in minority-owned properties subject to various conditions
- allowing REITs to make investments in property development projects in excess of the existing limit of 10% of gross asset value (GAV) subject to unitholders' approval and other conditions
- increasing the borrowing limit for REITs from 45% to 50% of GAV, and
- broadly aligning the requirements for REITs' connected party transactions and notifiable transactions with the requirements for listed companies.

The proposals received broad support and will be implemented with some modifications to clarify specific requirements such as those which apply to minority-owned properties. The revised REIT Code will become effective upon gazettal. For connected party transactions which were entered into before the effective date, a transitional period of six months will be allowed for REITs to comply with the revised requirements. The SFC will also provide further guidance to the industry by way of frequently asked questions.

More information is available on the SFC website: www.sfc.hk.

Stock Connect update

On 27 November 2020, Hong Kong Exchanges and Clearing Ltd (HKEX) announced that its wholly owned subsidiary, The Stock Exchange of Hong Kong Ltd (the Exchange), has reached an agreement with Shanghai Stock Exchange (SSE) and Shenzhen Stock Exchange (SZSE) on the Stock Connect inclusion arrangements for eligible pre-revenue biotech companies listed in Hong Kong, as well as for eligible A shares listed on the SSE's Sci-Tech Innovation Board (STAR Market).

Inclusion arrangements for companies listed on STAR Market

SEHK, SSE and SZSE have previously reached consensus on the Stock Connect inclusion arrangements for A+H companies listed on the STAR Market. Upon further discussions, the three exchanges have agreed that STAR Market–listed shares that are constituent stocks of the SSE 180 Index and SSE 380 Index, or have H share counterparts listed in Hong Kong, will be eligible for Northbound trading under the existing Shanghai-Hong Kong Stock Connect arrangements. Accordingly, their corresponding H shares will be included in Southbound trading of Stock Connect pursuant to the existing Stock Connect arrangements. Given the special investor eligibility requirements of the STAR Market, STAR Market-listed shares will only be accessible via Northbound trading of Stock Connect by institutional professional investors as defined under relevant Hong Kong rules. The relevant rules for the arrangement are subject to regulatory approval in Hong Kong and the Mainland. The three exchanges will actively engage in business and technical preparations and expect inclusion to take place in early 2021 after market preparations are complete.

Inclusion arrangements for biotech companies listed in Hong Kong

The three exchanges have also agreed that shares of pre-revenue biotech companies listed under Chapter 18A of Hong Kong's Main Board Listing Rules that are eligible constituent stocks of the Hang Seng Composite Index, or have corresponding A shares listed on SSE or SZSE, will be included in Southbound trading of Stock Connect under the existing Stock Connect arrangements. Shares of biotech companies that are H shares in STAR Market–listed A+H companies will be included in Southbound trading of Stock Connect pursuant to the inclusion arrangements for STAR Market-listed shares mentioned above.

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

Main Board profit requirement proposal

On 27 November 2020, The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly owned subsidiary of HKEX, published a consultation paper on the Main Board Profit Requirement (the Consultation Paper). The minimum profit requirement under Main Board Rule 8.05(1)(a) (Profit Requirement) has not been changed since its introduction in 1994. Since the minimum market capitalisation requirement under Main Board Rule 8.09(2) (Market Capitalisation Requirement) was increased from HK$200 million to HK$500 million in 2018, the Exchange has seen an increase in listing applications from issuers that marginally met the Profit Requirement, but had relatively high proposed market capitalisations.

The Exchange believes this misalignment of the Profit Requirement with the increased Market Capitalisation Requirement, has raised regulatory concerns as to the quality of companies seeking Main Board listings. Consequently, the Exchange is proposing to increase the Profit Requirement by either 150%, based on the percentage increase in the Market Capitalisation Requirement in 2018 (Option 1); or by 200%, based on the approximate percentage increase in the average closing price of the Hang Seng Index from 1994 to 2019 (Option 2).

The Exchange also proposes introducing transitional arrangements if the proposal is adopted. It will also introduce temporary conditional relief from the increased Profit Requirement to facilitate the listing of quality companies whose financial results have been temporarily and adversely affected by the COVID-19 pandemic and the economic downturn (each application will be considered on a case-by-case basis).

The Consultation Paper is available on the HKEX website: www.hkex.com.hk. The two-month public comment period will end on 1 February 2021.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