

CSj

July 2020

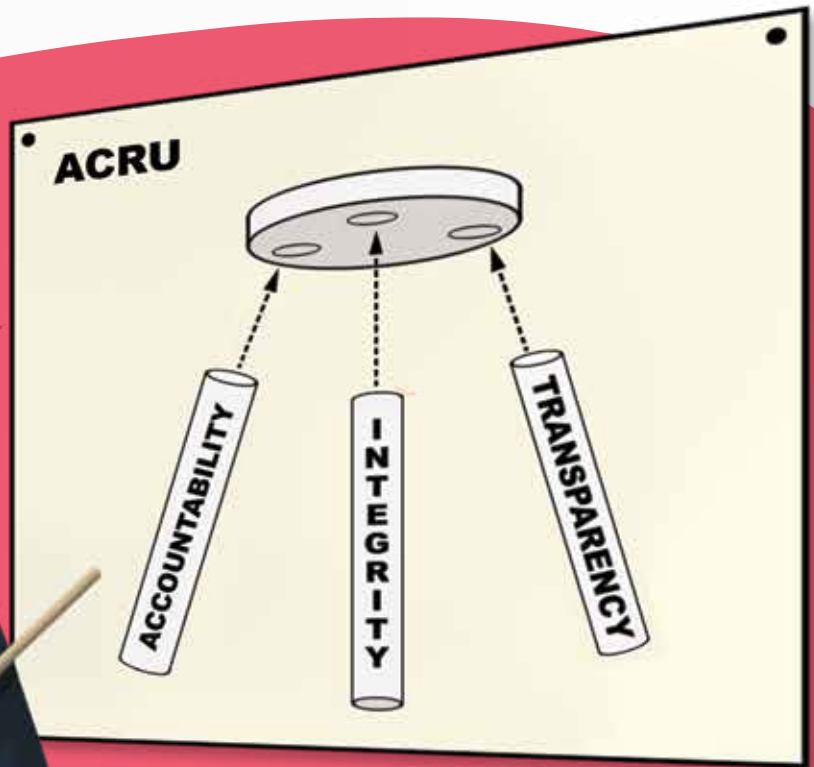
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The journal of The Hong Kong
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ACRU 2020 review

Individual accountability
COVID-19 disclosure lessons
AML/CTF compliance



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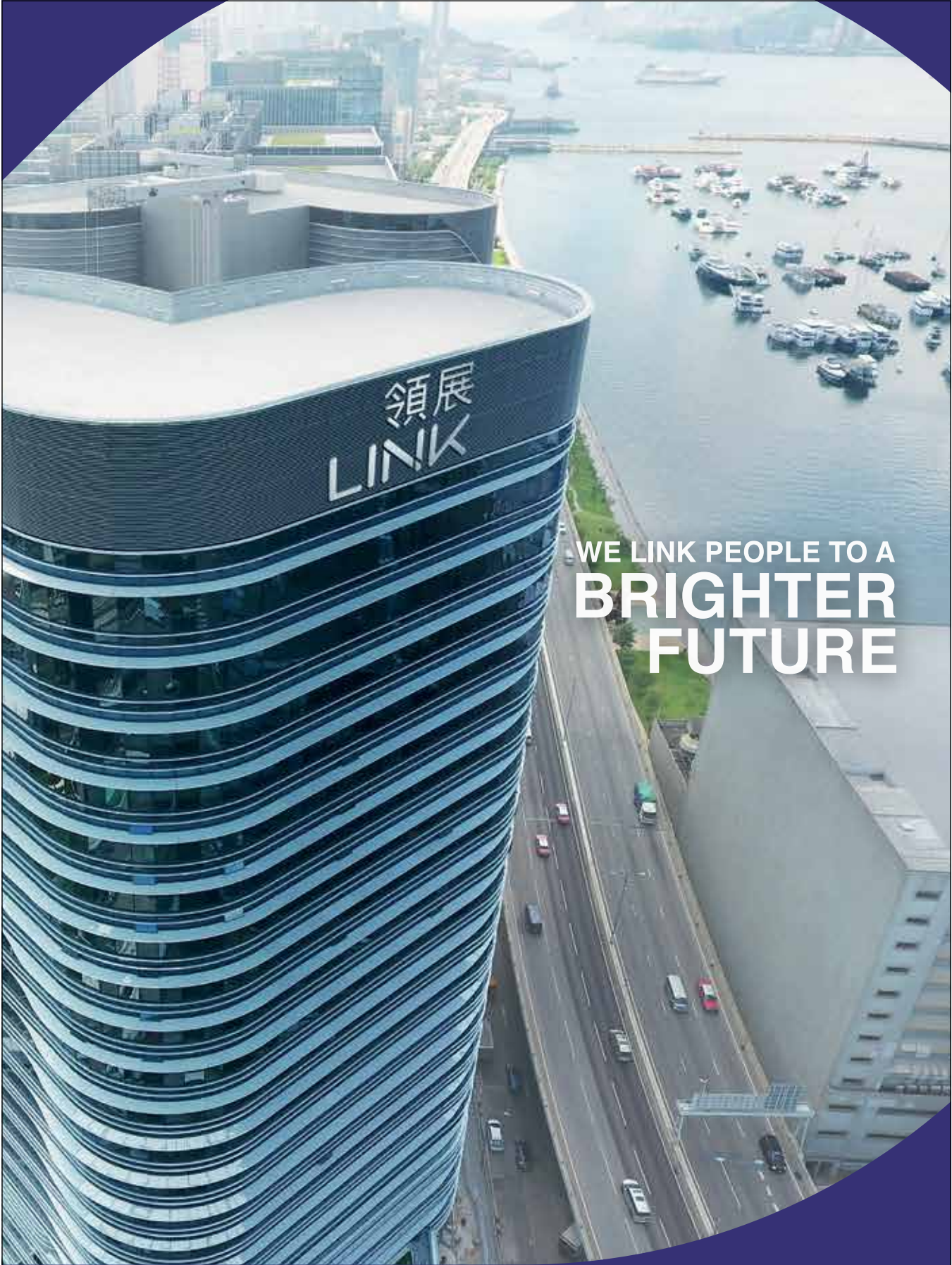
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The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of 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 – formerly known as The Institute of Chartered Secretaries and Administrators (ICSA) of London. It was a branch of The Chartered Governance Institute 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.

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This month sees the third instalment of our new Careers in Governance column, featuring a personal and professional profile of Dominic Wu ACIS ACS, Managing Director, Senior Risk Manager, Risk Management and Compliance, Asia Pacific, BNY Mellon.



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ACRU – your guide to good governance

This month's edition of *CSj* reviews our Annual Corporate and Regulatory Update (ACRU) conference held in webinar mode on 5 June 2020. Over 1,900 participants attended this year's ACRU and the day's discussions took in the issues currently at the top of the governance agenda in Hong Kong – including corporate disclosure lessons from the COVID-19 pandemic; new environmental, social and governance (ESG) reporting requirements; and compliance recommendations on anti-corruption and Hong Kong's two-year-old anti-money laundering and counter-terrorist financing (AML/CTF) regime.

These diverse themes may seem to have little in common, but every ACRU is an excellent guide to what good governance should look like, whatever the type of organisation and whatever the sector of the economy you are working in. The key messages, both of the regulators and practitioners speaking at this year's ACRU, were all about implementing the core governance principles of transparency, accountability and integrity.

Transparency is a starting point for effective governance and it featured highly in the discussions at this year's ACRU. Speakers from Hong Kong Exchanges and Clearing Ltd (HKEX) shared some lessons that have emerged from listed issuers' handling of the COVID-19 pandemic – in particular the need for quality disclosure. Nothing tests our corporate reporting processes quite like a major crisis and the key message at this year's ACRU was to avoid hiding

behind vague, generalised disclosures. Stakeholders need to know in as specific detail as possible what impact the crisis is having on company operations, and what the board and management are doing to mitigate the risks.

Another disclosure issue high on the agenda in Hong Kong at the moment is the latest HKEX upgrade of its 'ESG Reporting Guide'. Since this latest upgrade became effective earlier this month, listed companies need to be already collecting data for their next ESG report in compliance with the key changes made to the guide. In particular, HKEX has introduced a mandatory requirement for disclosure of the board's role in ESG governance and has upgraded the disclosure obligations of all 'social' key performance indicators (KPIs) to comply or explain. In addition, listed issuers will be required to disclose the significant climate-related issues which have impacted or may impact them and to disclose relevant targets relating to their 'environmental' KPIs. The deadline for publication of ESG reports has also been shortened to within five months after the financial year-end.

Transparency needs to be backed up by accountability and regulators' determination to impose individual accountability for corporate misconduct was another key theme of ACRU 2020. This year's forum made it very clear that personal accountability is not only an issue for directors – governance professionals may also find themselves the target of enforcement actions.

The core principles of transparency and accountability reinforce each other, but together they form two legs of a three-legged stool. The third leg is provided by the principle of integrity. To enforce accountability you have to have a sense of what is, and what is not, deemed to be acceptable behaviour and that will not always be found in the rule book.

Integrity issues featured highly in the ACRU discussions, in particular the message that achieving 'ethical governance' goes beyond just complying with the law. The benefits for organisations that aim for ethical governance, as well as legal compliance, were eloquently argued by Anna Lam, Executive Director (Acting) of the ICAC's Hong Kong Business Ethics Development Centre, in her ACRU presentation. She didn't stop there, however, because the benefits of ethical governance are not only felt by companies themselves but by the entire Hong Kong market.

Our work often focuses on the minutiae of good governance – establishing effective internal controls, arranging board meetings and taking minutes for example, but it is good to look up occasionally and see the bigger picture. I think Anna Lam's presentation was a valuable reminder that the work we do as governance professionals has wider implications. We can be justly proud of our work ensuring that the core principles of good governance – in particular transparency, accountability and integrity – are implemented by the organisations we work for, since this forms the basis upon which our market, and indeed our society as a whole, has built its success.

Before I go, I would like to invite readers to join the next major event in our CPD calendar – our Corporate Governance Conference (CGC) to be held on 25 and 26 September 2020. Further details on this year's CGC, which will be exploring the theme – 'Building the Modern Board: A 20/20 Vision', will be available on our website and in future editions of this journal. Book now to join this important conference.

Gillian Meller FCIS FCS

企业规管最新发展研讨会 (ACRU) - 良好治理指引

本月《香港特许秘书公会会刊》回顾了2020年6月5日我们通过网络会议形式召开的企业规管最新发展研讨会 (ACRU)。1,900余名参会人员参加了本年度ACRU，当天讨论了当前香港治理议程中最重要的问题，包括从新冠肺炎疫情中汲取的公司披露经验；新的环境、社会及治理(ESG)报告要求；以及有关反腐败和香港两年前颁布的“打击洗钱与恐怖分子资金筹集”(AML/CTF)而订定的制度。

这些多样化的主题之间似乎没什么共通点，但每一届ACRU都为良好治理的界定提供了绝佳指引，无论您任职于什么类型的机构及经济领域。监管机构和从业人员在今年ACRU上发言所传递的关键信息，都是践行透明度、问责和诚信的核心治理原则。

透明度是有效治理的起点，在今年ACRU的讨论中得到了高度重视。香港交易及结算有限公司（港交所）的发言人分享了上市发行人应对新冠肺炎疫情的经验教训，特别是高质量披露的必要性。重大危机是我们公司报告流程的试金石，今年ACRU传递的关键信息是避免模糊、笼统的披露。利益相关者需要详细了解危机对公司运营的影响，以及董事会和管理层为降低风险所采取的措施。

对于在香港上市的公司而言，当前另一重要披露问题是港交所近期对其《环境、社会及管治报告指引》的升级。自本次最新升级于本月初生效以

来，上市公司就已经需要根据指引的重大变更内容，为下一次ESG报告收集数据，满足合规要求。尤其是，港交所引入了披露董事会在ESG治理中职责的强制要求，并将所有“社会”关键绩效指标(KPI)的披露义务升级为“不遵守就解释”。此外，还要求上市发行人披露已经或可能会对上市发行人产生影响的重大气候相关事宜，以及与其“环境”KPI相关目标。ESG报告的刊发日期也缩短至报告期财政年度结束后五个月内。透明度需要以问责为后盾，监管机构对企业不当行为进行个人问责的决心是2020年ACRU的另一关键主题。今年的ACRU非常清楚地指出，个人问责不仅是董事的问题，公司治理专业人员也可能发现自己成为执法行动的目标。

透明度和问责这两项核心原则相互加强，是治理“三驾马车”中的两辆。第三辆是诚信原则。实施问责，要清楚区分“什么是可接受的以及什么是不可接受的行为”，而这并非照章行事就能实现。诚信问题在ACRU讨论中异常激烈，特别是传达出实现“诚信治理”不仅仅是遵守法律的理念。香港商业道德发展中心（代理）总干事林淑仪在其ACRU演讲中，富有说服力地论证了致力于诚信治理和法律合规的组织所能获得的好处，并进而强调，诚信治理的好处不仅公司本身可以感受到，整个香港市场都能感受到。

我们的工作通常侧重于良好治理的细节，如建立有效的内控、安排董事会会议和作会议记录，但偶尔高瞻远

瞩，了解大局很有裨益。我认为林总干事的演讲是在提醒我们，公司治理专业人员的工作有更广泛的影响。我们应该为自己的工作感到自豪，因为我们确保自己所服务的组织实施了良好治理的核心原则，特别是透明度、问责和诚信，而这构成了市场乃至整个社会的成功基础。

最后，我想邀请读者们参加公会持续专业发展(CPD)日程中的下个重要活动——将于2020年9月25日至26日举行的公司治理研讨会(CGC)。今年CGC的主题是“建立现代董事会：20/20愿景”，更多详细信息请查看公会网站及本刊后续文章。请尽早报名，参与这个重要的研讨会！



马琳 FCIS FCS

Individual accountability

ACRU 2020 review: part one

A central theme to emerge from the Institute's 21st Annual Corporate and Regulatory Update (ACRU) webinar, held on 5 June, was that regulators in Hong Kong will increasingly be holding individual executives, board members and professional practitioners accountable for corporate misconduct.



Companies act through individuals, but ambiguity around the roles and responsibilities of the people within organisations has meant that enforcing individual accountability has not been easy. However, the regulatory environment, both in Hong Kong and globally, is changing and regulators are using every available power they have to hold individuals accountable for corporate misconduct.

Who is at risk of enforcement action?

In Session 1 of this year's ACRU, Jon Witts, Head of Enforcement, Listing Division, Hong Kong Exchanges and Clearing Ltd (HKEX), pointed out that companies can only operate through their people. For every breach of rules by a company, there are individuals who have either caused or allowed the company to fall into breach. He emphasised that, while directors are obviously a key focus of HKEX enforcement work, the regulator will look at everyone who is at fault.

Senior management and professional advisers have a responsibility to ensure that issuers are run effectively and in compliance with the rules. He added that company secretaries, advisers and managers who work closely with directors, a category that applies to many people in the ACRU audience of course, have a key role in guiding directors to act in a compliant manner. He urged ACRU attendees to familiarise themselves with directors' fiduciary duties and duties of care, skill and diligence as set out in the listing rules.

He then addressed some of the common defences or explanations put forward by directors in HKEX enforcement investigations.

Ignorance is no defence

Individuals sometimes claim ignorance of the rules or the facts of the case. Mr Witts pointed out that this is no defence at all since it is the responsibility of directors to know the rules and the facts of the case. A variant of this defence is the argument that the directors were newly appointed and still unfamiliar with their obligations. Mr Witts pointed out that there is no grace period for new directors. This is where director induction in the first weeks of their appointment plays a key role. Directors need in particular to look at the robustness of the company's internal controls because, if the controls are unsatisfactory, not only the company but the directors themselves will be at risk.

Another defence relied on is that the directors delegated responsibility for handling the issue in question. Where the executive directors have engaged in malpractice and the independent non-executive directors (INEDs) have claimed ignorance of the facts of the case, HKEX will look at whether the INEDs failed to ask the right questions or failed to use their independent judgement, or had failed to put in place controls and procedures that may reduce the risk of malpractice or result in its detection

more readily. Where the executive directors claim that the INEDs on a particular board committee were given charge of the issue, Mr Witts pointed out that the board as a whole still has to maintain a requisite level of oversight. 'Delegation is permitted and is often essential, but our investigations will look at whether the delegation was properly handled. If you have the right mindset and are questioning everything, you are on the right track,' Mr Witts said.

The question as to whether different types of directors can be treated differently under the law was further explored in the Q&A at the end of Session 1. Edith Shih, FCG(CS, CGP) FCS(CS, CGP)(PE), the then International President, The Chartered Governance Institute; former Institute President; Executive Director and Company Secretary of CK Hutchison Holdings Ltd; and Chair of Session 1, asked whether it would be right for professional practitioners to be penalised for their special expertise – this after all would be a deterrent for these people to become INEDs.

Mr Witts said there was no intention to pursue individuals simply because they had particular qualifications. Where a professional practitioner has been

Highlights

- the regulatory environment, both in Hong Kong and globally, is changing and regulators are using every available power they have to hold individuals accountable for corporate misconduct
- managers and professional practitioners are at risk of enforcement action
- directors are expected to devote sufficient time and attention to understanding their business, maintaining an active interest in its affairs and applying a questioning mind to the information provided by management

“
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are on the right track
”

Jon Witts, Head of Enforcement,
Listing Division, Hong Kong Exchanges
and Clearing Ltd



given the lead in looking at a matter, the other directors still have a responsibility to ensure that the matter is properly handled. He emphasised that directors will be held accountable both for their collective and individual responsibilities. 'Some directors seem to have lost sight of the concept of collective responsibility. Whilst the case in respect of each person will be looked at individually, the principle of collective responsibility means that it will often be no real defence for one director simply to point out that another director is more to blame,' he said.

Lastly, another common defence relied on by directors is that the malpractice was successfully hidden and no controls could have stopped it from happening. Mr Witts pointed out that one of the jobs of directors is to ensure that adequate internal controls are in place. Malpractice and fraud may flourish in an environment where checks and controls are weak, or where the company culture creates an environment in which breaches of the rules are allowed to happen.

Mr Witts devoted the final part of his presentation to the solutions to

the problems highlighted above. He emphasised that having the right mindset is the key starting point. Having the right mindset at the very least means devoting sufficient time and attention to understanding the business, maintaining an active interest in its affairs and applying a questioning mind to the information provided by management. The listing rules might seem complex, he suggested, but directors should above all bear in mind the very straightforward requirements of Listing Rule 3.08 – namely the requirement for directors to have an active interest in the issuers affairs, a general understanding of its business and to follow up on anything untoward.

Individual accountability – a practitioners' perspective

Two years ago, the ACRU formula – which initially focused on facilitating the regulator/regulatee dialogue – was expanded to include the new Practitioners Sharing sessions. These sessions, designed to provide participants with insights from seasoned professionals on how to implement best practices, have subsequently become a major draw for ACRU participants and the three

Practitioners Sharing sessions of this year's ACRU complemented many of the regulators' presentations in the webinar.

Practitioners Sharing Session 1, chaired by Gillian Meller FCIS FCS, Institute President and Legal and European Business Director, MTR Corporation Ltd, focused on the latest trends in regulation and enforcement by the Securities and Futures Commission (SFC) in Hong Kong. She was in conversation with Jill Wong, Partner, Howse Williams, and Alva Lee, Head of Internal Audit & Risk Compliance Services, Hong Kong, KPMG China.

Ms Wong warned practitioners that the SFC is just as keen as HKEX to enforce individual accountability in Hong Kong. She pointed out that this trend is not in fact a new one. The SFC has had its Responsible Officer regime for a long time, at least since 2003, and brought in its Manager-in-Charge (MIC) regime in 2017. The MIC regime aims to ensure that there are named individuals with responsibility for overseeing the core functions of licensed corporations. Ms Wong emphasised the need for licensed corporations to train their MICs,

“
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in the shadows in the hope of
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SFC will use the full extent of its
enforcement powers to ensure
that they are held accountable
”

Jill Wong, Partner, Howse Williams

especially those in IT, Operations and HR, to understand their obligations and liabilities under the regime. 'They might have no idea of what accountability to a regulator will really mean,' she said.

She added that all market participants, not only those directly liable under the MIC regime, need to understand the aims of the MIC regime. The people running the company set the tone from the top but often they are not in the front line for accountability. 'The controlling minds may stay in the shadows in the hope of escaping accountability, but the SFC will

use the full extent of its enforcement powers to ensure that they are held accountable,' she said.

While the SFC has continued to pursue its 'front-loaded' philosophy – combining early regulatory intervention in listing matters and enhanced supervision of intermediaries – it has backed this up with focused enforcement actions against firms with important gatekeeping functions and individuals in senior roles.

Ms Wong recommended that practitioners monitor the public interest statements and the announcements of disciplinary actions issued by regulators in Hong Kong. 'These statements are useful since they help to educate the market – giving practitioners a good idea of what the regulators expect in terms of compliance,' Ms Wong said.

Handling SFC investigations

The panel discussion at the end of Practitioners Sharing Session 1 looked at how to handle regulatory investigations. Ms Meller presented



Ms Wong and Ms Lee with a fictional scenario whereby, late on a Friday afternoon, a company secretary receives a letter from the SFC asking for information relating to an inside information case that they are investigating.

The discussion emphasised the need to, firstly, cancel any plans you may have had for the weekend. You would then be well advised to read the letter in detail – in particular to ascertain whether your organisation is suspected of malpractice – and consult your head of legal on who can be informed of the investigation in compliance with statutory requirements for secrecy. This will usually include whoever has responsibility for inside information compliance within your organisation, as well as the CEO, the board chairman and the board committee with responsibility for inside information.

You should then get back to the SFC to let them know you are handling the matter – often a phone call is preferable since you can ask for further details of the case. You can then look at your legal obligations for making any necessary disclosures (taking into account any





confidentiality requirements) and whether a halt in trading will be needed.

Subsequent steps should include appointing an officer, usually the head of legal, company secretary or head of compliance to lead a thorough fact-

finding investigation of the matter and securing all documents relating to the investigation. This might include ensuring that relevant documents don't get destroyed as part of a routine record destruction policy – even if the usual retention period has expired.

The panel discussion also addressed the procedures to be followed if the letter accuses a specific director. For example, the director in question should be excluded from any internal enquiries and any board discussions of the matter, but what information can be shared with that director? Should the director be suspended if evidence of malpractice is found? Moreover, should the organisation pay for independent legal advice for the accused director?

Ms Meller added that it is useful to have guidelines on what legal support will be provided for directors who become the subject of investigations. Another best practice recommendation is to have the question: 'Is this inside information?' at the end of all board papers to prompt directors into a consideration of the inside information implications of all issues considered by the board. ^(CS)

ACRU: the new format

The Institute's Annual Corporate and Regulatory Update (ACRU) is the largest-scale event, in terms of attendance figures, in its CPD calendar. Holding this year's ACRU in the midst of a global pandemic clearly called for a change to the format and, in keeping with the Institute's current policy for its CPD events, ACRU was held as a webinar.

The change of format did not result in a significant fall in the number of attendees – the event attracted over 1,900 participants – neither did it result in any reduction in the number of questions in the webinar's Q&A sessions. This is testimony both of the degree to which online learning and communication, and the technology which makes this possible, has become the new normal, but also of the abiding popularity of the dialogue that ACRU facilitates.

Gillian Meller FCIS FCS, Institute President, pointed out in her welcoming address that holding the forum as a webinar does not mean losing any of the functionality it would have in an in-room setting. 'Crucially, participants can ask questions in the Q&A sessions from whatever device they are using to attend,' she said. 'For this reason, I believe that COVID-19, far from being a setback, will have a positive legacy for ACRU that will widen the accessibility of the forum.'

The 21st Annual Corporate and Regulatory Update (ACRU) of The Hong Kong Institute of Chartered Secretaries was held on 5 June 2020.



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Disclosure in times of crisis

ACRU 2020 review: part two

Corporate disclosure issues featured highly in the discussions at this year's Annual Corporate and Regulatory Update (ACRU). This second part of our ACRU review looks at the insights into corporate disclosure offered by regulators and practitioners speaking at the forum, in particular the disclosure lessons to be learned from the COVID-19 pandemic.



Corporate disclosure issues have been high on the agenda of companies in Hong Kong, particularly in the context of the COVID-19 outbreak. Two speakers from Hong Kong Exchanges and Clearing Ltd (HKEX) – Kenneth Chan, Senior Vice-President, Listed Issuer Regulation Listing Division, and Steve Ong FCA FCPA Senior Vice-President, Head of Accounting Affairs, Listing Division, devoted their ACRU presentations to corporate disclosure issues – in particular sharing insights on the lessons to be learned from the COVID-19 outbreak.

Disclosure lessons from COVID-19

1. Be as specific as possible

The measures taken in Hong Kong to minimise the impact of COVID-19 coincided with busiest time of the year for listed issuers – that is, when they were making final preparations for their annual reports and AGMs. The restrictions on travel and social distancing measures meant that the staff of many companies couldn't get to the office and auditors were not able to travel to complete their field work. In this context, Mr Chan said it was a credit to those involved in corporate disclosure over the last few months in Hong Kong that only five issuers (0.3%) had to be suspended due to their failure to publish preliminary results/material financial information due to matters related to the pandemic. 'We should be proud of ourselves that we did as well as we did and that the integrity of the market was not compromised,' Mr Chan said.

Nevertheless, there have been disclosure lessons from the COVID-19 crisis. Mr Chan urged ACRU attendees to read the guidance issued by HKEX and the Securities and Futures Commission (SFC) on the impact of COVID-19. He referred in particular to the 'Listed Issuer Regulation

Newsletter' (published April 2020) which makes useful recommendations on how listed issuers should approach the task of publishing announcements and providing business updates to investors.

The key message is the need to be as specific as possible in such announcements and updates. 'The more specific you are, the more helpful the disclosure will be to shareholders,' Mr Chan pointed out. Issuers should:

- include quantitative measures of the financial impact
- provide an assessment of cost measures and liquidity positions
- review their current liquidity position and expected financial resource needs
- disclose principal risks and uncertainties arising from the pandemic
- continuously assess and update investors of material developments, and
- disclose new business opportunities with factual information in a clear and balanced manner.

2. Disclose your judgements and estimates

Making specific disclosures in a fast-moving situation such as a global pandemic is not easy, particularly when it comes to non-financial assets. Mr Ong emphasised in his ACRU presentation that issuers should disclose their critical judgements and estimates and be particularly vigilant in areas such as any impairment assessments of non-financial assets, including goodwill.

Mr Ong pointed out that intangible assets such as goodwill are often significant assets and any impairment of these assets remains a key area of concern for investors. Issuers should take into account all of the relevant factors and disclose the key judgements made by the management in determining the useful life of an intangible asset. 'It is critical for issuers to make sufficient disclosure with reference to Hong Kong Financial Reporting Standards (HKFRS), particularly information on management's judgements and estimates in the preparation of the financial statements,' Mr Ong said. He added that investors are likely to disregard companies whose assumptions are perceived to be inaccurate.

The impact of COVID-19 will differ of course depending on issuers' specific

Highlights

- issuers need to be as specific as possible when publishing announcements and providing business updates to investors
- issuers should disclose their critical judgements and estimates and be particularly vigilant in areas such as any impairment assessments of non-financial assets
- the board and/or board committees should consider climate-related issues when reviewing business strategy and policies



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 the more specific you
 are the more helpful
 the disclosure will be to
 shareholders
 ”

Kenneth Chan, Senior Vice-President,
 Listed Issuer Regulation Listing Division,
 Hong Kong Exchanges and Clearing Ltd

circumstances, and Mr Ong pointed out that issuers are obliged to apply the relevant accounting standards to their particular situations. This means that issuers preparing their financial statements need to consider, with their audit committee and auditors, how COVID-19 may affect their financial results and key balances in their statements of financial position.

Mr Ong also addressed the key themes of the latest HKEX Financial Statements Review Programme (FSRP), published in January 2020. The report highlights the need for listed issuers to ensure proper assessment of recognising 'gains on bargain purchase'. Mr Ong said there was a tendency to overestimate the 'bargain purchases' in M&A transactions, but that investors need to know the true value of such assets. Mr Ong reminded ACRU attendees that the SFC has issued guidance in relation to valuations in corporate transactions such as the 'Statement on the Conduct and Duties of Directors when Considering Corporate

Acquisitions or Disposals' (issued in July 2019), and the guidance on corporate transactions and the use of valuations (issued in May 2017).

Finally, Mr Ong thanked all of the company secretaries who collated the information to enable the FSRP to be compiled. He pointed out that company secretaries are an important conduit between the board and shareholders and play a key role to ensure that financial disclosures are properly managed. 'You have a great role to play in ensuring that the ecosystem relating to financial reporting works for listed issuers,' Mr Ong said.

New listing rule disclosure requirements

Before the arrival of COVID-19, HKEX was in the process of upgrading the disclosure requirements of the listing rules. Rule amendments made in 2019, for example, were designed to help issuers to communicate more effectively and meaningfully with shareholders. Mr Chan highlighted some of the key changes such as the requirement

for issuers to better identify their counterparties in notifiable transactions.

HKEX was concerned that some issuers were taking a 'form over substance' approach to disclosures with regard to notifiable transactions. Mr Chan urged issuers to consider what shareholders need to know to fully understand what is being proposed. 'We highly encourage companies to disclose the identity of the beneficial owners of their counterparties, particularly where they are investment holding vehicles. There are cases where issuers have followed the letter of the rule but shareholders have not been provided with sufficient information to assess the transaction,' Mr Chan said.

The 2019 listing rule changes also seek to enhance the transparency of material connected transactions. In particular, issuers are now required to disclose the identity and activities of the parties to such a transaction, as well as their ultimate beneficial owners, in both announcements and circulars.

“
**company secretaries
 should be focusing
 on the board’s role in
 managing ESG risks**
 ”

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



In addition, Mr Chan pointed out that the latest HKEX 'Review of Issuers' Annual Report Disclosure' highlights some weaknesses in current disclosure practices. For example the 2019 review found that around one-half of issuers assessed provided no or limited disclosure relating to 'other expenses' in their annual reports. Moreover, in a number of cases the unexplained 'other expenses' were material with reference to the issuer's total costs and expenses for the year. He emphasised the principle that listed issuers need to provide a full discussion and analysis of the material factors underlying their results and financial position. Issuers should therefore be disclosing meaningful information by providing a breakdown of 'other expenses' to enhance shareholders' understanding of their financial performance.

Mr Chan also reiterated the principle that, to enable investors to make informed investment decisions, issuers should provide shareholders with financial

statements which fairly present their financial position and performance and are free from material misstatements. This means providing additional information if the financial statements do not give a true and fair view. Where issuers have included a modified audit opinion, they should take prompt actions to actively engage auditors on the action plans at the earliest instance and take actions to address the modifications.

ESG disclosure

In her ACURU presentation, Katherine Ng, Chief Operating Officer and Head of Policy and Secretariat Services, Listing Division, HKEX, gave an overview of the latest developments relating to environmental, social and governance (ESG) reporting and performance of Hong Kong listed issuers.

Ms Ng started by sketching the latest international developments in ESG, including the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). Ms Ng encouraged

ACRU attendees to read the TCFD recommendations since they have become a bible for what best climate change-related disclosure looks like. She added that it is particularly relevant for governance professionals since it places a lot of emphasis on governance – the processes companies need to have in place to govern ESG and the board's role in overseeing this area.

She pointed out that the latest HKEX 'Analysis of Environmental, Social and Governance Practice Disclosure' published in December 2019 found that many listed issuer ESG reports contained little or no description of board involvement. 'Company secretaries should be focusing on the board's role in managing ESG risks,' she said. She shared a slide (see 'ESG governance: assessing the board's readiness') listing a number of questions testing the board's readiness for ESG governance. 'If you take one slide takeaway from my presentation, let it be this one,' she said. 'Please bring these questions to your board.'

ESG governance: assessing the board's readiness

		Yes	No
1	The board is involved in evaluating and determining the ESG risk		
2	We know the ESG issues that are material to the business and can talk about the ESG strategy to a certain level of detail		
3	We know what ESG issues our key investors want to know about		
4	We have regular access to the information needed to evaluate ESG risks		
5	We are looking to the future and evaluating how different ESG scenarios will impact the financials		
6	We have a diverse board so that we have good perspectives and understanding on ESG and other areas		

Ms Ng urged ACRU attendees to monitor the frequency by which the board and/or board committees are informed about climate-related issues, whether the board and/or board committees consider climate-related issues when reviewing business strategy and policies, and how the board monitors and oversees progress against goals and targets for addressing climate-related issues.

Ms Ng also addressed the latest upgrade to the HKEX 'ESG Reporting Guide'. New disclosure requirements, effective for financial years commencing on or after 1 July 2020, include mandatory requirements to disclose the board's consideration of ESG matters; the application of the reporting principles 'materiality', 'quantitative' and 'consistency'; and an explanation of the reporting boundaries used in ESG reports.

She emphasised that early preparation before the changes become effective will be key. She urged company secretaries to familiarise themselves with the new requirements, implement any necessary changes to their reporting infrastructure, and gather the necessary information. She also pointed ACRU attendees to the

relevant guidance materials available on the HKEX website.

ESG – a practitioner's perspective

Ms Ng's presentation was complemented by the practitioner's perspective on ESG disclosure provided by Practitioners Sharing Session 2, chaired by David Simmonds FCIS FCS, Institute Vice-President and Group General Counsel, Chief Administrative Officer and Company Secretary, CLP Holdings Ltd. Mr Simmonds was in conversation with Flora Wang, Director, Sustainable Investing, Fidelity International.

Ms Wang pointed out that ESG concerns are now mainstream and not only confined to investors. For example, the ability of companies to attract and retain talent will depend increasingly on how they manage ESG issues. Moreover, consumers are more aware of ESG issues and less willing to buy products from companies that have a poor record on ESG. Companies that do not adopt sustainable practices will also incur increasingly high costs, whether through fines or inefficient operations and that will have a very tangible impact on their bottom lines. Put all these factors

together and it is an absolute no brainer for companies to improve their ESG performance and disclosure, she said.

The discussion also addressed how to engage with boards not yet convinced about the need for better ESG disclosure and performance. Ms Wang suggested that getting boards to understand how a poor record on ESG will impact their share price is often a persuasive argument. 'Try to get your board members to hear directly from investors about why ESG is important – let them do it for you,' she suggested.

She shared a story a board secretary of one of the biggest Chinese state-owned enterprises told her about the effect that a road show had on the chair of the company. Being grilled on ESG issues by investors at the road show had a strong impact on him and this led to a marked improvement in their approach to ESG. 

The 21st Annual Corporate and Regulatory Update (ACRU) of The Hong Kong Institute of Chartered Secretaries was held on 5 June 2020.

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AML/CTF compliance

ACRU 2020 review: part three

This third and final part of our review of ACRU 2020 focuses on the insights shared at the forum regarding anti-money laundering and counter-terrorist financing (AML/CTF) compliance.



Two years on from the implementation of Hong Kong's new anti-money laundering and counter-terrorist financing (AML/CTF) regulatory regime for trust or company service providers (TCSPs), uncertainties still exist among market participants about the interpretation of the new requirements. Session 2 of ACRU provided a useful opportunity to hear from the Companies Registry, the regulator for TCSPs in Hong Kong, about compliance expectations going forward.

The new licensing regime for TCSPs

Roger Wong, Deputy Registry Manager, Registry for Trust and Company Service Providers, Companies Registry, focused his ACRU presentation on compliance with the licensing requirements for TCSPs. He pointed out that the majority of prosecutions of TCSPs by the Companies Registry under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) (Cap 615) have related to TCSPs carrying on trust or company service business without a licence.

Carrying on such business without a licence is an offence under Section 53F of the AMLO, and can result in fines of up to HK\$100,000 and imprisonment for up to six months. Mr Wong urged practitioners to familiarise themselves with the licensing requirements of the AMLO. In particular, he clarified that TCSPs cannot carry on trust or company service business while waiting for the Companies Registry to grant a licence. Where the Companies Registry comes across cases of applicants providing TCSP services after making an application but before a licence has been granted, the Companies Registry will reject the application and may take prosecution action as appropriate.

New AML/CTF requirements for TCSPs

In addition to highlighting the licensing requirements for TCSPs under the AMLO, the Companies Registry also reminded practitioners of the ongoing AML/CTF requirements TCSPs need to comply with. For example, TCSPs are required to carry out customer due diligence (CDD) measures, keep records of customers and transactions, and comply with the statutory requirements relating to financial sanctions, terrorist financing and the proliferation of weapons of mass destruction. TCSPs are also expected to file suspicious transactions reports with the Joint Financial Intelligence Unit (JFIU).

Christy Yiu, Senior Solicitor, Registry for Trust and Company Service Providers, Companies Registry, focused her ACRU presentation on the CDD measures relevant to TCSPs. These include requirements to:

- identify customers and verify their identity
- identify the beneficial owner and take reasonable measures to verify the beneficial owner's identity
- obtain information on the purpose and intended nature of the business

relationship, if a business relationship is to be established, and

- identify the person purporting to act on behalf of the customer, and take reasonable measures to verify the person's identity and verify the person's authority to act on behalf of the customer.

She emphasised that these CDD measures must be carried out:

- before establishing a business relationship with the customer
- before carrying out an occasional transaction involving HK\$120,000 or above
- when the TCSP licensee suspects that the customer or the customer's account is involved in money laundering or terrorist financing (ML/TF), and
- when the TCSP licensee doubts the veracity or adequacy of the information obtained during the CDD process.

Highlights

- the majority of prosecutions of trust or company service providers (TCSPs) by the Companies Registry since the implementation of Hong Kong's new anti-money laundering and counter-terrorist financing (AML/CTF) regime relate to TCSPs carrying on trust or company service business without a licence
- having the right corporate culture and internal controls are key to an effective AML/CTF compliance programme
- making a suspicious transaction report (STR) can give practitioners protection from prosecution, but they need to refrain from informing third parties about the STR since this might be considered a tipping-off offence

If the CDD requirements cannot be complied with, TCSPs cannot establish a business relationship or carry out an occasional transaction with that customer. If a business relationship has been established, it must be terminated as soon as reasonably practicable.

Ms Yiu reminded practitioners that TCSPs are expected to continuously monitor their business relationships with customers. They should review from time to time documents, data and information relating to the customer to ensure they are up-to-date and relevant. They should scrutinise customer transactions to ensure that they are consistent with the licensee's knowledge of the customer and its business, risk profile and source of funds. They should also identify transactions that are complex, unusually large or of an unusual pattern and which have no apparent economic or lawful purpose, and examine the background and purposes of those transactions and set out their findings in writing.

Moreover, in situations that present a high risk of ML/TF, enhanced due diligence (EDD) must be carried out. This would include where the customer is not physically present for identification purposes, where the customer or the beneficial owner of the customer is a politically exposed person (PEP), or where the customer is from, or the transaction is connected with, a higher-risk jurisdiction. The EDD measures required are set out in Sections 9, 10 and 15 of Schedule 2 to the AMLO.

Ms Yiu emphasised that the best way to stay compliant with the above compliance requirements is to ensure robust AML/CTF internal controls. TCSPs must assess the ML/TF risks they are exposed to, and they should develop and



implement AML/CTF policies, procedures and controls. TCSP licensees should establish and implement adequate and appropriate AML/CTF systems taking into account factors including the products and services offered, the types of customers they serve and the geographical locations involved. The senior management of any TCSP licensee should appoint a director or senior manager as a compliance officer and a senior member of the licensee's staff as the Money Laundering Reporting Officer.

Ms Yiu was followed at the podium by Wendy Ma, Registry Manager, Registry for Trust and Company Service Providers, Companies Registry, who gave an update of the latest developments relating to the Companies Registry's e-Services.

AML/CTF compliance – a practitioner's perspective

Complementing the Companies Registry presentations of ACRU Session 2, Practitioners Sharing Session 3, chaired by Natalia Seng FCIS FCS(PE), Council Member and Institute Past President, and Senior Advisor, Tricor Services Ltd, provided practitioner perspectives on AML/CTF compliance.

Jeremy Birch, Partner, Corporate Crime and Investigations, Herbert Smith Freehills, first addressed the issue of the market uncertainty surrounding the licensing of nominee entities. When Hong Kong's licensing regime for TCSPs was implemented in 2018, market participants were uncertain how to interpret the requirement for nominee entities to apply for a licence if they were carrying on TCSP work 'by way of business'. Some took the view that their nominee entities could not be deemed to be providing trust or company services 'by way of business' and did not apply for licenses.

The Companies Registry subsequently prosecuted a number of nominee entities of TCSPs for carrying on TCSP work without a licence. Mr Birch referred ACRU participants to the Companies Registry FAQ of 9 May 2018 (available on the Companies Registry website) which gives guidance on how the Companies Registry interprets the question of whether a person or entity will be deemed to be providing a trust or company service by way of business.

Mr Birch also looked at how the Companies Registry's enforcement



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The Companies Registry has shown itself to be very serious about enforcement. This underscores the fact that it is worth investing time and resources to get AML/CTF compliance right.
”

Jeremy Birch, Partner, Corporate Crime and Investigations,
Herbert Smith Freehills



work will evolve in the future. While the focus has been on enforcing the licensing regime, Mr Birch expects the Companies Registry to increasingly focus on enforcing the substance of the ongoing AML/CTF requirements. He added that TCSPs will be well advised to focus on their AML/CTF policies, procedures, systems and controls. 'The Companies Registry has shown itself to be very serious about enforcement. This underscores the fact that it is worth investing time and resources to get AML/CTF compliance right,' he said.

The second speaker in Practitioners Sharing Session 3 was Katherine Chiu, Managing Director, Trust & Corporate Services, Sino Corporate Services Ltd. She gave a practical introduction to the corporate culture and internal controls needed to ensure good AML compliance. In terms of corporate culture, she emphasised, among other things, the need to have a group policy that is consistent internationally and to have a Group Compliance Officer or Money Laundering Reporting Officer looking after this area. Another best practice is to encourage employees' input. Sino Corporate Services operates an 'open

door' policy whereby employees are welcome to go to any senior manager with queries or information relating to this area.

In the Q&A session following the Practitioners Sharing, there were many questions about how to handle suspicious transaction reports (STRs). In cases of suspicions of money laundering, TCSP licensees are required to make an STR to the JFIU. Mr Birch emphasised that making an STR can be a 'get out of jail free card' in a sense since, if handled properly, TCSPs cannot be prosecuted for dealing in the proceeds of crime if they have made an STR. Handling the STR properly, however, requires TCSPs to understand the protocols attached.

'STRs are a powerful intelligence gathering tool for the JFIU, which is why the obligation exists. Filing an STR can give you some protection, but one important point to bear in mind is the need to manage the confidentiality of the STR since disclosure to a third party, which poses the risk of undermining an investigation, will be considered a tipping-off offence,' Mr Birch said.

Ms Chiu stressed the importance of training to ensure that staff recognise the red flags that might lead to a suspicion of money laundering. These might involve a client asking to open many bank accounts without commercial reasons, or creating vehicles and selling them very quickly. Training can also familiarise staff with the procedures for making an STR. In addition to the issues discussed by Mr Birch, it is also good practice, for example, to maintain a record of all STRs.

A question from the floor related to the procedures involved with terminating the relationship with a client after making an STR. Mr Birch pointed out that filing an STR doesn't necessary mean you have to terminate the relationship, but, if that is the appropriate course, you need to be careful about how you explain to a client your reasons for terminating the relationship to ensure you don't inadvertently tip them off about filing an STR. [CSj](#)

The 21st Annual Corporate and Regulatory Update (ACRU) of The Hong Kong Institute of Chartered Secretaries was held on 5 June 2020.

Anti-corruption and ethical governance

ACRU 2020 was fortunate to have Anna Lam, Executive Director (Acting), Hong Kong Business Ethics Development Centre (BEDC), Independent Commission Against Corruption (ICAC), to highlight anti-corruption and ethical governance issues in Session 3 of the webinar.

Ms Lam started her presentation by highlighting the fact that Hong Kong is one of least corrupt jurisdictions in Asia. According to the 2019 TRACE Matrix business bribery risk assessment conducted by the RAND Corporation, Hong Kong has the lowest bribery risk in Asia. This is in no small part due to Hong Kong's good legislative and regulatory regime, such as the Prevention of Bribery Ordinance (POBO) enforced by the ICAC, but also to its high-quality anti-corruption enforcement.

While legal compliance is a necessity for any organisation, of course, Ms Lam emphasised that there are huge benefits to be gained from going beyond compliance to ensure 'ethical governance' in your organisation.

She went on to discuss the roles governance professionals play as a first line of defence against corruption and malpractice. 'Governance professionals and company secretaries play a very important role acting as a check and balance on company management and advising the board. They act as guardians of corporate governance,' she said.

To fulfil this role, however, company secretaries need to stay up to date with all legislative, regulatory and corporate

governance developments. She urged company secretaries, as governance professionals, to think not only in terms of legal compliance but to promote ethical governance. They should do this in their role of advising the management and board on best practices, as well as facilitating induction and the professional development of directors and staff. She added that these functions have led to company secretaries being known as the 'conscience of the company'.

She also pointed out that there are many resources available online that company secretaries can use to inform themselves of governance best practice. These include the Institute's guidance notes. Ernest Lee FCIS FCS(PE), Institute Treasurer, Technical Partner of Deloitte China and the Chair of ACRU Session 3, added that the Institute's Ethics, Bribery and Corruption Interest Group has issued five guidance notes on this area of practice, the latest one being in October 2019.

Ms Lam also recommended the Hong Kong Institute of Certified Public Accountant's Code of Ethics and the many publications produced by the ICAC available on the BEDC website: <https://hkbedc.icac.hk>. In addition, the ICAC offers free anti-corruption and ethics training to people in the business sector every year.

'Be ready to contact the ICAC', Ms Lam said, 'we want to be helpful'.



“Governance professionals and company secretaries play a very important role acting as a check and balance on company management and advising the board. They act as guardians of corporate governance.”

Anna Lam, Executive Director (Acting), Hong Kong Business Ethics Development Centre, Independent Commission Against Corruption



The social credit system – are you prepared?

Carl Li, Senior Partner, AllBright Law Office, makes recommendations for meeting the compliance requirements of the social credit system, which is scheduled to become fully operational in the Mainland by the end of 2020.

Corporate compliance is becoming increasingly important in the Mainland, especially with the expected nationwide full implementation of the social credit system (SCS) by the end of 2020. SCS assigns social credit scores to each entity (including businesses and other organisations, government officials and individuals) based on the data collected. The scores correspond to various rewards and punishments. The main purpose of SCS, when it relates to businesses, is to create a fair, transparent and predictable business environment.

The SCS includes different rating mechanisms, many of which are operational already. The official launch of the nationwide SCS will weave together all mechanisms into a comprehensive, intricate and interdependent network. It means that enterprises will face stricter compliance requirements and higher risks if they do not follow laws and other rules. This article aims to provide businesses with suggestions on how to face the new challenges imposed by the full adoption of SCS.

Legislative framework

The government first outlined its vision for the SCS in 2014, in a State Council guideline, aiming for its full launch by the end of 2020. The SCS has been expanding and evolving since then, with many mechanisms being created and applied to enterprises. With the original deadline approaching, government authorities are accelerating their construction of the SCS according to the guiding opinions published by the general office of the State Council in July 2019.

Sources of data

The government collects data from three main sources. First, the majority of data

is submitted by businesses through self-reporting. Second, the government collects data through inspection. While on-site inspections remain the norm, web-based, digital inspection is becoming more prevalent, such as real-time emission monitoring. Third, data collected by private companies, such as Alibaba, will play an increasingly prominent role.

Ratings and requirements

Depending on their size and scope, businesses need to prepare for a varying number of ratings. A core set of key ratings, such as tax, applies to all companies. Multiple concrete rating requirements constitute a specific rating. Those requirements are written in the respective regulations that companies are already legally required to comply with. While most ratings reflect standard regulatory and compliance criteria, the SCS features three unconventional requirements.

First, businesses now need to take responsibility for their business partners. Even if a company meets all its legal requirements, it can still receive penalties if one of its suppliers is on a blacklist. Second, individual and corporate credit systems interact. As such, a business registered in the name of an individual with a poor rating will automatically have a poor rating. Third, some rating requirements explicitly incorporate ratings

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even if a company meets all its legal requirements, it can still receive penalties if one of its suppliers is on a blacklist
”

by other government authorities, thus creating a ripple effect through which a negative rating in one area also affects a company's other ratings. For example, any negative rating in a field other than customs would lead to a downgrading of the customs rating, and the respective company would lose, or would not be able to receive, AEO (authorised economic operator) certification.

Rewards and punishments

High scores can mean a range of different things for companies, from lower tax rates, better credit conditions, easier market access and fast-tracked approvals to more public procurement opportunities and lower inspection rates or targeted audits.

Punishments come in various forms. Other than fines, court orders, high

Highlights

- a negative rating in one area also affects a company's other ratings
- high scores can mean lower tax rates and better credit conditions, while low scores can mean blacklisting and sanctions
- businesses on a blacklist either from a poor rating or a particular violation may be classified as 'heavily distrusted entities'



“
**a business registered in the name of
 an individual with a poor rating will
 automatically have a poor rating**
 ”

inspection rates and targeted audits, restricted issuance of government approvals, exclusion from preferential policies, restrictions from public procurement, as well as public shaming and naming, the SCS also employs blacklisting and joint sanctions. Businesses can fall on a blacklist either from a poor rating or a particular violation, and they will be classified as 'heavily distrusted entities', which are flagged within the National Enterprise Credit Information Publicity System and published via www.CreditChina.gov.cn.

Blacklisting will lead to joint sanctions, meaning that government authorities will not only levy sanctions based on the rating they are directly responsible for, but also in response to negative ratings in all rated fields. For example, a rating as a distrusted taxpaying company will impact a company's licence approvals, among others, beyond the imposition of tax-specific sanctions. In other words, a government authority may impose sanctions on a distrusted company even if that company is not blacklisted

for reasons within that government authority's jurisdiction.

Suggestions

The author suggests that enterprises prepare for the full implementation of the SCS by taking the following three steps.

1. Enterprises should conduct an internal audit to assess where they stand regarding the requirements. To do so, enterprises should first identify and understand all the laws and regulations they need to comply with. The compliance requirements may be dispersed across a large amount of government documents, so enterprises must conduct the necessary analysis thoroughly. Then, enterprises must assess where gaps exist between the requirements and reality. The last step of an internal audit is to design and implement adjustments based on the gap analysis, and to continue monitoring the changes in the SCS to keep abreast of the latest compliance requirements.

2. Businesses should undertake a supply chain audit and conduct due diligence on business partners, given that partners' trustworthiness is included in the SCS assessments. Enterprises may already have a systematic supplier screening mechanism in place for various purposes, and now they have an extra reason to monitor their suppliers even more carefully, because their own ratings will be affected by the suppliers' behaviours.

3. Enterprises may need to decide the scope of disclosure of its business operations. Since the SCS requires the collection of massive amounts of data through the enterprises' self-reporting, enterprises need to transfer data to government authorities, most of which are neither sensitive nor problematic in isolation, but when combined, may create a more complete disclosure of the enterprises' profiles. Therefore, enterprises may want to engage with respective government authorities should they hope to modify or exclude certain data transfer requirements to prevent excessive disclosure.

Enterprises are recommended to prepare for the full launch of the SCS from now on by following the above-mentioned three steps before full launch of the SCS in a year's time.

Carl Li, Senior Partner
AllBright Law Offices

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Bank culture reform in Hong Kong

Herbert Smith Freehills looks at a new report issued by the Hong Kong Monetary Authority on its review of self-assessments on bank culture made by 30 authorised institutions.



On 22 May 2020, the Hong Kong Monetary Authority (HKMA) published a report on its review of self-assessments on bank culture. This is part of the HKMA's bank culture reform supervisory measures, where 30 authorised institutions (AIs) were selected in the initial phase to conduct self-assessments on their culture enhancement efforts and benchmark themselves against the findings of major conduct incidents outside Hong Kong.

The 30 AIs, comprised of major retail banks and selected foreign bank branches with substantial operations in Hong Kong, were required to submit their self-assessment outcomes within six months. The HKMA has now completed its review of the self-assessment submissions and compiled a report which sets out the following for reference by the industry:

- common themes to focus on to improve culture (see below), and
- practices observed in respect of the three pillars of culture (governance, incentive systems, and assessment and feedback mechanisms).

Next steps for AIs

AIs should review the common themes and the practices observed and consider which areas require enhancement based on their desired culture, values and behavioural standards. This includes the AIs that were not covered in the first phase of the self-assessment exercise, which are also expected to reflect on their culture enhancement efforts.

Although the 30 AIs involved in the initial phase of self-assessment were all licensed banks, the common themes and the practices observed also apply

to restricted licence banks and deposit-taking companies.

The HKMA recognises that there is no 'one-size-fits-all' approach to assessing and enhancing culture. The examples of the practices observed are not exhaustive and AIs may explore different culture enhancement initiatives based on their desired culture, values and behavioural standards, as long as the initiatives are effective in driving cultural change.

HKMA's plan going forward

Going forward, the HKMA intends to:

- conduct focused reviews to dive deeply into the incentive systems of front offices in the business of distributing banking, investment and/or insurance products in retail banks
- continue its culture dialogues with AIs, which it commenced in 2019 (it will inform selected AIs of the details individually)
- continue to gauge the progress of bank culture reform in Hong Kong and share insights and practices with the industry as and when appropriate, and

Highlights

- the Hong Kong Monetary Authority (HKMA) expects to see more initiatives in relation to incentive systems which are designed to promote bank culture and prevent incidents of misconduct
- the HKMA expects authorised institutions (AIs) to cascade down their desired culture to downstream operations outside Hong Kong, taking into account the local circumstances
- AIs are encouraged to keep track of key international developments and draw lessons from major overseas misconduct incidents as far as possible

“
the HKMA noted that AIs' culture efforts in the area of incentive systems remain a work-in-progress
”

- explore other culture initiatives, taking into account overseas experience and emerging themes that may arise.

Common themes

The HKMA observed that the 30 AIs involved in the self-assessment had implemented a range of culture initiatives and made significant progress in promoting sound bank culture over the past two years. The common themes which have been identified from the self-assessments are as set out below.

Incentive systems

Further work is needed to ensure that incentive systems are designed to promote sound culture and prevent incidents of misconduct. The HKMA

noted that Als' culture efforts in the area of incentive systems remain a work-in-progress as the coverage of incentive systems in the self-assessments was relatively limited. While there is an increasing trend away from incentives being based solely on financial factors to a greater use of balanced scorecards, there remain questions as to:

- whether there is an appropriate balance of 'what' (financial factors) and 'how' (non-financial factors), or whether there is still a stronger focus on the 'what'
- whether the right non-financial factors (including behaviour factors) are embedded with a greater focus on customer outcomes, and
- whether there is a consistent application of consequences regardless of staff financial performance.

The HKMA expects to see more initiatives in relation to incentive systems which are designed to promote bank culture and prevent incidents of misconduct.

Weak links

Stronger links are required to connect Als' Hong Kong operations with the culture efforts of their headquarters or upstream entities, as well as their downstream operations, as appropriate. The HKMA observed that culture enhancements are often driven by the headquarters of Als, which are part of a larger banking group incorporated outside Hong Kong. However, the links of these Als to their headquarters (global or regional) or upstream entities in relation to culture efforts vary, with some of these links being weak.

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more focus is needed to facilitate the undertaking by relevant staff of continuous professional development to complement the effort of promoting sound culture
 ”

There is generally limited coverage in the self-assessments on:

- how the formulation of global culture initiatives have taken into account feedback from regional operations and different contexts across geographies (including Hong Kong)
- how adjustments have been or will be made by these Als when implementing their global culture initiatives in Hong Kong with regard to local circumstances, especially how to ensure the buy-in of local staff for the culture promoted at the regional or global level
- how any implementation issues would be escalated to the headquarters for consideration and resolution, and
- how the headquarters are providing support to their operations in Hong Kong in implementing culture enhancement initiatives.

Similarly, the links to downstream overseas operations from regional headquarters in Hong Kong appear generally weak or non-existent. The HKMA expects Als to cascade down their desired culture to downstream operations outside Hong Kong, taking into account the local circumstances. This is particularly important for larger banks that

span numerous geographies and business lines, and can have a large number of different sub-cultures develop over time.

Learning from overseas misconduct incidents

Deeper analysis is expected to benchmark against the findings from the reviews of major overseas misconduct incidents. The HKMA considers that the Als had not put adequate effort into benchmarking themselves against the findings of the reviews of major misconduct incidents outside Hong Kong, such as the 'Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry' in Australia. For example, while some Als had made reference to the findings of major misconduct incidents outside Hong Kong, most did not go beyond simple sharing of the facts with their staff.

Although the HKMA does not expect Als to monitor each and every misconduct incident in all jurisdictions, Als are encouraged to keep track of key international developments and draw lessons from major overseas misconduct incidents as far as possible.

The HKMA plans to share with the industry relevant overseas developments (including any overseas misconduct incidents) from time to time through channels such as circulars and regulator's dialogue.



The role of CPD

More focus is needed to facilitate the undertaking by relevant staff of continuous professional development (CPD) to complement the effort of promoting sound culture. The HKMA noted that none of the Als had mentioned in their self-assessments the use of CPD as a tool in promoting sound bank culture.

The HKMA encourages Als to set out goals and concrete targets in respect of CPD, including those under the Enhanced Competency Framework or those offered by other professional bodies, with a view to supporting the strategy of promoting sound culture within their organisations.

Identifying gaps between current progress and desired culture

More effort is needed to tackle the key challenge of culture assessment to identify gaps between current progress and desired culture. Many Als acknowledged challenges in assessing culture or indicated that developing tools to assess culture or determining appropriate indicators in their dashboards were key priorities in their culture reform agenda. The HKMA also observed that Als had further work ahead to identify the gaps between their current progress and the realisation of desired culture within their organisations.

There is no 'one size fits all' approach to assessing culture. The HKMA recommends:

- incorporating 'forward-looking indicators' into the culture dashboard (most Als had incorporated 'backward-looking indicators'), and
- combining both quantitative and qualitative data from multiple sources to allow for the different culture indicators to be triangulated (a few Als had tended to rely solely on a single source of data, such as results from employee surveys, when assessing their culture).

Fostering a speak-up culture

More work is needed in promoting an environment which provides 'psychological safety' to encourage staff to speak up without fear of adverse consequences. The HKMA noted that while most Als had certain 'speak-up' mechanisms in place, not many had identified the need to address the fear of speaking up. There was also limited coverage in the self-assessments regarding the effectiveness of the Als' speak-up mechanisms.

Only some Als had incorporated measures into their speak-up mechanisms to protect staff who chose to speak up against bullying or retaliation. While most Als had

in place formal speak-up arrangements and escalation channels, this needs to be complemented by continuous communications to reinforce the message. Effective speak-up mechanisms should also recognise the importance of responsiveness as staff will only feel safe to speak up if their voices will be heard.

Culture fatigue

Sustained effort is required in driving cultural changes and Als should be mindful of 'culture fatigue'. Staff can experience 'culture fatigue' over time if Als implement a large variety of culture initiatives in a 'form over substance' approach that overwhelms their staff, which may undermine the Als' efforts in implementing culture initiatives.

Some Als acknowledged that a key challenge was to ensure that culture remained at the forefront of staff's mindset at all times. Some of them indicated that continuous reinforcement through effective communication and promotion at all levels was important to have a lasting impact.

**William Hallatt, Hannah Cassidy,
Gareth Thomas, Tess Lumsdaine and
Valerie Tao**

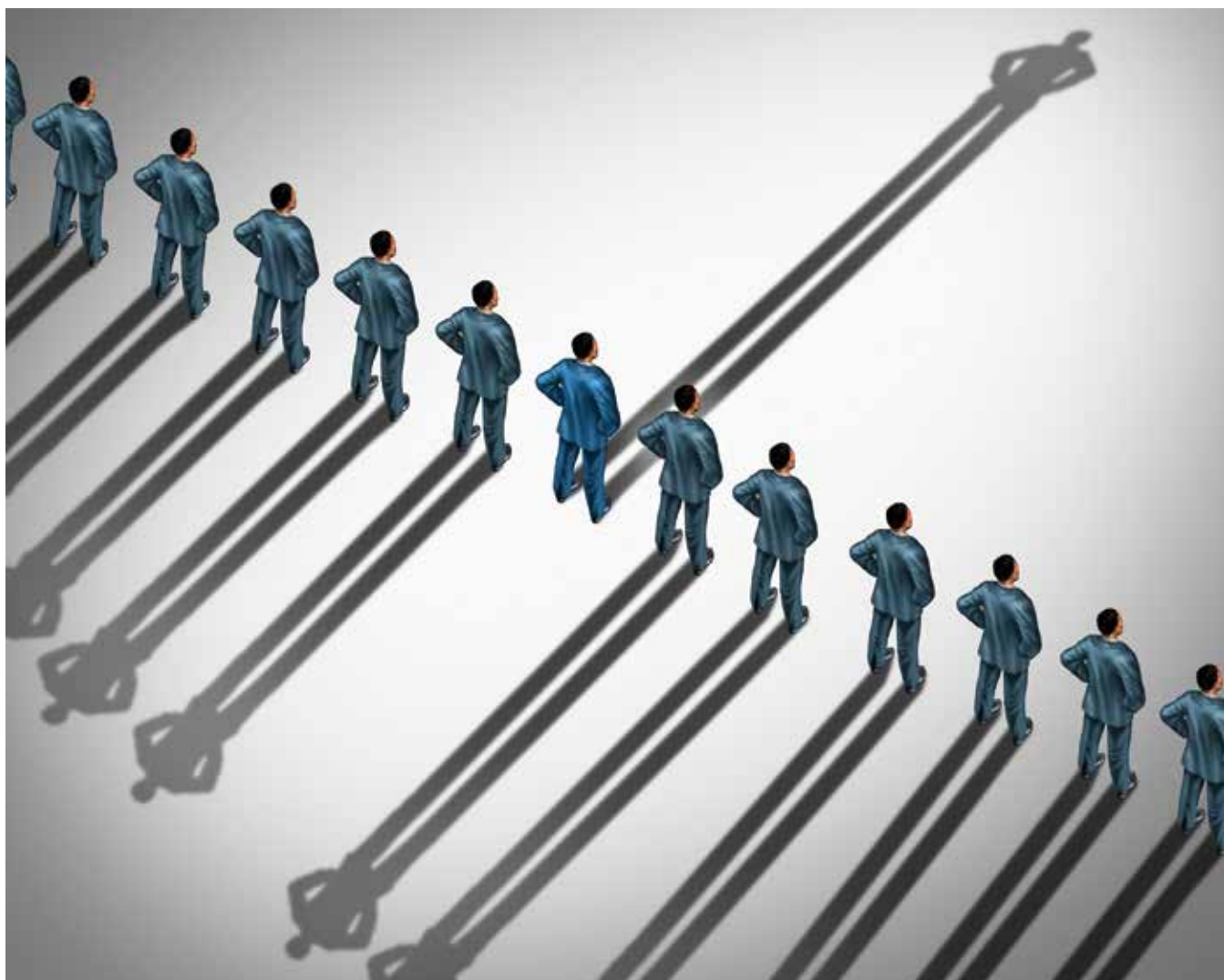
Herbert Smith Freehills

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Seeking immunity

An update to the Competition Commission's Leniency Policy

Adelaide Luke, Partner and Howard Chan, Associate, Herbert Smith Freehills, consider the recent updates to the Hong Kong Competition Commission's Leniency Policy and what they mean for companies that discover they have been involved in activities that infringe the Competition Ordinance.



The Competition Ordinance (Cap 619) (the Ordinance) has now been in force for nearly five years, and the competition law regulator, the Competition Commission (the Commission), has brought a total of six cases before the Competition Tribunal (the Tribunal) to date.

Under Section 80 of the Ordinance, the Commission may enter into a leniency agreement with a party and agree not to bring (or continue) proceedings in the Tribunal for a pecuniary penalty, in exchange for that party's cooperation in an investigation or Tribunal proceedings. The Commission's procedures and guidance on leniency applications by companies are contained in the Leniency Policy for Undertakings Engaged in Cartel Conduct (the Leniency Policy), which was revised in April 2020. It is important to note that a separate policy exists for leniency applications by individuals: this gives rise to the possibility of an employee (or indeed, former employee) reporting the undertaking for breaches of the Ordinance.

On 22 January 2020, the Commission initiated proceedings against Quantr Ltd and its director for alleged participation in bid-rigging in breach of the First Conduct Rule of the Ordinance. This was the first case brought as a result of a successful leniency application (made under an earlier version of the Leniency Policy). The leniency applicant, whose identity remains a secret, was a co-bidder of Quantr. The leniency application also triggered the issuance of an infringement notice under Section 67(2) of the Ordinance to Nintex, the upstream supplier to Qantr and its co-bidder that facilitated the coordination between the two. Nintex accepted the infringement notice in lieu of the Commission bringing proceedings against

it in the Tribunal – the notice required Nintex to admit to its involvement in the infringement and to commit to implementing an effective competition compliance programme.

'Type 1' and 'Type 2' leniency

The new Leniency Policy applies to any 'undertaking' (a term referring to any entity or natural person engaged in economic activity, defined in Section 2(1) of the Ordinance) that has participated in 'cartel conduct', a breach of the First Conduct Rule under Section 6 of the Ordinance, by engaging in any agreement and/or concerted practice consisting of:

- price-fixing
- market allocation
- output restriction, or
- bid-rigging.

Under the Leniency Policy, the first undertaking to successfully apply for leniency will be granted either 'Type 1' or 'Type 2' leniency:

- 'Type 1' leniency is available to undertakings that alert the

Commission to a cartel that is not currently the subject of an initial assessment or open investigation by the Commission, and

- 'Type 2' leniency is available to undertakings that provide substantial assistance to the Commission's investigation or enforcement of a cartel that the Commission is already assessing or investigating.

In each case, where the undertaking complies with all of the conditions for leniency, the Commission may then enter into a leniency agreement with the successful applicant and this will include an agreement not to pursue any proceedings against it in the Tribunal.

The key difference between 'Type 1' and 'Type 2' leniency is that the Commission may issue an infringement notice against an applicant with 'Type 2' leniency, requiring the applicant to admit to its participation in the contravention of the Ordinance. This means that such party may be subject to damages claims from third parties that have suffered losses due to the cartel (known as 'follow-on damages claims'), although the Commission has stated that it will

Highlights

- the Competition Commission's Leniency Policy for Undertakings Engaged in Cartel Conduct (the Leniency Policy) was revised in April 2020
- under the revised Leniency Policy, the first undertaking to successfully apply for leniency in relation to a new cartel (that is, 'Type 1' leniency) may benefit from immunity from being prosecuted for the reported conduct
- an applicant with 'Type 1' leniency will not have to admit involvement in a contravention of the Competition Ordinance and will be immune to follow-on damages claims from third parties

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there is now an even greater incentive for any undertaking that discovers it has been involved in any cartel activity to consider applying for leniency from the Commission at the earliest opportunity”

only issue such infringement notices if any such follow-on damages claims are brought against other members of the cartel. On the other hand, an applicant with 'Type 1' leniency will not have to admit involvement and will be immune to follow-on damages claims from third parties.

This distinction between 'Type 1' and 'Type 2' leniency was introduced in the recent revisions of the Leniency Policy in order to encourage more cartel participants to apply for leniency. Previously, all successful leniency applicants were required to admit participation in the contravention, opening them up to possible third-party damages claims. The Commission found that this possibility had acted as a substantial deterrent for parties considering whether or not to apply for leniency.

As a result of this change, there is now an even greater incentive for any undertaking that discovers it has been involved in any cartel activity to consider applying

for leniency from the Commission at the earliest opportunity.

Applying for leniency

As leniency is only available to the first party in a cartel to apply, the Leniency Policy sets out a procedure for parties to anonymously check (either directly, or through legal representatives) with the Commission whether leniency is available in relation to the relevant cartel arrangement.

If leniency remains available, the Commission will inform the applicant that a 'marker' is available. This means that the applicant can reserve its position as the 'first in line' for leniency, whilst it prepares a full application to submit to the Commission (a process known as 'perfecting' a marker) within a period stipulated by the Commission (ordinarily, 30 calendar days). The Commission may also request that the applicant provides evidence or makes witnesses available for interviews during this period.

At the conclusion of this process, the Commission will determine whether to offer leniency to the applicant (for example, based on whether the evidence provided by the leniency applicant provides substantial assistance to the Commission's assessment or investigation). If so, the Commission will enter into a leniency agreement with the applicant, and will also impose conditions on the applicant, for example, to provide continued assistance to the Commission throughout its investigation and any subsequent legal proceedings. The successful leniency applicant will have to comply with these conditions on an ongoing basis in order to ultimately benefit from leniency from the Commission.

Cooperation and settlement beyond leniency

Where leniency is no longer available, the Commission may also enter into cooperation agreements with parties that assist with the Commission's investigation under its Cooperation and Settlement Policy for Undertakings Engaged in Cartel Conduct (the Cooperation Policy). This process requires the relevant party to admit its involvement in a contravention of the Ordinance by way of a statement of agreed facts (known as an Agreed Factual Summary).

In return, the Commission may agree to apply a discount to the pecuniary penalty that it recommends to the Tribunal, as well as agree not to bring proceedings against officers or employees of the relevant undertakings.

The discounts that may be applied (as recommended in the Cooperation Policy) range from: 35–50% for a 'Band 1' discount; 20–40% for a 'Band 2' discount and up to 25% for a 'Band 3' discount. The 'Band 1' discount is usually applied to the first undertaking to express its interest in cooperation, whereas the Commission will apply a 'Band 2' or 'Band 3' discount at its discretion for all other parties, based on the order in which the parties apply.

Relevant considerations when applying for leniency

When a company discovers that it has been involved in an infringement of the First Conduct Rule, it should try to ascertain whether the conduct is of the type that can benefit from leniency (the policy only applies to 'cartel conduct'), or whether it falls into another category. It should also consider whether there are any clear arguments that the

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previously, all
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possible third-party
damages claims
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relevant conduct may be exempted from the Ordinance.

Additionally, it is important for parties to ascertain the nature of their involvement in a cartel when considering whether to apply for leniency. Under the Commission's Leniency Policy, leniency is not available to any party that was the 'ringleader' of a cartel arrangement, which usually means any party that coerced others to join or remain within a cartel.

If the company wants to apply for leniency, then it is advised to approach the Commission as soon as possible to

maximise the likelihood that 'Type 1' leniency can be secured.

If 'Type 1' leniency is no longer available, then questions of strategy will arise – for example, how likely is it that the company could defend itself in any proceedings against the Commission. It is important to bear in mind that 'Type 2' leniency and other forms of cooperation will not protect the company from follow-on actions for damages brought by third parties.

Adelaide Luke, Partner, and Howard Chan, Associate

Herbert Smith Freehills




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PRC Individual Income Tax reforms: anti-avoidance tax provisions



In the second of this two-part series, Henry Kwong, Tax Partner, and Matthew Cheung, Tax Manager, Cheng & Cheng Taxation Services Ltd, assess the salient features of the anti-avoidance tax provisions, recently introduced as part of the PRC Individual Income Tax reforms.

In the first part of this two-part article, published in the May edition of *CSj*, we examined recent reforms, which were approved on 31 August 2018 by the National People's Congress of the People's Republic of China (PRC), to the PRC Individual Income Tax (IIT) law, and which came into effect on 1 January 2019. We explained the definition of a PRC individual tax resident, as well as the implications for Hong Kong individuals and foreigners working in the Mainland.

In this second part, we will look at the anti-avoidance tax provisions that have been integrated into the IIT law and their significant impact on overseas investments by PRC individual tax residents, and will also provide a general comparison of Hong Kong and Mainland tax rates on various forms of income earned by an individual.

Anti-avoidance tax provisions

In the past, anti-avoidance tax provisions were included only in the PRC Corporate Income Tax law. While the definition of a PRC individual tax resident in the IIT law has attracted the major portion of the public's attention, we consider that the introduction of anti-avoidance tax provisions is also an important part of the reforms to the IIT law.

Article 8 of the IIT law empowers the Mainland's State Administration of Taxation to make adjustments to the taxable income of an individual under the following situations:

- where the tax payable by an individual or his/her related parties in the Mainland is reduced due to non-arm's length related party transaction(s)
- where the set-up of a Controlled Foreign Corporation (CFC) does not distribute, or has reduced the distribution of, its profits without reasonable business needs, or
- where an individual has obtained inappropriate tax benefits by entering into an arrangement lacking reasonable commercial purposes.

CFC rule

Of the above three situations, we consider that the CFC rule will have the most pronounced ramifications for PRC individual tax residents (which includes Mainland domiciled individuals) making overseas investments, including in Hong Kong (see Diagram 1). The rationale

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the introduction of anti-avoidance tax provisions is also an important part of the reforms to the PRC Individual Income Tax laws
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behind this assertion lies in the following two important facts:

- the profit distribution (normally in the form of dividends) from an overseas investment is subject to IIT of 20% for a PRC individual tax resident, and
- for a number of reasons, investors commonly set up intermediary holding companies in low-tax

Highlights

- anti-avoidance tax provisions have recently been integrated into the PRC Individual Income Tax law and have a significant impact on overseas investments by PRC individual tax residents
- adjustments can now be made by the Mainland's State Administration of Taxation to an individual's taxable income under certain situations, most pertinently those relating to undistributed profits retained by a Controlled Foreign Corporation
- there are significant differences between Hong Kong and Mainland personal tax rates for individual investment, employment and business income

Diagram 1



jurisdictions (such as Hong Kong or the British Virgin Islands) to hold investments.

In view of the above, PRC individual tax residents could leave any profits earned by their overseas investments in an intermediary holding company without distributing those profits, in order to postpone or avoid IIT liabilities. As such, in order to protect the interests of the Mainland, if the intermediary holding company is now considered a CFC under the new IIT anti-avoidance tax provisions, the undistributed profits of the CFC will be deemed as income of the PRC individual tax resident.

Below are some of the features of a CFC as it relates to a PRC individual tax resident:

- it is under the control of a PRC individual tax resident
- it is set up in a low-tax jurisdiction (such as the British Virgin Islands or the Cayman Islands). In this regard, it is also possible for a Hong Kong corporation to be considered a CFC since dividend income received from a Hong Kong corporation is not subject to Hong Kong profits tax, and
- it does not have substantial enough business operations to justify the

need to retain earnings to support its business operations and/or future growth.

Taking this into account, in order to avoid the intermediary company being treated as a CFC of a PRC individual tax resident, you would have to set up substantial operations and substance in the intermediary company. In this regard, a PRC individual tax resident could consider setting up substance in Hong Kong, given its geographical convenience. Meanwhile, obtaining a Hong Kong Certificate of Resident Status to demonstrate that the management and control of the entity is exercised in Hong Kong is one of the indirect ways to support the fact that the entity is not a CFC.

Common Reporting Standard

In the past, it would not have been easy for the State Administration of Taxation to detect the income of a PRC individual tax resident from an overseas investment because such income would generally not be repatriated back to the Mainland. However, with the implementation of the Organisation for Economic Co-operation and Development (OECD)'s Common Reporting Standard (CRS), it is now easier for the State Administration of Taxation to be aware of any CFC maintained by a PRC individual tax resident, as well as the relevant financial information.

Financial institutions in Hong Kong generally require bank account holders to complete a self-certification form to declare their place of tax residency. In the case of a corporation, the bank account holders are further required to declare whether it is a financial institution, an Active Non-Financial Entity (NFE) or a Passive NFE. If the corporation is a Passive NFE, it also has to fill in another self-certification form declaring its controlling person(s).

In the case of a CFC – as it is likely to be an investment holding company and will thus have limited business activities – the majority should fall within the definition of a Passive NFE in the self-certification form. It is therefore likely that a CFC would be required to fill in the information about its controlling person(s), which includes individuals owning more than 25% of the issued share capital of the CFC. If the controlling person is a PRC individual tax resident, the State Administration of Taxation can easily establish the relationship between that individual and the CFC when the information is transmitted to them.

Therefore, it is strongly recommended that all PRC individual tax residents ensure they are aware of their potential tax liabilities from overseas investments, as well as carry out necessary tax planning to reduce their Mainland tax risk.

Table 1: Tax rates for the common types of income under the tax systems of the Mainland and Hong Kong.

	Mainland	Hong Kong
1. Employment income	Progressive rates from 3% to 45%	Progressive rates from 2% to 17%; standard rate at 15%
2. Remuneration for labour services		15%; 7.5%
3. Author's remuneration		
4. Royalties		
5. Business income	Progressive rates from 5% to 35%	15%; 7.5%
6. Rental income	20%	15%; 7.5%
7. Dividends	20%	0%
8. Capital gains		
9. Bank interest		
10. Incidental income		

Individual tax rates in Hong Kong and the Mainland

To sum up this IIT series, we would like to highlight the differences in personal tax rates for individuals between Hong Kong and the Mainland.

Investment income

As explained above, dividend income from an overseas investment is subject to IIT at a rate of 20%. Other investment income, like capital gains and rental income, are also generally subject to the same rate of 20% in the case of a PRC individual tax resident.

In contrast, dividend income and capital gains are not subject to profits tax in Hong Kong. In this regard, the Inland Revenue Department is more concerned about whether the relevant investment represents capital or revenue assets of the individual. For capital assets held for long-term investment purposes, the gain from disposal of the investment represents

capital gains, which is not subject to Hong Kong profits tax.

Employment income

As many of you will be aware, the Hong Kong salaries tax rate (that is, at progressive rates from 2% to 17%, or a standard rate at 15%) is one of the lowest across the globe, while the Mainland's IIT is calculated based on progressive rates from 3% to 45%. In cases where the same income is subject to both Hong Kong salaries tax and IIT, a tax credit is generally available to reduce the taxpayer burden.

Business income

For a PRC individual tax resident, business income is subject to an IIT rate of 5% to 35%, while in Hong Kong, business income for an unincorporated business is subject to a tax rate of 15% (if no personal assessment is selected). It is worthwhile highlighting that the first HK\$2 million of assessable profits earned by an unincorporated business

is subject to a half tax rate of 7.5%, if no other connected entities claim the same tax benefits in Hong Kong. Table 1 summarises the tax rates for the common types of income under the tax systems of the Mainland and Hong Kong.

Last piece of advice

As the taxation system in the Mainland becomes more sophisticated, individuals doing business there should be aware of their potential tax exposure, while PRC individual tax residents should also be aware of their tax exposure in respect of local and overseas investments. Taxpayers are encouraged to look for tax advisers to examine whether their current investment structure and operations are tax efficient, as well as to ascertain their potential IIT exposure.

**Henry Kwong, Tax Partner, and
Matthew Cheung, Tax Manager**
*Cheng & Cheng Taxation
Services Ltd*



Photographer: Michael Kistler

Careers in Governance

Dominic Wu ACIS ACS

What is your role as a governance professional?

'I provide oversight of all sorts of risks for several business lines within my bank. Risk management is a key component of governance, assisting the business to better identify and manage risks so as to accomplish business objectives and fulfil regulatory requirements. Balancing risks and returns is an art as well as a science.'

What was your career path to your current role?

'I was trained as a professional auditor and company secretary in one of the big four firms and then moved into the financial sector, taking on various roles in finance, operations, risk and compliance.'

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

'Governance is the foundation stone of a sound organisation. Stakeholders, including shareholders, regulators, employees, customers, suppliers and the general public have expectations that the organisation should establish proper governance controls to ensure that the business is responsibly run to protect their interests. Deficiencies in governance is the most common underlying reason that organisations fail, whether that failure is attributed to financial misstatements, scams or management fraud. A company with good corporate governance, in particular good transparency and holding its people accountable, earns the trust of its stakeholders, attracts customers and has better access to the financial markets for fund-raising.'

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

'Continuous training, acting honestly and faithfully, avoiding biases and having an independent mindset are key. Also, governance professionals should be able to deal with people and manage expectations. The three Cs (collaboration, critical thinking and creativity) will drive the success of future generations. Moreover, in this era, governance professions should be masters of data governance – they need to be able to capture, analyse and disseminate different sorts of data.'

How do you think governance will evolve in the future?

'Increasingly, governance professionals will need to have higher academic and professional qualifications and they will need to

“

governance is the foundation stone of a sound organisation

”

Dominic Wu ACIS ACS, Managing Director, Senior Risk Manager, Risk Management and Compliance, Asia Pacific, BNY Mellon

adhere to higher professional and ethical standards. Governance will also need to adapt to the digital world – especially in terms of providing oversight in the virtual work space, cloud computing and the use of artificial intelligence.'

What inspires you in your life and work?

'Helping my family, friends and employer, as well as wider society. In my view, achievement should be measured by what people still remember of you when you are gone. Set a good example for others and have the courage to attempt new challenges while you can.'

How do you fill your time outside of work?

'Balancing work and life commitments is very important, in particular managing your physical health and emotional well-being. There are also great benefits from having a keen interest in learning new things, visiting new places and meeting new people. Participating in activities or training outside your industry will also greatly enhance your capacity for lateral thinking. Just randomly watching YouTube videos outside your interest areas can be surprisingly rewarding.'



Professional Development

Seminars: May 2020

5 May

AML/CFT best practices series: the AML/CFT law, sanctions compliance and technology – the importance of knowing and dealing with these

Chair: Natalia Seng FCIS FCS(PE), Past President and Institute Council member, and Senior Advisor, Tricor Services Ltd

Speakers: Michael Lintern-Smith, Senior Partner, Robertsons; Rani Kamaruddin, Partner, KPMG Forensic, AML and Trade Sanctions Services, KPMG China; Sachin Singh, Director of Partnerships – APAC, Risk & Compliance, Dow Jones; and Martin Lim, Founder and Director, Ingenique Solutions

6 May
IPO 101



Chair: Desmond Lau ACIS ACS, Institute Professional Development Director

Speaker: Terence Lau, Senior Associate, Stevenson, Wong & Co. In association with AllBright Law Offices

7 May

Don't ever trade off security when adopting work from home



Chair: Desmond Lau ACIS ACS, Institute Professional Development Director

Speaker: Casper Po, Executive Director, Supplier Development Asia Pacific Ltd

8 May

Public companies and COVID-19 – investigations & litigation?



Chair: Desmond Lau ACIS ACS, Institute Professional Development Director

Speaker: Maria Sit, Partner, Dechert LLP

8 May

Company secretarial practical training series: notifiable transactions – practice and application



Chair: Desmond Lau ACIS ACS, Institute Professional Development Director

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

11 May

How to handle tax disputes in this ever-changing tax environment



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

Speakers: Karen Au, Partner, Tax Controversy Services; and Joyce Chak, Manager, Tax Controversy Services; PwC Hong Kong

12 May
Company secretarial practical training series: share transfer in Hong Kong private companies & significant controllers register



Chair: Desmond Lau ACIS ACS, Institute Professional Development Director

Speakers: Carina Foo ACIS ACS(PE), Director; and Sam Lo, Company Secretarial Manager; CS Legend Corporate Services Ltd

12 May
PRC company secretarial practice series: annual reporting for WFOE & RO

Chair: Desmond Lau ACIS ACS, Institute Professional Development Director

Speaker: Shirley Sung, Associate Director - Corporate Services, Tricor China

13 May
Video call etiquette – how to look and sound professional in a VC



Chair: Desmond Lau ACIS ACS, Institute Professional Development Director

Speaker: Oliver Williams, Corporate Coach & Trainer, RBP Group Ltd

18 May
Sports governance – Hong Kong's elite sport system during the pandemic



Chair: Samantha Suen FCIS FCS(PE), Institute Chief Executive

Speakers: Trisha Leahy PhD JD BBS, Chief Executive; Tony Choi, Deputy Chief Executive; Raymond So, Director, Elite Training Science & Technology; and Ron Lee, Director, Community Relations and Marketing; Hong Kong Sports Institute

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
22 July 2020	6.45pm–8.45pm	What can we learn from the first two competition cases in HK? (i) CTEA 1/2017(bid-rigging) & (ii) CTEA 2/2017 (market sharing), decided in May 2019, and the newly published judgment on the approach to determining penalties handed down in April 2020	2
24 July 2020	11.00am–12.30pm	Governance, risk & compliance series: G in ESG – corporate governance in Asia and why it matters to investors	1.5
27 July 2020	6.45pm–8.15pm	Mainland company secretarial practice series: business entities – basic features, pros & cons	1.5
29 July 2020	6.45pm–8.45pm	Company secretarial practical training series: disclosure of interests in securities – practice and application	2

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

Professional Development (continued)

Online CPD seminars

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

Details of the Institute's online CPD seminars are available in the CPD section of the Institute's website: www.hkics.org.hk. For enquiries, please contact the Institute's Professional Development Section: 2830 6011, or email: cpd@hkics.org.hk.

Membership

Membership/graduateship renewal for the financial year 2020/2021

The renewal notice, together with the debit note for the financial year 2020/2021 (2020/2021), was sent to all members and graduates by email at the beginning of July 2020 to their email address registered with the Institute. In view of the challenges brought by COVID-19, and as a caring professional body, the Council has made the decision to offer a relief of 10% discount on the annual subscription for 2020/2021 for members and graduates, as well as extending the deadline for payment of that fee to 31 December 2020.

All members and graduates are highly encouraged to settle their annual subscription online directly via the Login area on the Institute's website: www.hkics.org.hk. Please ensure that you settle your annual subscription in time. Failure to pay by the deadline will constitute grounds for membership/graduateship removal.

For enquiries, please contact the Membership Section: 2881 6177, or email: member@hkics.org.hk.

Re-issue of certificates of The Chartered Governance Institute

Due to the change of name from The Institute of Chartered Secretaries and Administrators (ICSA) to The Chartered Governance Institute (CGI) in September 2019, new membership/graduate certificates under the name of CGI will be issued to all members and graduates, respectively. Details are as follows:

Phase	Expected collection period	Eligible members/graduates
1	July to September 2020	Fellows and Associates who are awarded the dual designation of Chartered Secretary and Chartered Governance Professional on or before 30 June 2020 All graduates
2	October 2020	Fellows and Associates who are awarded the dual designation of Chartered Secretary and Chartered Governance Professional between 1 July and 30 September 2020
3	January 2021	Fellows and Associates who are awarded the dual designation of Chartered Secretary and Chartered Governance Professional between 1 October and 31 December 2020

The collection periods stated above are tentative and may change subject to the COVID-19 situation. The Secretariat will inform eligible members and graduates of the collection arrangement and any subsequent change by email in due course.

For enquiries, please contact the Membership Section: 2881 6177, or email: member@hkics.org.hk.

Membership (continued)

Forthcoming membership activities

Date	Time	Topic
17 July 2020	7.00pm–8.00pm	香港精英运动团队分享 - 与体院一起对抗新冠肺炎的战役 (free webinar)
18 July 2020	10.30am–12.00pm	Mentorship Programme Mentors' Training – goal setting, feedback, handling difficult conversations (by invitation only)

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

Membership activities: May and June 2020

27 May

Fun & Interest Group –
Stress management in
the time of coronavirus
(webinar)



16 June

Fun & Interest Group
– Use of essential oils
for boosting immune
system (webinar)



New Associates

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

Au Yeung Sze Ngar, Anthea	Chong Lai Ying	Lee Tsz Fung	See Hiu Lun	Wong Lai Tong
Chan Chun Hei	Chu Hiu Ching	Li Meng	Shum Cheuk Yi	Wong Miu Shun
Chan Hoi Lam	Chu Wai Lim	Li Shuk Ling	Sin Yu	Wong Pik Sum
Chan Mui	Ding Bo	Li Zhenxiu	Tam Mei Po	Wong Pui
Chan Ngar Wai	Hung Sai Kit	Lian Weimin	Tang Chi Shing	Wong Siu Ki
Chan Tak Cheong	Kwok Sze Nei	Lu Xingjia	Tang Wai Yee	Wong Yuen Ki
Chan Yim Shan	Kwong Kin	Lui Kwun Yiu	Tsang Ka Wa	Wu Shuk Ling
Chen Wai Yee, Michelle	Lai Ching Ho	Ma Zhengjun	Tsang Tsz Kwan	Yang Liu
Cheung Mei Ting	Lai Kuen	Mak Hau Yin, Melody	Tse Pik Shan	Yang Xueyan
Cheung Wing Yan	Lam Man Hei	Mak Ho Man	Wang Pang, Paul	Young Wai Heng, Matthew
Ching Kim Fung	Lam Man Yee	Ng Mei Ha	Wong Ka Chi	
Chiu Yi Sum, Esther	Lee Toi Mei	Ng Wai Ki, Otto	Wong Kin Hang	

Correction

The title of Lau Shuk Fan FCIS FCS(PE) was misstated in the New Fellows section of Institute News (page 42, May 2020 edition, CSj). Her correct title is: Deputy Company Secretary, John Swire & Sons (HK) Ltd.

Membership (continued)

Maintaining professional standards

Member, graduate and student discipline

The Institute requires its members, graduates and students to comply with the requisite standards of professional ethics and conduct, as well as the Institute's regulations. The Investigation Group, Disciplinary Tribunal and Appeal Tribunal are the Institute's independent disciplinary bodies, as stipulated in the Byelaws of The Chartered Governance Institute and the Articles of Association of the Institute.

Notice of Disciplinary Tribunal decision

The Institute reprimands one member for professional misconduct:

- So Kwok Keung, Keith

The penalty of removal from the membership register was imposed by the Disciplinary Tribunal on the following four members for CPD non-compliance for the year 2019/2020:

- Cheng Wing Heng, Janet
- Lam Kin Ming, Edward
- Lok Mun Wai, Lousia Christine
- Ma Yin, Jean

For details of member, graduate and student discipline, please visit 'Discipline' in the Membership section of the Institute's website: www.hkics.org.hk.

Advocacy

Global webinar on 'Do we really need to meet? Learning from a pandemic'

The Chartered Governance Institute (CGI) held a global webinar – 'Do we really need to meet? Learning from a pandemic' on 2 June 2020. The speakers at the webinar included Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE), the then International President of CGI, Past President of the Institute, and Executive Director and Company Secretary of CK Hutchison Holdings Ltd; Peter Turnbull FCG, the then Vice-President of CGI, Non-Executive Director; and Amanda Mellor FCG, Group Company Secretary of Standard Chartered Bank Plc. Peter Greenwood FCIS FCS, International Council member and Chairman of the Thought Leadership Committee of CGI, served as chairman. These leading governance professionals shared their experiences and explained how different countries and organisations have addressed the challenge of holding meetings, especially general meetings, during the current pandemic. The speakers also discussed how the evolution of technology, regulations, laws, and shareholders' and stakeholders' attitudes can enable companies and other entities to move away from the traditional concept of the set-piece physical general meeting towards holding hybrid or virtual meetings. The webinar was attended by over 2,100 participants globally.

Webinar on 'Sports governance – Hong Kong's elite sport system during the pandemic'

On 18 May 2020, a webinar was held on the challenges faced by Hong Kong sports and athletes during the global pandemic. We appreciate the valuable contribution from our four



seasoned speakers from the Hong Kong Sports Institute (HKSI) – Dr Trisha Leahy, Chief Executive; Tony Choi, Deputy Chief Executive; Dr Raymond So, Director, Elite Training Science & Technology; and Ron Lee, Director, Community Relations and Marketing, who gave in-depth evaluations of the risks imposed on the sport system by COVID-19 and how HKSI responded.

As governance professionals, our members always strive to learn more about different sectors and this webinar was well attended by over 600 participants.

The Institute would like to thank the HKSI speakers for sharing their interesting insights and observations.

Chartered Governance Qualifying Programme (CGQP)

Student Ambassadors Programme

A free webinar, on ESG reporting, was held for the Institute's student ambassadors and undergraduates in Hong Kong on 26 May 2020. This webinar was designed to benefit any undergraduate interested in participating in the Institute's Corporate Governance Paper Competition and Presentation Awards 2020. HKICS students were also invited to join.



Forthcoming activities from July to September 2020

Date	Event
21 July 2020	Briefing Session for CCA New Graduates 2020 (webinar and by invitation only)
20 August 2020	Virtual Student Seminar: Corporate Secretaryship and Compliance – Shares and Share Capital (Part 1)
10 September 2020	Virtual Student Seminar: Corporate Secretaryship and Compliance – Shares and Share Capital (Part 2)
19 September 2020	Corporate Governance Paper Competition and Presentation Awards 2020
21 September 2020	Governance Professionals Information Session (Cantonese session)

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

Corporate Governance Paper Competition and Presentation Awards 2020

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

The theme for submission this year is 'ESG Reporting: A Value Proposition? Yes or No?'

The enrolment was closed on Friday 26 June 2020. Each enrolled team is required to submit a paper on the theme of not more than 5,000 words in English to the Secretariat by Friday 31 July 2020. The six finalist teams will present their papers on Saturday 19 September 2020 to compete for the Best Presentation Award.

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

Chartered Governance Qualifying Programme (CGQP) (continued)

Postgraduate Programme in Corporate Governance for Mainland students

The Open University of Hong Kong (OUHK) launched the Postgraduate Programme in Corporate Governance (PGPCG) in Shanghai and Shenzhen in 2016 and 2019 respectively. The PGPCG will also be launched in Beijing in the autumn of 2020. Students who complete the PGPCG and obtain an OUHK master's of corporate governance degree are eligible to apply for full exemption from the Institute's Chartered Governance Qualifying Programme (CGQP). The upcoming cohort of PGPCG students is expected to begin their course in autumn 2020 in Beijing, Shanghai and Shenzhen. Members, graduates and students are encouraged to pass this information on to any friends or contacts in the Mainland who are interested in enrolling this programme.

Three virtual PGPCG information sessions have been organised, two of which were held on 11 and 23 June, while the other is scheduled for 23 July 2020. For enrolment, please contact Ms Wang Yuan whose details are set out below.

For more details of the PGPCG, please contact:

<p>PGPCG in Shanghai: Eastern China University of Science and Technology (上海华东理工大学)</p>	<p>Contact person: Mr Kong Wei (孔巍) Tel: (86) 21 6425 1139</p>
<p>PGPCG in Shenzhen and Beijing: Shenzhen Campus, Harbin Institute of Technology (哈尔滨工业大学深圳研究院)</p>	<p>Contact person: Ms Wang Yuan (王媛) Tel: (86) 755 2672 7130/7110</p>

Notice:

Policy – payment reminder

Studentship renewal

Students whose studentship expired in May 2020 are reminded to settle the renewal payment by Thursday 23 July 2020.

Featured job openings

Company name	Position
Corporate Services Ltd	Company Secretarial Assistant (Senior)/Company Secretarial Supervisor
Conyers Dill & Pearman	Group Secretary
Presitge CPA Limited	Supervisor/Senior - Corporate Services Department

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

Rewarding the Extraordinary



CHARTERED
SECRETARIES
特許秘書



The Hong Kong Institute of Chartered Secretaries Prize 2020

Call for Nominations

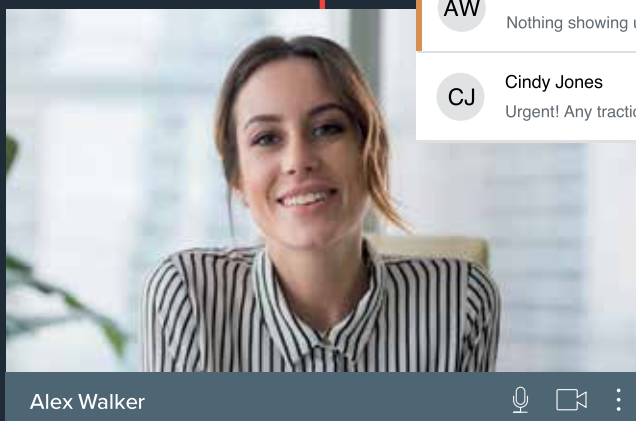
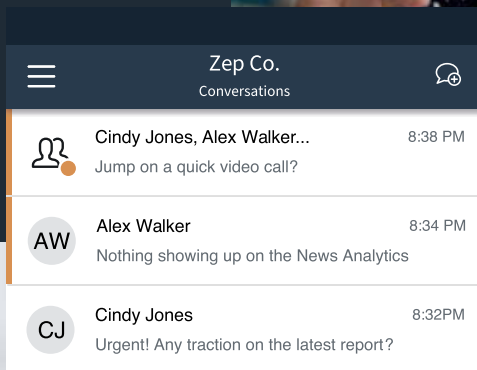
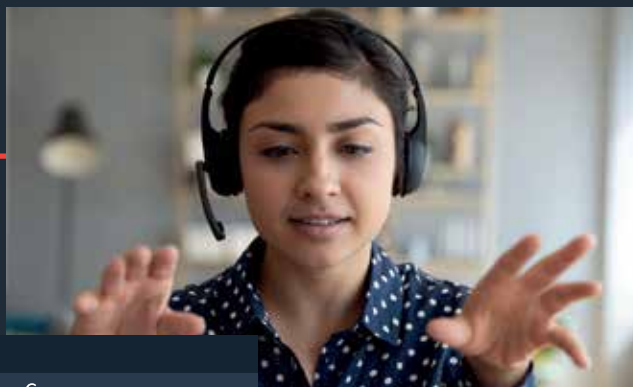
The Hong Kong Institute of Chartered Secretaries Prize will be awarded to a member or members who have made significant contributions to the Institute, and the Chartered Secretary and governance profession over a substantial period.

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

The nomination deadline is Wednesday 30 September 2020.

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

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act now!



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