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September 2020

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



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The role of governance
professionals

Director accountability
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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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CGC 2020: our Institute's flagship event

This month's journal looks at an area of governance that has been gaining attention both locally and globally in recent years – data privacy risk. Our cover story looks at the role we can play as governance professionals in effectively managing data privacy risk.

I would like to devote this message, however, to our biennial Corporate Governance Conference (CGC) to be held on Friday 25 September 2020 on the theme: Building the Modern Board: A 20/20 Vision. The conference will be followed on 26 September by a webinar, ESG in Practice. The conference will be the culmination of our Corporate Governance Week, which will be held from 19 to 26 of this month. More details of the activities we have lined up for the week are available on our website, www.hkics.org.hk, and you can find the CGC programme and speaker line-up on the conference website: cgc.hkics.org.hk.

Our CGC journey began in 1998. These events have evolved to become not only a leading forum on current and emerging governance issues, but also a very good calling card for our Institute's work. Many of the ingredients of the success of our CGCs are deeply ingrained in the way our Institute operates. The emphasis on practice rather than theory, for example, and on taking a forward-looking approach to governance issues, guides our Institute in its work from education, research and advocacy to continuing professional development (CPD) and thought leadership events such as our CGCs. We aim to

provide insights and guidance that are practical, valuable and relevant to the challenges that governance professionals face in their daily work.

Other components of our CGC 'magic formula' have evolved over the two decades we have been running these events. Structuring the discussions with relatively short speaker presentations (15 minutes) and long Q&A and panel discussions at the end of each session (50 minutes) maximises the opportunity for everyone – conference attendees as well as the speakers and panellists – to join in the debate. Apart from the strictures of keeping to timing restraints, we have also learned the value of keeping the day's discussions unscripted and informal. Feedback from previous CGCs indicates that the lively, impromptu exchanges in the Q&A and panel discussions are what attendees find most enjoyable and valuable.

Our longstanding Event Chairman, Peter Greenwood FCIS FCS, with his trademark irreverence and good humour, can be relied upon to ensure that our CGC formula will work its magic again this year. He will be helped in his task of keeping the discussions anything but predictable by the electronic polls that have become an essential feature of our CGCs. These polls, introduced into the debate at key junctures, have proved to be an excellent way of not only gauging views on the topics under discussion, but also of introducing the occasional curve ball to ensure that everyone is fully awake.

Our CGC journey continues and this year will see the addition of a new innovation in response to the COVID-19 pandemic. Over the past year, our Institute has gained valuable experience

in how online modes of delivery of CPD events work best. This experience has led us to adopt a 'modified virtual' formula for this year's CGC. The conference will be 'virtual' in the sense that attendees can join and participate in the event from anywhere in the world (we already have participants signed up from Australia, India, Malaysia, Nigeria, Singapore, South Africa and the UK), but most of the speakers and panellists will be present at the conference venue. This mode of delivery enables us to get the benefits of remote attendance – principally wider and more convenient access to the forum for attendees – while also more closely replicating the experience attendees would have from physical attendance at a forum of this kind.

Two decades of experience of running our CGCs have helped us craft a forum that will not only widen your awareness of the issues at the top of the governance agenda, but also enhance your knowledge and skills, thereby helping you to make a stronger contribution to good governance. If you haven't already registered for this event, I urge you to do so now. Another new feature this year is that you can sign up for morning, afternoon or full day attendance. Participants can also opt to sign up for Day 1 or Day 2 separately.

So, I leave you to this month's journal and look forward to joining you at our CGC 2020 later this month.

Gillian Meller FCIS FCS

2020公司治理研讨会：公会的旗舰活动

本期月刊将探讨近年来在香港和全球备受关注的治理领域——数据隐私风险。封面故事将探讨治理专业人士在有效管理数据隐私风险方面所扮演的角色。

但是，我想在此介绍公会将于2020年9月25日（星期五）举行两年一度的公司治理研讨会。今年研讨会的主题是“建立现代化董事会之 20/20 愿景”。研讨会的第二天（即9月26日）的主题为“环境、社会及企业管治之实践”。本届研讨会是公会“公司治理周”（9月19至26日）活动的重点项目。有关公会公司治理周活动的详细信息，请浏览公会网站：www.hkics.org.hk 有关公司治理研讨会议程和演讲嘉宾名单，请浏览研讨会网站 cgc.hkics.org.hk。

自公会于1998年首次举办公司治理研讨会以来，此研讨会不仅演变成探讨时下新兴治理题目的前沿论坛，还成为展示公会成果的一个重要盛事。研讨会得以成功的众多因素都归因于公会的运营方法。例如，重视实践而非理论、对治理问题采取前瞻性态度，这些方法一直引领着公会开展各项工作，从教育、研究、倡议到持续专业发展，再到思想领导活动（如公司治理研讨会）。目的是为治理专业人士在日常工作中面临的挑战提供实用、有价值和相关见解和指引。

在我们举办此研讨会的二十多年间，研讨会的成功因素不断在演变。每

个环节以演讲嘉宾简短的发言（15分钟）开始、以较长时间的小组讨论和问答环节（50分钟）结束，尽量提高每位出席人士包括：演讲嘉宾、对话嘉宾及与会者参与辩论的机会。除了严格控制时间外，我们还深深体会到让研讨会的讨论可以保持即席和自由发挥的价值。以往公司治理研讨会的反馈表明，与会者最为享受及认为最有价值的是充满热烈及即兴交流的问答环节和小组讨论。

我们的常任公司治理研讨会主席林英伟FCIS FCS将继续主持今年的研讨会，相信他幽默调侃的主持风格会继续令今年的研讨会精彩绝伦。电子投票已经成为公会公司治理研讨会的一个重要特色，这也使研讨会更具不可预测性。实践证明，在辩论的关键时刻引入投票调查，不仅可以了解大家对所讨论议题的看法，还可以临时抛出一个令大家出乎意料的结果，提振研讨会气氛。

今年的公司治理研讨会继续举办，并因2019新冠病毒疫情加入创新元素。在过去一年中，公会通过举办在线持续专业发展讲座，获得了如何发挥在线讲座最佳效果的宝贵经验。依据这些经验，我们今年的公司治理研讨会采用“虚实结合”的方式。研讨会将是“虚拟的”，因为参会者可以从世界各地参与（已经有来自澳大利亚、印度、马来西亚、尼日利亚、新加坡、南非和英国的参会者报名参加），但是演讲嘉宾和对话嘉宾将在现场出席

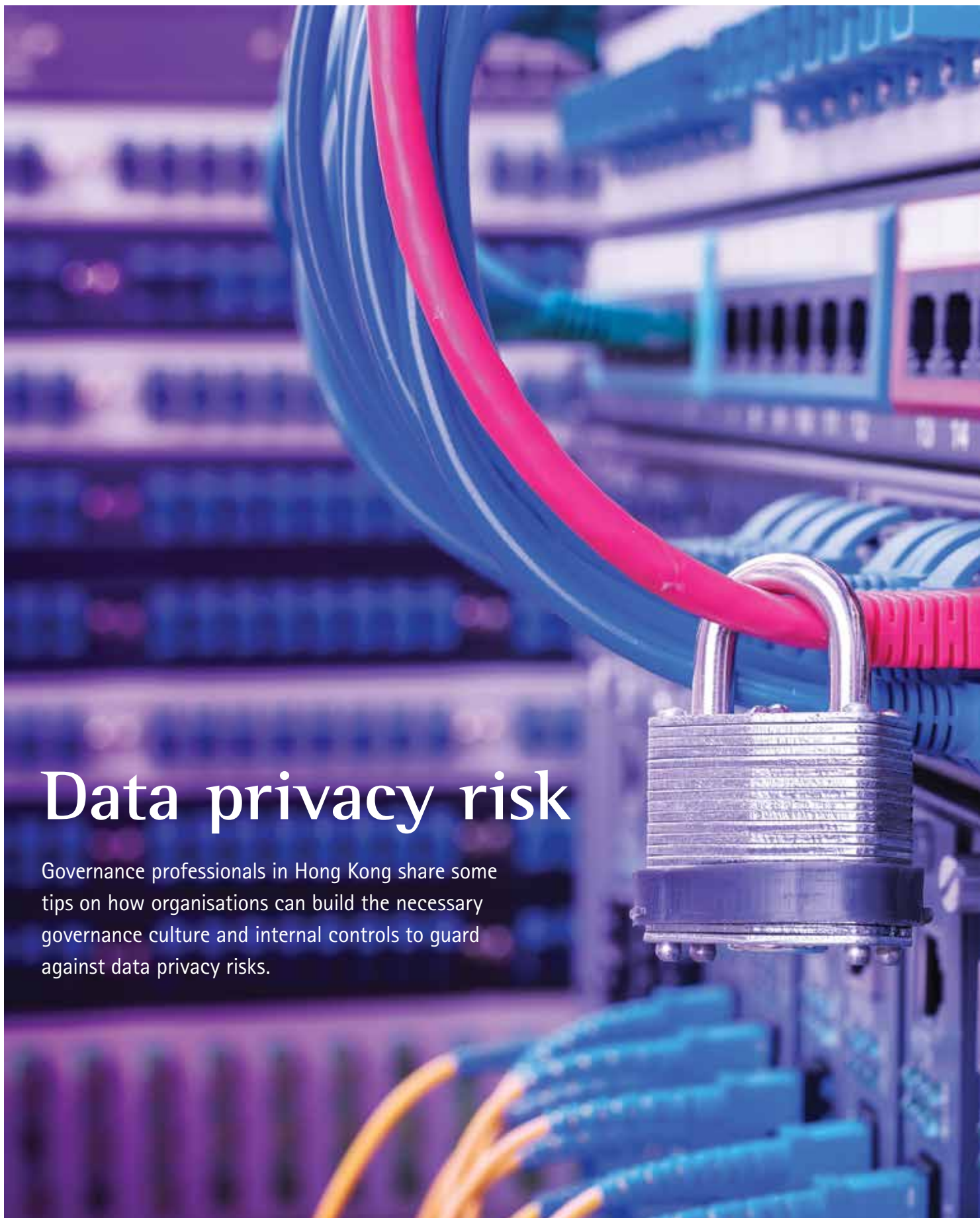
研讨会。这种举办方式使我们能够获得远程参与的好处——参会者可以在更广范围内及更方便地参与研讨会——同时也让参会者拥有犹如亲身出席此类研讨会时的体验。

二十年举办公司治理研讨会的经验帮助我们成就了这一项盛事，在研讨会上，您不仅可以拓展对顶尖治理领域的认知，还可以增强知识和技能，从而帮助您为良好治理做出更多贡献。如果您还未报名参加本次研讨会，欢迎您马上行动。今年的另一个新特点是可以选择报名参加不同时间段的会议，包括：上午、下午或全天参会。参会者也可以分别报名参加第一天或第二天的研讨会。

接下来请阅读本期月刊。期待与您一起参加将于本月下旬举行的2020公司治理研讨会。



马琳 FCIS FCS



Data privacy risk

Governance professionals in Hong Kong share some tips on how organisations can build the necessary governance culture and internal controls to guard against data privacy risks.



The legislative and regulatory landscape for data privacy is changing fast. The introduction by the European Union (EU) of its General Data Protection Regulation (GDPR) back in May 2018 heralded a shift towards tougher data protection standards globally.

'Regulators have responded to the increasing concerns over the need to protect personal data with a convergence towards more robust regulation that has been gathering momentum across the world,' says Neil McNamara FCIS FCS, Institute Past President and Corporate Secretary of one of Hong Kong's first virtual banks, livi bank. He adds that locally both Hong Kong and the Mainland have been a part of this trend. 'In Hong Kong we saw the review of the Personal Data (Privacy) Ordinance (PDPO), while in the Mainland there was the introduction of the Personal Information Security Specification, which took effect on May 2018,' he says.

Navigating the compliance risks

For governance professionals, the management of data privacy risks has become a lot more complex since the introduction of the GDPR, which has extraterritorial application. Ensuring

compliance now requires practitioners to keep in touch with developments in data protection and privacy risk management globally.

'While enforcement actions under the GDPR have mostly been taken against businesses with permanent establishments in the EU, this is likely to change over time as regulators test their extraterritorial powers. Hong Kong businesses need to understand their obligations and ensure that they are in compliance if they fall within the jurisdiction of the law – even if they do not have a physical presence in the EU. After all, compliance with applicable laws is an obligation as well as an essential part of corporate governance,' Mr McNamara says.

Mark Parsons, Partner at law firm Hogan Lovells, says that businesses are now more aware of data privacy compliance risks, both because of the extraterritorial aspect of the GDPR and also the very large potential fines and penalties under the law.

'Even if you don't have a business presence in the EU, you can still be required to comply with the GDPR if you're selling goods and services into the

Highlights

- regulators have responded to the increasing concerns over the improper use of personal data with a convergence towards more robust regulation that has been gathering momentum across the world
- respondents welcome the approach taken by the Privacy Commissioner to engage with companies, focusing on training and best practice advocacy, rather than solely relying on enforcement
- one of the roles the company secretary can play in privacy risk governance is to ensure that senior management and the board are aware of their duties and responsibilities

EU, or if you're monitoring the behaviour of individuals in the EU. Because the fines are heavy and the standard of compliance is very high, there's often a strategic question of whether companies should structure their business to reduce their exposure to the GDPR,' Mr Parsons, who is also Hogan Lovells' Head of Corporate Practice in Hong Kong, says.

The GDPR has been followed by similar laws in other jurisdictions, some of which also have extraterritorial aspects. This has prompted companies to look at how to set a common standard across their operations to ensure compliance. Jennifer Ho, Global Risk Assurance Leader, PricewaterhouseCoopers, advises her clients to set a benchmark at the highest compliance level – using something like the GDPR – when setting standards. 'For companies in the region, assuming they have different business units, if you take something like the GDPR as a baseline then you can dial up or down depending on which country you are operating in,' Ms Ho says. This, she adds, may have cost-saving benefits for companies able to reduce compliance costs in business divisions not subject to high compliance requirements.

Proposed changes to the PDPO

In Hong Kong, the trend towards tougher data privacy requirements can be seen in the proposed changes to the PDPO put forward by the Privacy Commissioner for Personal Data (PCPD) last year. The government plans to submit to the Legislative Council six of the proposals seeking to amend the PDPO to introduce:

1. a mandatory data breach notification requirement
2. a data retention policy requirement

“
it is advisable for company secretaries to have a broad view of what is happening in the data protection landscape across the globe so that they can be in a better position to help their organisations
 ”

Jennifer Ho, Global Risk Assurance Leader, PricewaterhouseCoopers

3. provisions for the PCPD to be able to impose direct administrative fines
4. provisions for the PCPD to regulate data processors
5. an expanded definition of personal data, and
6. new provisions to regulate the disclosure of other data subjects' personal data.

The first of these proposals has received a lot of attention from the market. A high-profile data breach involved Cathay Pacific in October 2018, with the personal data of more than nine million customers falling into the hands of hackers. The airline was also found to have delayed disclosure of the breach for about seven months, drawing a rebuke from the Privacy Commissioner.

The PCPD has also reported an increase in the proportion of privacy complaints relating to inadequate data security in fiscal 2018/2019 compared with the two previous fiscal years. Data breaches reported to the PCPD have also

consistently increased, from 61 cases in 2013 to 129 cases in 2018.

There are still issues that need to be decided, however, regarding how the data breach notification requirement can be implemented. 'The devil is in the details,' Mr Parsons says. He points out that setting the right materiality threshold for notifications will be key – the proposal talks about setting a threshold of 'a real risk of significant harm'. 'If the Privacy Commissioner is inundated with unimportant notifications, this will not really serve the purposes of the law,' he says.

The proposals to increase the powers of the PCPD are generally welcomed, including the proposal for the PCPD to be able to impose direct administrative fines. The current penalties in the PDPO for compliance breaches are low by international standards. The law has a maximum fine of HK\$50,000, while the GDPR sanctions fines of up to 4% of turnover. Mr McNamara points out, however, that tougher penalties will not be effective alone – they need to be part of a regulatory system that should also





focus on helping companies become better at data protection and privacy management.

Fabrizio Rosina, CEO of 7Layers, a cybersecurity and information management firm with headquarters in Europe and a Hong Kong branch, agrees. 'It is much more effective and important to use the regulatory system as an incentive for companies to act correctly. For example, in the GDPR environment, taking steps to build an "adequate" security programme means being more protected from a legal point of view in case the company is a victim of a data breach. This way, everyone benefits in the end,' he says.

Mr Parsons welcomes the approach taken by the Privacy Commissioner to engage with companies, focusing on training and best practice advocacy, rather than solely relying on enforcement. 'I've had plenty of situations where this approach has been very positive for compliance. I can call the PCPD and ask them for their advice. There are benefits to having a very constructive regulator prepared to work with an industry that wants to find ways to comply,' he says.

The role of governance professionals

Now that the importance of effectively managing data privacy risks is better recognised by companies, the focus is switching to how their governance of these risks can be improved. Ms Ho recommends an approach that involves looking at companies' data protection governance framework from strategy to operation, as well as clearly defining the roles of those tasked to assess, design, implement and monitor data protection controls, including the escalation process. This involves looking at whether there is someone in the organisation who has overall responsibility for data protection, like a Data Protection Officer (DPO), as well as whether there

are mechanisms in place to support the compliance processes and role of the DPO.

'The whole framework is very important, whether it's on the technology, the operations or legal side, because each person in the framework has a role to play,' Ms Ho says.

Mr McNamara emphasises that, while in a bank data privacy compliance is very much driven by its stringent regulatory obligations, in other companies the company secretary can be key to ensuring that the board and senior management are well informed about the risks involved. He points out that if the board is not aware

Data protection and COVID-19

A day for remote workers in the COVID-19 era might begin with a teleconference with their colleagues. When a stranger shows up 'Zoom-bombing' the meeting with obscene images, the risks of this new work arrangement become very apparent.

Jennifer Ho, Global Risk Assurance Leader, PricewaterhouseCoopers (PwC), points out that organisations need to get to grips with these risks since remote working could well become a much more permanent feature for organisations in the post-COVID-19 world. At PwC, for example, there is no need for 9-5 working hours. 'We have a culture of "WeFlex", which is a reimagined way of working, offering our people the flexibility in when, where and how we work each day. It allows our people the flexibility to better meet the demands of our clients as a team, while respecting and understanding our people's personal priorities. I think this is something, going forward, that organisations are going to have to reassess because COVID-19 has changed the whole working landscape,' she says.

Data protection is one of the top risks facing organisations that have embraced remote working practices. Fabrizio Rosina, CEO of 7Layers, points out that organisations should be updating their software – to use advanced endpoint protection and data leak protection software for example – but that effective staff training is also key. 'Organisations can minimise the privacy risks associated with remote working by ensuring adequate training of staff on the correct use of the company's systems. Organisations need to build awareness of the risks and enable safe access to the company's network and systems,' he says.

“ there is a very apparent forward momentum towards increasing compliance requirements, so it is definitely advisable to anticipate that trend and implement a programme that is catching where the direction is heading ”

Mark Parsons, Partner, Hogan Lovells



and doesn't understand the implications of these risks, it will be very hard to drive down the processes and roles through the company that are needed to build an effective privacy risk governance framework.

Ms Ho adds that company secretaries need to look beyond the local regulatory regime. 'It is advisable for company secretaries to have a broad view of what is happening in the data protection landscape across the globe so that they can be in a better position to help their organisations,' she says.

Mr Parsons points to the Privacy Management Programme (PMP) (see end note for more details) advocated by the Privacy Commissioner since 2014 as a framework organisations can use to get started. 'The PMP provides an accountability model to ensure that management is aware, at all levels, of the importance of data protection. It helps organisations recognise data as an important asset and an important human responsibility, but also the importance of

allocating resources to it and managing it sensibly,' he says.

Future-proofing data privacy risks

As stated at the outset, the compliance requirements relating to data privacy are changing fast. 'I think there is a very apparent forward momentum towards increasing compliance requirements, so it is definitely advisable to anticipate that trend and implement a programme that is catching where the direction is heading,' Mr Parsons says.

He adds that organisations need to be thinking about how technological change will impact this space. New technology, for example, may provide opportunities to use existing data in new ways, but organisations need to consider the issue of data users' consent. 'If you are looking at new technology that enables you to use existing data for another purpose, you need to make sure that you're getting the right consent now and stepping up cybersecurity planning if you anticipate that in a few years that you will be using that technology,' he says.

Managing cybersecurity risks also needs to be a major part of any future-proofing exercise. 'Cyber risk must be assessed in the context of the specific circumstances of businesses – where and how they store their data, whether they have policies relating to remote working, whether they use cloud services, whether they have in-house servers, etc,' Mr Rosina says. 'Once we have obtained and documented all the relevant information, we map the "as-is" situation, and then we evaluate and provide advice on whether that particular technological setup is adequate to their industry and to the specific way that company manages data. Solutions must be tailor-made to each situation and you can't copy and paste the same solution to everyone,' he says.

Poo Yee Kai
Journalist

More information on the Privacy Management Programme mentioned in this article is available at:
www.pcpd.org.hk/pmp/pmp.html.

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Personal data privacy – an ethical perspective



Stephen Kai-yi Wong completed his tenure as Privacy Commissioner for Personal Data, Hong Kong, China (Privacy Commissioner) on 3 August this year. CSj talks to him about the changes he has seen in the privacy protection landscape in Hong Kong over his five-year term and about the role of governance professionals in upholding data ethics and accountability.

Can we start by discussing the proposed amendments to the Personal Data (Privacy) Ordinance (PDPO)?

'Yes, that will be a good place to start. The data breaches in the travel industry, in particular the airlines and hotel chains, were alarming signals to us that the law needs to be changed. There is a clear need for the industry to take practical steps to ensure better data security and our proposal is to introduce a mandatory data breach notification requirement. Data users would be required to notify the office of the Privacy Commissioner for Personal Data (PCPD) and relevant data subjects of data breach incidents reaching a threshold of "real risk of significant harm".

Equally alarming have been the criminal doxxing cases we have seen on both sides of the political divide in Hong Kong. Currently Section 64(2) of the PDPO makes it a criminal offence to disclose any personal data of a data subject obtained without the consent of the data user and where such disclosure causes psychological harm to the data subject, but we believe that there might be a clearer and more effective way to deal with doxxing. The police have made arrests for activities of this sort based on the provisions of other pieces of legislation. I believe, in terms of personal data, that there are good reasons to have specifically designed provisions in the PDPO on this.

More generally, the PDPO was enacted back in 1995 and has only once been amended – that was in 2012 when the offence of direct marketing was introduced. But many different offences start with abuses of personal data, and I think there is a need to do better in terms of updating the legislation.'

How soon do you think any amendments to the PDPO might take effect?

'We submitted our recommendations to the Constitutional and Mainland Affairs Bureau in our review report in June last year. They accepted that there were good reasons to amend the existing law and six proposed directions of amendment were listed for consideration in the Panel on Constitutional Affairs of the Legislative Council (LegCo). In addition to the mandatory

data breach notification requirement and new provisions to regulate criminal doxxing mentioned above, the proposals also include provisions to increase the PCPD's powers, such as the imposition of administrative fines. I believe we need these because we have been known as a toothless tiger. But it is really difficult for us or the government to make an educated guess about when any draft bill, if at all, might be presented to LegCo. It's a matter of priority and the bill is waiting along with a number of other pieces of legislation that have been stalled.'

Do you think that there is support for privacy protection across the political divide in Hong Kong?

'People, whichever camp they belong to, have been using personal data as a weapon. Posting the personal data of individuals, sometimes together with that of their family members, amounts in my view to intimidation. As I mentioned, Section 64(2) of the PDPO makes this type of doxxing a criminal offence, but so far we haven't seen many prosecution cases based on this provision – despite the fact that we have received more than 5,000 complaints and, of those, more than 1,400 cases have been referred to the police for further investigation. Why do we have to refer the cases to the police? Because we don't have the powers they have to go to the relevant premises to search for and seize evidence. Neither do we have the power to obtain statements or to prosecute.'

Highlights

- data governance breaches will lose you the trust and confidence of your clients and customers, as well as your reputation
- governance professionals need to ensure that the board recognises its accountability for personal data governance
- personal data privacy issues should be frequently tabled as one of the agenda items at board meetings

You made the point earlier that many different offences start with the abuse of personal data – do you think this will help make the case that the PCPD needs to have greater powers?

'Let me tell you a story. On the first day I assumed duty back in 2015, I paid an official visit to the Commissioner of Police and I made the same point – that most fraud cases start with an abuse of personal data. Doxing would be an obvious example of this, but there are many other cases we have seen where abuse of personal data is involved. Generally, however, when the police prefer charges relating to a criminal offence, which might have stemmed from a personal data-related offence, they leave the personal data offence aside. This is probably because personal data offences were often regarded as more trivial, less tangible and not really criminal.

So I recommended to the Commissioner of Police that police officers should be reminded of the relevant personal data offences when they prepare charges. I offered the assistance of the PCPD to provide advice and training on the provisions of the PDPO. That was five years ago and fortunately the attitude has changed now – the police often issue warnings that offences are the same whether they are committed online or offline. We have also built up a consensus that the two enforcement authorities – the PCPD and the police – should dovetail our approaches and work together appropriately. The Hong Kong Monetary Authority (HKMA) has also joined the effort, so we are very happy to be working closely with law enforcement and regulatory authorities in Hong Kong to promote better due diligence and vigilance relating to the use of personal data.'

Are mindsets changing on privacy issues in Hong Kong?

'We did a survey recently – the findings will be published shortly – which shows that mindsets are changing. The survey, conducted by The University of Hong Kong, asked 1,200 Hong Kong citizens for their opinions on many of the issues we are discussing. The survey indicates high awareness levels of these issues and support for the proposed amendments to the PDPO.

So I believe that over the last five years people have become more acutely aware of personal data privacy issues, but how far enterprises understand how to exercise ethical data governance in the course of business is another question. We have been trying to educate enterprises about many different aspects of personal data protection. For example, exercising due diligence and vigilance in respect of the personal data of customers is not only important in Hong Kong. The European Union (EU)'s General Data Protection

Regulation (GDPR) has extraterritorial effect over enterprises in Hong Kong doing business with, or offering services to, individuals in the EU. Similar legislation applies to California and the Mainland.

So one of the major tasks that I have endeavoured to get involved with is to engage with enterprises to help minimise the damage caused by breaches of the PDPO. I haven't used a "name and shame" policy. When there is a data breach, we call to offer our help to mitigate the damage that might have been caused. It is not only the enterprises' interests that we have in mind, but the interests of the data subjects – the Cathay Pacific data breach, for example, involved 9.4 million passengers.

When I started as Privacy Commissioner and was introduced to business executives at functions, they would often look at me as if I was Dracula about to suck their blood, but I think this has changed. I and my team are often asked to give talks to trade associations, chambers of commerce, individual enterprises and government departments about compliance and data governance issues, and I think that's very encouraging.'

As the regulator for personal data privacy, isn't there an advantage to being feared?

'We have adopted a policy of using both carrot and stick. When we receive complaints and initiate compliance investigations, we do want people to feel a certain kind of fear or respect for our authority to ensure everyone acts strictly in accordance with the law, but my mission number one, as set out very clearly in our annual reports, is fair enforcement. Our enforcement must be fair, otherwise we will lose the confidence and trust of those we are regulating.

Moreover, there is very little point for me to take someone to court and fine them HK\$30,000 if, when they get back to their office, they are going to do it all again. The message that I've been trying to convey is that this is not just about compliance and sanctions. Abuses of personal data are not only wrong in law, but also wrong in terms of ethics. Data governance breaches will lose you the trust and confidence of your clients and customers, as well as your reputation.'

Is this a message you would like readers of CSj, as governance professionals, to pay particular attention to?

'Absolutely. I would like to make it very clear for your audience that they need to convince themselves first and then their bosses that data governance is not as simple an issue as it looks. It is a very

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people, whichever camp they
belong to, have been using
personal data as a weapon
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serious issue and it should be an issue frequently tabled as one of the agenda items at board meetings. This is what we mean by accountability. To ensure accountability for personal data privacy is already a legal requirement of the EU's GDPR, for example, and a statutory reporting obligation!

Over the five years of your term, have you seen rising awareness of the need for board accountability of data privacy issues among Hong Kong companies?

'Yes I have and this is very important when the deterrent effect of a failure to comply with law is so low. Even when, for example, British Airways or Cathay Pacific has received fines up to the maximum level, does it really hurt? Moreover, data privacy legislation and regulation is still quite fragmented, especially in Asia. We haven't yet been able to achieve a unification of standards or regulatory requirements. Even within jurisdictions in Asia, the laws relating to personal data privacy may still be very fragmented, with different laws relating to different industries for example. So that is another reason why we need to promote the principles of data stewardship, data governance and data ethics to complement the requirements of the law.

We started advocating accountability in 2014 and when we hosted the Global Privacy Assembly (formerly known as the International Conference of Data Protection and Privacy Commissioners) conference in Hong Kong in 2017, we made accountability one of the main themes. I think we have managed to put across the message that data ethics and accountability need to complement, but not replace, the law!

You have forged closer links with privacy regulators outside Hong Kong and with global privacy organisations – would you like part of your legacy to be this closer cooperation globally and the promotion of more unified standards?

'Yes, this is something I have been trying hard to achieve. One of the irreplaceable attributes of Hong Kong is that we are an international centre for many things – we are an international



financial centre, an international logistics hub, and so on, but many people forget that we are also an international data hub and information centre. We are well placed to develop Hong Kong as an international data hub – we have free flow of information, which is not the case 25 kilometres away. We also have good protections for freedom of expression, assembly and privacy under global covenants such as the International Covenant on Civil and Political Rights and guaranteed under the Basic Law. We need to protect our international status and the rule of law in Hong Kong. The "rule of law" is different from "rule by law" and rests on two cardinal principles – namely that no one is above the law and that the judiciary maintains its independence!

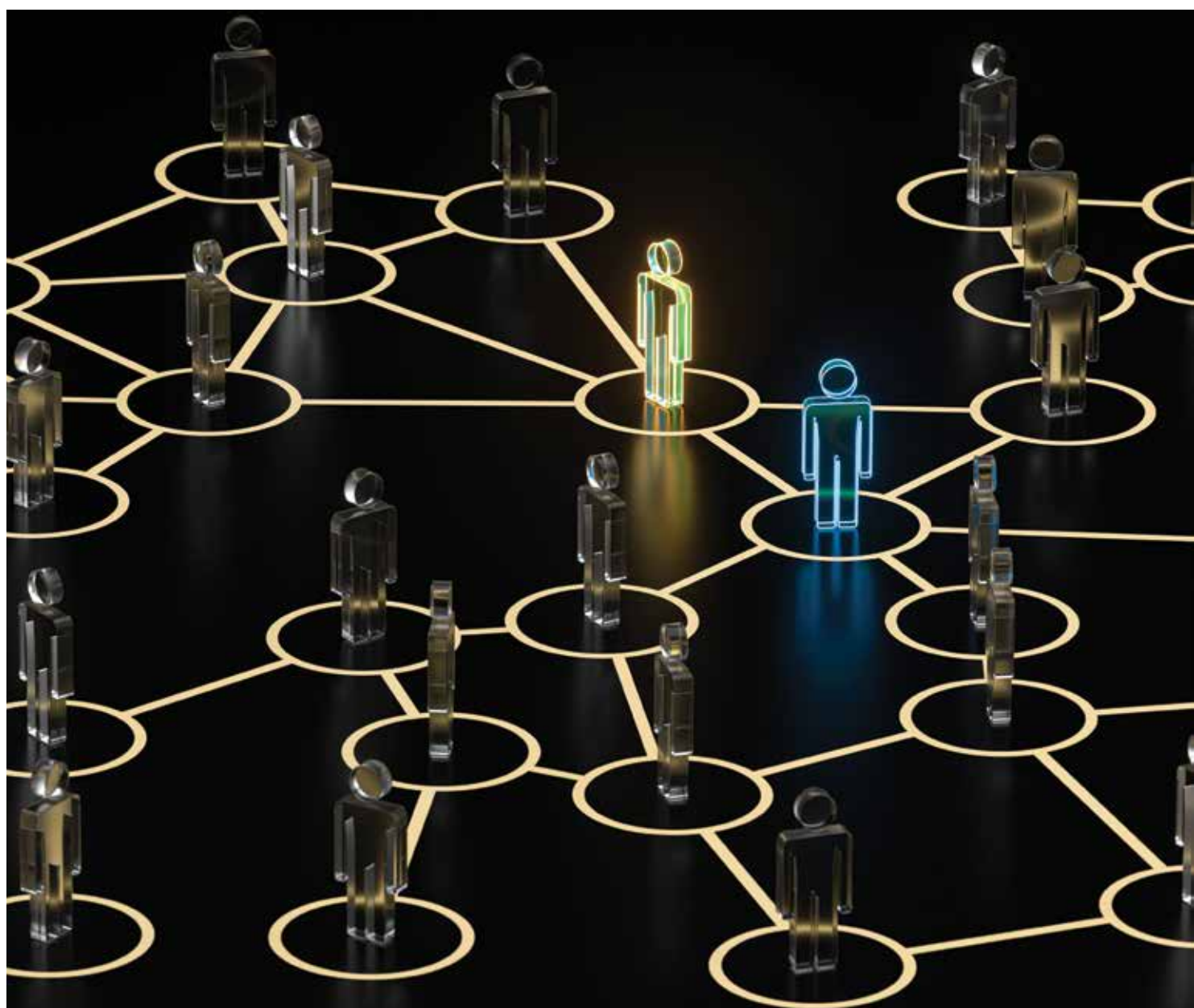
Now that you will be resuming your private practice as a barrister, do you think privacy cases will be a large part of your work?

'Actually no. I intend to specialise in three areas: the statutory obligations of companies, personal freedoms and rights, and the regulatory authorities' limits of power.' 🗨️

Stephen Kai-yi Wong was interviewed by CSj Editor Kieran Colvert.

Stephen Kai-yi Wong's term as Privacy Commissioner ended on 3 August 2020. Ada Chung Lai-ling JP, previously the Registrar of Companies of the Companies Registry, took up the Privacy Commissioner role with effect from 4 September 2020.

Enhancing individual director accountability



Sharan Gill, writer, lawyer and contributor to *CSj*, reviews a paper published earlier this year by the Thought Leadership Committee of The Chartered Governance Institute, which looks at one of the most debated and controversial areas in governance – the accountability deficit on modern boards.

Enhancing Individual Director Accountability grapples with the perennial governance debate on form versus substance – highlighting the growing inadequacy of relying on regulation or the intervention of legislation alone. Many recommended or required board governance practices exist because they reflect legislative requirements or the results of studies, reviews or updates, and are often not due to any impetus from within. The paper argues that the very preponderance of these regulations might have led boards of directors to be fixated on adhering to the minutiae of form, for example how the board is organised, to process matters, such as how the board delivers its oversight responsibilities. This focus extends to board reviews, where again lip service adherence to structure and processes can lead to a lack of any real enforcement of accountability.

The paper does recognise that structural matters and process considerations are undoubtedly crucial starting points. The argument, however, is that the effectiveness of these same processes can be compromised without a real understanding of the relationship and behavioural dynamics within the board.

This challenge can become particularly critical when there is a tussle for influence or balance of control between the board and management, or between board members themselves. Difficulties can also arise in adopting the Western model of board governance, with its emphasis on

moving away from 'static hierarchical accountability structures' towards 'corporate teamwork'. The paper makes the blunt observation that 'individualism may be too hardwired into our psyches for corporate teamwork to function effectively within the boardroom'. Instead the inverse is more likely to be true, with powerful personalities dominating the boardroom, leaving other board members in meek acquiescence. Many boards simply ignore the presence of these relationship factors, with the excuse that they are ill-equipped to do otherwise. The hard reality is that the bottom line takes priority and any progress on enhancing boardroom efficiency 'has hardly reflected the same rigour and commitment often applied to the pursuit of organisational results', the paper states.

Double standards in the boardroom

The paper also highlights the lack of mechanisms for aligning directors' conduct with an organisation's values. This inevitably leads to a double standard between board members and management, whereby the latter is held

to account and the former is tolerated. 'Breaches in appropriate boardroom behaviour go beyond mere slip-ups to blatant examples of poor performance and conduct, for example, refusing to acknowledge procedures or impatience with agenda items', the paper states.

The paper goes on to lay bare the inherent irony that would result if the board became increasingly demanding in their oversight of managers and their behaviours, while steering clear of setting complementary expectations of their own behaviours. A particularly pertinent example is the significant time and resources spent by boards in assessing a CEO's performance, with little in the way of board self-reflection or weighing up the performance of individual board colleagues.

Attempts, however, to call out inappropriate behaviour or addressing gaps in the trust and confidence between boards and those they oversee tend to be ill-defined and stymied by flat-footed responses. One would think that it would

Highlights

- board processes, recommended and required, are undoubtedly crucial starting points for effective boards, but need to be backed up by a real understanding of the behavioural dynamics within the board
- board diversity serves as a preventative measure against an adverse culture becoming ingrained and acceptable
- proactive adoption of individual director assessment facilitated by third parties will focus attention on the need for directors to deliver on their obligations

be logical to expect that if organisations require employees to undergo regular performance assessments, then directors themselves should be the first to run the gauntlet of the evaluation process to demonstrate its value, relevance and commitment to it.

A lack of meaningful personal accountability

Despite the growing emphasis on individual accountability globally and in Hong Kong – both the Securities and Futures Commission and Hong Kong Exchanges and Clearing Ltd (HKEX) have made this a key focus of their advocacy and enforcement work – it would appear that much of the work over the past several decades to help boards increase their effectiveness has overlooked or sidestepped the implications for individual board members. The paper takes this bull by the horns and highlights the prevalent lack of personal accountability on the board, pointing out that it occurs even where there is a focus on culture and behaviours. It suggests that the focus on directors' skills, knowledge and experience in the nomination process is not complemented by consideration of nominee behaviours and their individual ability to contribute in meaningful and constructive ways in a group or team environment. 'As a result, boards get what they ask for, highly successful individuals who may or may not have the temperament to function well in the boardroom', the paper states.

The adoption of a process to assess individual director performance and contribution has received slow uptake on the part of the board, despite similar processes being the norm for management. Board performance reviews are generally a review of the board as whole. Where there is a review of individual directors, it

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boards get what they ask for, highly successful individuals who may or may not have the temperament to function well in the boardroom

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tends to be perfunctory. When we look at the majority of board questionnaires or workshop scripts, there is a heavy focus on process or effectiveness as a collective group. Even though there may be the occasional questionnaire on individual performance, the actual responses in rating fellow board members are far more likely to be polite than searching. And where there is an issue involving feedback about an individual director's performance, this again tends to involve a process with little visibility on the individual level and is often dealt with one-on-one between the chair and the person concerned. Many other directors would often have no knowledge of the process involved, hence having little chance to contribute in a meaningful way.

There is the oft-quoted argument that there is a certain logic applied to this reluctance to hold directors to account for their meeting attendance etc, the argument being that this might disrupt collegiality within the board. One might ask how collegiality contributes in any meaningful way to governing well and performing the oversight role expected of the board on fellow members who are executives in the business.

Moreover, there is the perception that directors should be above the fray of personal performance assessments. The paper argues, however, that it is time that boards demonstrate the requisite leadership of their role and responsibility

by example rather than by mere decree. The author believes that there clearly needs to be some sense that not only is the board being evaluated as a whole but that individual directors are as well. 'Accountability must go beyond skills, knowledge and experience... adoption of processes to address individual director performance and contribution are critical.'

Globally, recognition that boardroom behaviour is a priority that needs to be addressed has taken root in emerging governance standards. The UK Financial Reporting Council in its Guidance on Board Effectiveness (2018) makes the pertinent point that directors 'need to reinforce values through their own behaviour and decisions. To do this effectively, executive and non-executive directors may need to increase their visibility'. There have been similar initiatives in Australia, where there has been a focus on building a corporate culture that will mitigate the risk of misconduct.

Ultimately, accountability for corporate culture is within the purview of an organisation's board of directors. To successfully develop a culture of openness and transparency, the behaviours of directors need to be commensurate with the stated values and principles of the organisation. As former US Securities Exchange Commission Chair, Mary Jo White, noted 'Ensuring the "tone at the top" for a company is a critical responsibility for each director and the board collectively. Setting

the standard in the boardroom that good governance and rigorous compliance are essential goes a long way in engendering a strong corporate culture throughout the organisation.'

The imperative going forward

The paper highlights the need for greater recognition of the importance and value of assessing a director's effectiveness, and suggests the adoption of processes and practices that address this need.

- Poor behaviour needs to be called out when it manifests itself, ideally by the chair but, failing that, anyone who witnesses it.
- Complaints against any director should be reported to the full board

and handled by a set procedure.

- Directors should self-police and either defer to the norms that are explicitly identified or remove themselves from the board.
- Diversity in any form, be it gender, race etc, goes beyond expanding board capability. It also serves as a preventative measure against an adverse culture becoming ingrained and acceptable.
- Rigour should be applied with the recruitment process of directors, and should include an assessment of whether a prospective director's personality

aligns with the board's chosen culture and behaviours.

- To encourage accountability, disclosure of directors' qualifications should include the particular qualities and capabilities for which board members have been nominated, as well as how they intend to contribute to the board.
- Directors should meet regularly outside the formal setting of the boardroom, providing an opportunity to raise matters in a low-key manner. Independent directors should be encouraged and expected to meet a cross-section of management and staff.

The Hong Kong Institute of Chartered Secretaries 2020 Annual General Meeting

Tuesday
15 December 2020
6.30pm

Call for nominations for Council election

Members are invited to nominate candidates for election to Council of the Institute at the 2020 AGM. The Articles of Association of the Institute provide that Fellows who are ordinarily resident in the Divisional Territory are eligible to stand for election. More details are available on the Institute's website: www.hkics.org.hk.



Members please
mark your diaries
and join us at the
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the adoption of a process to assess individual director performance and contribution has received slow uptake on the part of the board, despite similar processes being the norm for management
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- The chair is a key figure in monitoring conduct and behaviour. This accountability should be supported by the company secretary or a respected senior director. They should be tasked with reminding the chair of these obligations.
- All policies and procedures, especially any code of conduct, must apply equally to directors as well as management or the broader employee group.
- Proactive adoption of individual director assessment facilitated by third parties will focus attention on the need for directors to deliver on their obligations. A third-party evaluation should ideally be proposed by the company secretary and approved by the full board. The process used should adopt maximum rigour, including observation at board and committee meetings, and interviews with each board member and members of management who have regular interaction with the board.
- To preserve independence and objectivity, no assessor should carry out more than two successive

assessments. The assessor should be expected to suggest opportunities for improvement for each director. The findings should be discussed with each director and the chair, after which an overview should be prepared for consideration by the governance committee, prior to formal reporting to the whole board.

Conclusion

The Chartered Governance Institute (CGI) Thought Leadership Committee publishes both research papers and opinion papers – John Dinner’s Enhancing Individual Director Accountability is an example of the latter. It is a strongly argued piece by someone with a good deal of experience in board governance consulting. In an era when individuals are increasingly being held to account for their actions, and in the midst of a ruthless pandemic that has cut down even entities that are run well, the paper’s attempt to root out the causes of boardroom dysfunction could not have come at a more opportune time.

What remains unsaid, however, is the lack of suitability of the Western model in the Asian context of boards that are dominated by controlling shareholders. Unlike the West, the reality of Asian boards is that they are often dominated by controlling

shareholders who run the business, with non-executives on the board often treated politely but not seen as experts in the area of operations. This conundrum would be a good theme for future CGI thought leadership papers – addressing the inherent difficulty of board members who are appointed by the same people whose conduct they are expected to oversee. The question naturally arise: what would be the incentive of board members to be challenging, rather than just be nominally independent when they are appointed to the board?

On the question of the accountability deficit on modern boards, however, John Dinner’s paper has thrown down the gauntlet – it is time for all parties to take up the challenge and initiate real change.

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

Enhancing Individual Director Accountability was authored by John Dinner, President of John T Dinner Board Governance Services, and a member of The Chartered Governance Institute’s Thought Leadership Committee. Published in April 2020, the paper is available on the CGI website: www.cgiglobal.org.



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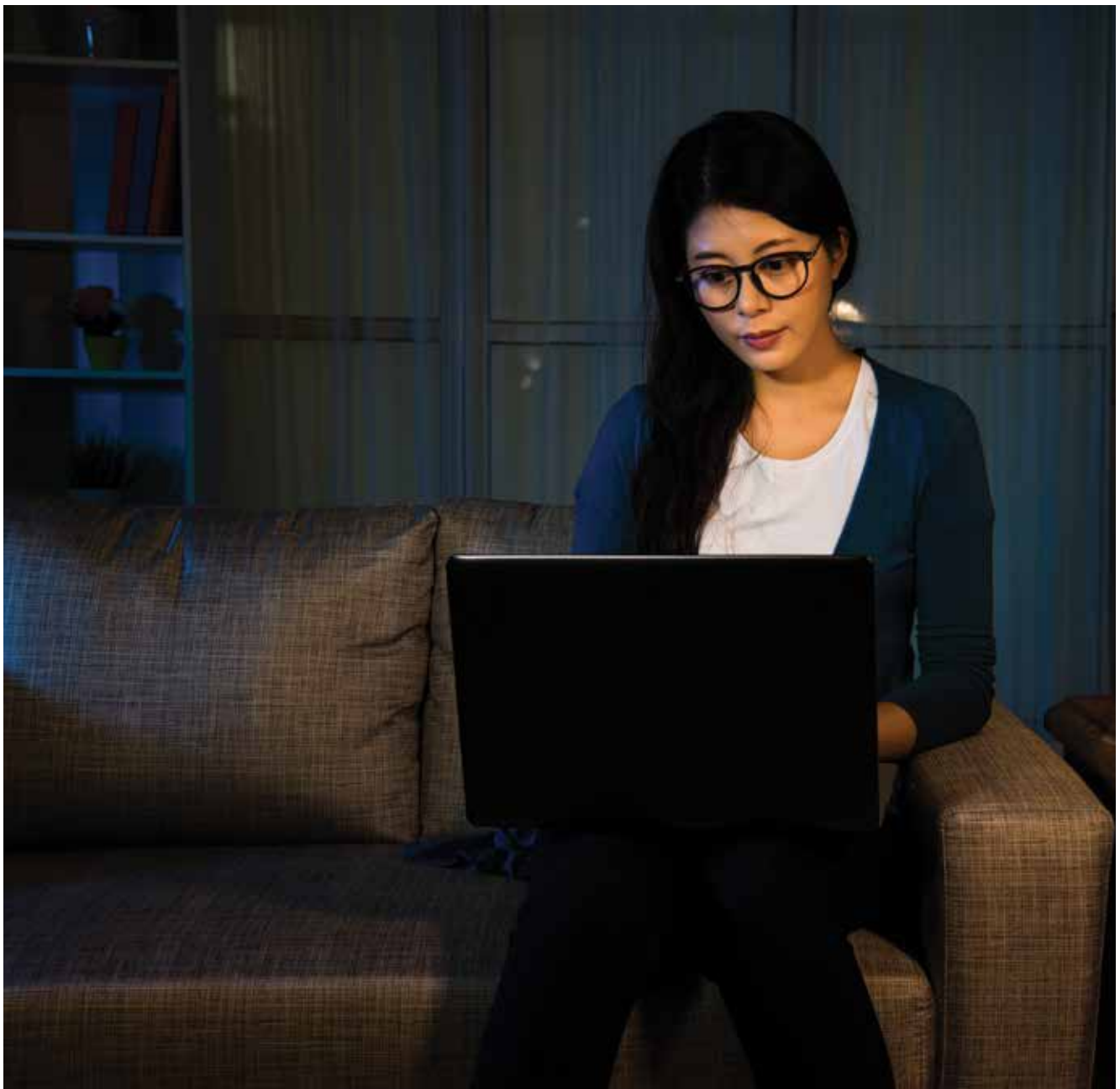
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Working from home?

Donald Lai ACIS ACS, Solicitor, CPA, argues that there is a need for more clarity on employees' rights and obligations during search operations of residential premises conducted by the Securities and Futures Commission (SFC).



During the current COVID-19 pandemic, technology has made it possible for employees to access the office system and carry on their job duties from home, but, as this arrangement has become more commonplace, some unexpected consequences have started to emerge. This article looks at one such consequence – the question of employees' rights and obligations during search operations of residential premises conducted by the SFC.

What are the SFC's powers?

The SFC has the power to apply to a Magistrate for a warrant to carry out search operations at a private residence and to request the production of records or documents from a search target. Section 191(2) of the Securities and Futures Ordinance (Cap 571) (SFO) and Section 17(2) of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615) (AMLO) make it clear that, under this 'production power', an SFC officer can ask the person on the premises to provide the required information rather than having to conduct a full search.

The maximum penalty for breaching a Magistrate's search warrant is a fine of HK\$1 million and imprisonment for two years under Sections 191(6) & (7) of the SFO and Sections 17(9) & (10) of the AMLO. Similar production power is not available in the search warrants granted to the police or the Independent Commission Against Corruption (ICAC).

The exercise of the SFC's production power is subject to two reasonable caveats. Firstly, the SFC officer must reasonably believe that the person on the premises is employed in connection with the business,

which is, or which has been, conducted on the premises. Secondly, the SFC officer must reasonably believe that the record or document in possession of the person is required to be produced under Part 8 of the SFO.

The second caveat attracts little dispute as any records or documents relevant to the investigation are required to be produced on request under Part 8 of the SFO, but does the first caveat essentially exclude the SFC from exercising its production power on residential premises? After all, under normal circumstances, no business would be conducted therein.

The key issue is whether the SFC believes a search target is 'carrying on a business' in such premises. In the CL Management Services Ltd case [2016] HKCFI 940, the court held that 'carrying on a business is a matter of fact and degree'. But where an employee is working 'bits and pieces' for his or her company at home, would this amount to carrying on business activities there? This uncertainty is likely to become more important to resolve since an employee's home, under a home-office arrangement, is likely to be used to conduct business.

Highlights

- as work-from-home arrangements have become common during the COVID-19 pandemic, there is a need for more clarity regarding the SFC's powers when searching residential premises
- in particular, there is still some uncertainty in the case law relating to the production powers of the SFC when searching residential premises
- companies should discourage employees from using their own electronic devices to carry out office work and avoid saving office records or documents on their personal electronic devices

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as part of their risk assessment processes, company secretaries should strengthen internal policies and procedures to guide employees on how to respond to SFC search operations at their homes
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There is further uncertainty in cases where the SFC officer demands a mobile phone – which can be considered as 'records or documents' as per the Cheung Ka Ho Cyril case [2020] HKCFI 270. The SFC officer is entitled to seize any mobile phone left unattended anywhere in a residential premises. But if a search target has the mobile phone in his or her pocket, the SFC officer has no legal power to demand the production of the mobile phone or conduct a physical search of the person to seize the phone. The SFC officer can request voluntary

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production, but the person is under no legal obligation to comply with such a request and a refusal would not amount to an obstruction.

The work-from-home arrangement might therefore open an alternative interpretation of the SFC's production power since there is still some uncertainty in the case law relating to the production powers of the SFC when searching residential premises.

The implications for governance professionals

How the SFC will interpret their production powers in their search operations of residential premises is uncertain, but governance professionals, in particular company secretaries, should be alerted to the potential implications of these issues. Companies generally have standard guidelines on how employees should respond to SFC search operations of business premises, but such operations conducted in residential premises may be more of a grey area. As part of their risk assessment processes, company secretaries should strengthen internal policies and procedures to guide employees on how to respond to SFC search operations at their homes.

Employee training should highlight the investigative powers of SFC officers and the implications of the alternate interpretation they may have of these powers when conducting searches of residential premises. Companies may also want to separate office equipment and employees' electronic devices as much as possible. Companies should discourage employees from using their own electronic devices to carry out office work and avoid saving office records or documents on their personal electronic devices.

Where possible, the company should provide office equipment for employees to work on at home. Office records and documents should be saved in a centralised office network server. Employees should also be encouraged to keep a regular backup of their electronic devices to mitigate disruption to their daily lives. That way, even if an SFC officer seizes their electronic devices, the employee can restore the backup data on a new device.

Conclusion

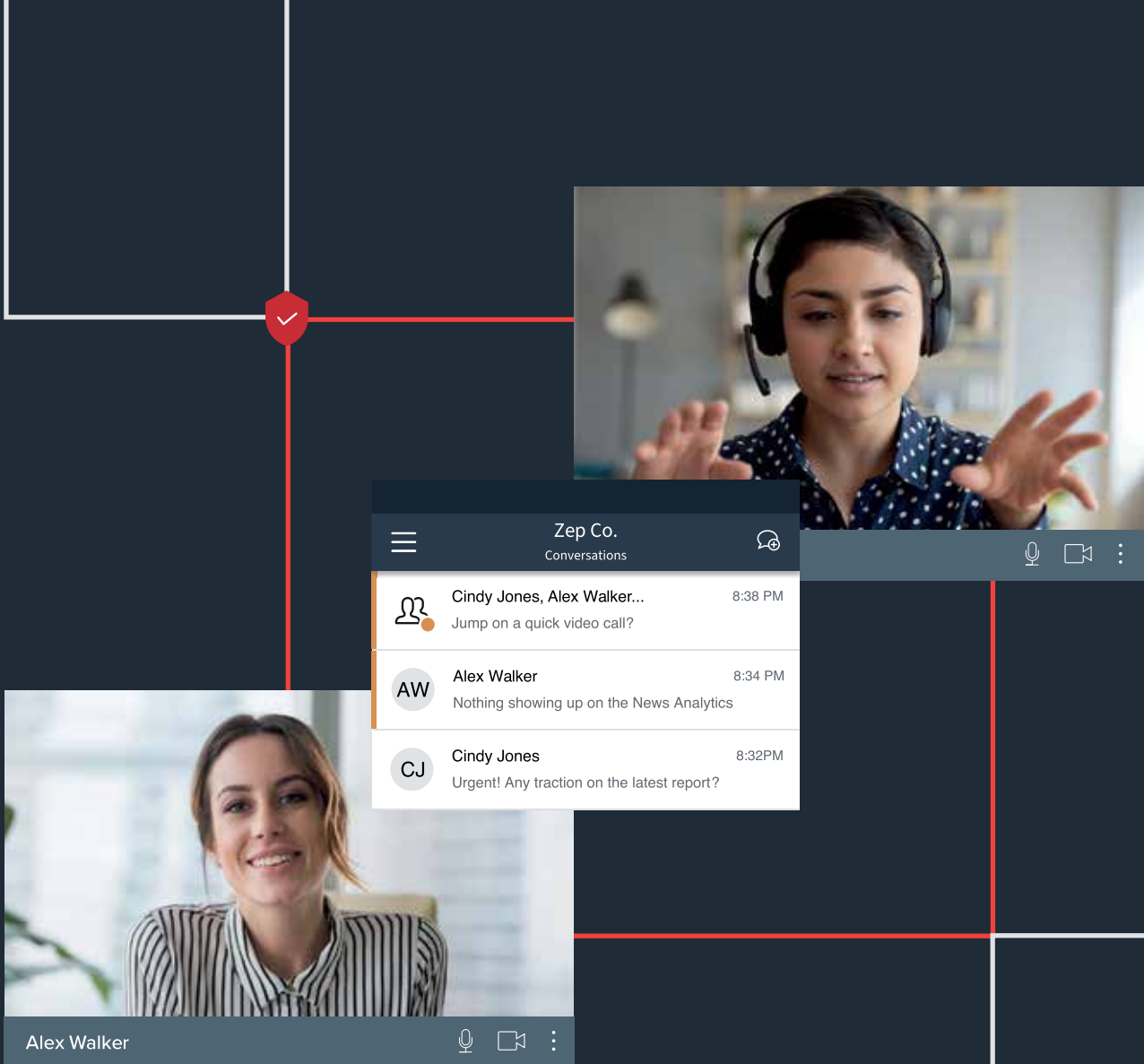
COVID-19 has changed our modes of working permanently. The work-from-home arrangement may well remain the

new normal after the pandemic is over. In this context, the questions raised in this article surrounding the SFC's production powers when searching residential premises will become increasingly important to address. As business will be increasingly conducted at home, employees need to know their rights and obligations during SFC search operations. Governance professionals, and in particular company secretaries, should be well prepared to give guidance on these important issues.

Donald Lai ACIS ACS, Solicitor, CPA

Donald Lai is a securities law specialist and a contributing editor to Securities and Futures Ordinance (Cap 571): Commentary and Annotations (2019 Edition), published by Sweet & Maxwell.

Do you have issues you would like to raise, or expertise you would like to share, with fellow members of the Institute? Members of the Institute are welcome to submit articles to CSj. Please contact the CSj Editor, Kieran Colvert, by email: kieran@ninehillsmidia.com.



MODERN GOVERNANCE IN TIMES OF CRISIS

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Corporate insolvency in the COVID-19 era

Some suggestions regarding directors' duties and liabilities



Against the backdrop of the coronavirus pandemic in Hong Kong, Keoy Soo Khim, Angela Law and Kelly Tan, Withers, offer a timely reminder to directors of their duties and liabilities when companies are insolvent or nearing insolvency.

None expected that the culprit responsible for putting an end to Wall Street's 11-year bull market would be the COVID-19 pandemic. Even as the situation stabilises in Asia, the COVID-19 pandemic has battered economies around the globe and there is uncertainty regarding more waves coming as case numbers rebound. Stock markets have plummeted and retrenchment rates are at an all-time high. Governments across the world have been announcing unprecedented stimulus packages aimed at tiding businesses through the pandemic.

In Hong Kong, the government announced in April this year that it would be offering HK\$137.5 billion (approximately US\$17.7 billion) to aid ailing businesses and to safeguard employment. With the Hong Kong economy still reeling from the impact of the social unrest over the past few months, it is uncertain whether such measures will be sufficient to keep businesses alive. In such times, it is important to be aware of what directors should or should not do when the company is insolvent or nearing insolvency.

Duties of a director when a company is insolvent

As a general rule, directors owe their duties to the company as a whole. However, when a company is insolvent, or is in a dangerous financial position, the director will be under a duty to take into account the interests of the creditors of the company. This is because the creditors of the company are entitled to look to the assets of the company to satisfy their debts in priority to those of the shareholders.

It is also important to note that, where there are different groups of creditors of the company, the directors of an insolvent company are obliged to regard the interest of the company's creditors *as a whole*. Thus, directors may be in breach of their duties if they:

- (i) favour a particular creditor over other creditors of the company without believing that it benefits the interest of the creditors as a class, or
- (ii) knowingly cause the company to pay away its assets to a particular creditor.

It is usually the liquidator of the company who will commence proceedings against the errant directors for breach of director's duties. The liquidator may also be entitled to claim for equitable remedies against an errant director to restore the company to the position it was in prior to the breach of duty, for the benefit of the creditors as a whole.

Transactions involving the company

When the company is insolvent or on the brink of insolvency, the directors will also have to be cautious in relation to the transactions involving the company. For instance, some directors may be pressurised or tempted to repay the debts of internal creditors of the company (for example directors or shareholders) before settling debts owed to external creditors. This may amount to a breach of directors' duties as well. Such payments may also be regarded as an unfair preference and may be voidable in certain circumstances upon an application by the liquidator, pursuant to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) (CWUMPO).

Apart from unfair preference, directors should also take note not to enter into transactions at an undervalue. One example would be selling the company's factory to the spouse of a shareholder of the company at a price that is grossly below market value. Similarly, such transactions may be set aside upon an

Highlights

- directors may be in breach of their duties if they favour a particular creditor over other creditors of the company without believing that it benefits the interest of the creditors as a class
- even in the absence of a statutory insolvent trading regime in Hong Kong, directors can be held personally liable if they knowingly carry on the business of the company with intent to defraud creditors or for a fraudulent purpose
- the HKSAR Government intends to introduce a new statutory corporate rescue regime that will include provisions against insolvent trading

“
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application by the liquidator pursuant to the CWUMPO.

Unlike in England and Wales, and in Singapore, the current Hong Kong insolvency regime does not have a provision for insolvent trading. However, there is a provision for fraudulent trading. Pursuant to Section 275 of the CWUMPO, if upon winding up of the company, it is found that the director of the insolvent company had knowingly carried on the business of the company with intent to defraud creditors or for a fraudulent purpose, the director may be found to be personally liable, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct. The director may also incur criminal penalty, which consists of a fine and/ or a jail sentence. The court may also make a disqualification order against any directors (including shadow directors) who were knowingly parties to the fraudulent trading, and the maximum period of disqualification is 15 years.

Apart from the disqualification of directors on the basis of fraud, the court may also make a disqualification order against any director (including a shadow director) of a company that is

being wound up, if the director’s conduct makes him/her unfit to participate in the management of a company. The minimum period of disqualification is one year, and the maximum period of disqualification is 15 years.

What is next for insolvent companies?

Hong Kong has recently announced its plan to revive a corporate rescue bill (the Bill) that was first mooted in 1996. One of the features of the Bill would be the proposal for provisions relating to insolvent trading to be incorporated into the Hong Kong insolvency regime. Under the proposed provisions, directors and shadow directors of the insolvent company will be personally liable if they allow the company to continue to trade and incur debts when they knew, or ought to have known, that the company was insolvent, or that there was no reasonable prospect of avoiding insolvency. If insolvent trading becomes part of the insolvency regime in Hong Kong, directors would have to exercise extra care and caution in conducting the affairs of the company, as insolvent trading is much easier to establish than fraudulent trading.

Another important aspect of the Bill is that it will include US Chapter 11-style

provisions, which will allow debt-stricken companies to petition for an automatic moratorium with global effect. This means that all civil proceedings against the company (subject to exceptions) will be postponed. Such a moratorium will give the provisional supervisor that is appointed to manage and control the company some breathing space to formulate a voluntary arrangement proposal to creditors, and to restructure the company’s finances. Creditors may also vote to extend the period of the moratorium for up to six months.

The proposed introduction of the US Chapter 11-style provisions could not have come at a better time. Corporate restructuring may be the key to survival for some companies who are facing financial difficulties caused by the COVID-19 outbreak, as it would buy these companies time to work on rehabilitation plans. This would be more desirable as compared to having to wind up or liquidate the company and watching years of hard work go down the drain.

Keoy Soo Khim, Angela Law and Kelly Tan

Withers

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Rewarding the Extraordinary

The Hong Kong Institute of Chartered Secretaries Prize Awardees from 2010 to 2019:



2010
Mike Scales FCIS FCS
Past Chairman, The Institute of Chartered Secretaries and Administrators in Hong Kong Ltd



2011
Duffy Wong BBS JP FCIS FCS
Past Chairman, The Association of The Chartered Secretaries and Administrators in Hong Kong



2012
John Brewer
Past President, The Hong Kong Institute of Chartered Secretaries



2013
Edwin Ing FCIS FCS
Past President, The Hong Kong Institute of Chartered Secretaries



2014
Neil McNamara FCIS FCS
Past President, The Hong Kong Institute of Chartered Secretaries



2015
Anthony Rogers GBS QC JP FCIS FCS
Former Vice-President of the Court of Appeal of Hong Kong



2016
Gordon Jones BBS FCIS FCS
Former Registrar of Companies



2017
Natalia Seng FCIS FCS(PE)
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2018
Peter Greenwood FCIS FCS
Member, Technical Consultation Panel, The Hong Kong Institute of Chartered Secretaries



2019
Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE)
Immediate Past International President, The Chartered Governance Institute; Past President, The Hong Kong Institute of Chartered Secretaries; Executive Director and Company Secretary of CK Hutchison Holdings Ltd

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 Chartered 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.



Internal control

Is the company's senior management being effectively 'controlled' by (independent) non-executive directors?



Sherman Yan, Managing Partner and Head of Litigation and Dispute Resolution, ONC Lawyers, reviews a recent Court of First Instance ruling that sends a clear message about the fiduciary duties of non-executive directors and independent non-executive directors.

In the recent case of *Miu Hon Kit & Others v The Stock Exchange of Hong Kong Ltd* [2020] HKCFI 675, the non-executive directors (NEDs) and the independent non-executive directors (INEDs) of Kong Sun Holdings Ltd (Kong Sun), a company listed on the Main Board of The Stock Exchange of Hong Kong Ltd (the Exchange), applied for judicial review of the decision of the Listing Appeals Committee of the Exchange to impose the sanction of public censure on them. The applications were dismissed by the Court of First Instance (CFI).

Background

The chief operating officer (COO) and the financial controller (FC) of Kong Sun authorised Kong Sun and its subsidiaries (together, the Group) to issue around RMB1.523 billion worth of loans to Zhongke Hengyuan Technology Co Ltd and its subsidiaries (together, the Zhongke Group), without the approval of the board of directors of Kong Sun (the Board), between 26 November 2014 and 15 March 2016 (the Pre-March Loans). The Pre-March Loans were interest free, not secured with collateral and without fixed terms of repayment. In a board meeting on 15 March 2016 (the March Board Meeting), the Board first became aware of the Pre-March Loans – which should have been subject to disclosure and shareholders' approval requirements as a 'major transaction' and an 'advance to an entity' – and thereafter instructed the COO, FC and chief financial officer (CFO) of the Group to cease all loans to the Zhongke Group. No other action or disciplinary action was taken to prevent

the COO and FC from authorising further loans. The COO and FC did continue to make further loans to the Zhongke Group, in the amount of around RMB84.72 million, again without the Board's knowledge or approval, between 18 March 2016 and 11 May 2016 (the Post-March Loans). Kong Sun failed to publish either an announcement in respect of the loans, or their financial reports for 2015 and 2016 in a timely manner, and failed to seek shareholders' approval of either the Pre-March Loans or the Post-March Loans (together, the Loans).

On 21 December 2017, the Listing (Disciplinary) Committee (LDC) of the Exchange found that the INEDs (who also formed the audit committee) and the NEDs of Kong Sun had breached Listing Rule 3.08(f) of the Exchange's Rules Governing the Listing of Securities (Listing Rules), as well as the directors' undertaking contained in Part 2 of Appendix 5 to the Listing Rules (Undertakings), by failing to perform their

duties as directors with reasonable skill, care and diligence to:

- use their best endeavours to procure Kong Sun to comply, and themselves comply, with the Listing Rules in relation to: (a) Kong Sun's breaches with respect to the Loans, and (b) the publication of the financial reports within the specified time limits (Specific Breaches)
- take sufficient or effective action to stop the COO and FC from authorising further loans to the Zhongke Group after the Board had become aware of the Pre-March Loans (Prevention Failure)
- ensure that Kong Sun had established and maintained effective and appropriate internal control procedures and risk management systems (ICRM system), particularly when the COO and FC were given immense power over Kong Sun's

Highlights

- the Court of First Instance (CFI) recently dismissed applications by the non-executive directors and independent non-executive directors of Kong Sun Holdings Ltd to overturn their sanction of public censure
- the applicants unsuccessfully argued that the Listing Appeals Committee had failed to give adequate reasons for their decision, that there was an error of law and that they suffered procedural unfairness
- the CFI decision highlights the importance of the directors' performance of their fiduciary duties to review and monitor a company's internal control procedures and risk management systems

operations and funds (Internal Control and Risk Management Failure), and

- ensure that Kong Sun's staff had received adequate and appropriate training with respect to the Listing Rules (Training Failure).

As such, the LDC imposed the sanction of public censure on each of the NEDs and INEDs, who then requested a review of the LDC's decision. On 6 June 2018, the Exchange's Listing (Disciplinary Review) Committee (LRC) upheld the decision of the LDC. The NEDs and INEDs requested a further review of the LDC's decision. On 23 January 2019, the Exchange's Listing Appeals Committee (LAC) also upheld the decision of the LRC and conveyed the same by way of letter, together with a copy of a news release approved by the LAC, to the lawyers of the NEDs and INEDs. The NEDs and INEDs then applied for a judicial review of the LAC decision on the grounds that, among other things: (a) the LAC failed to give adequate reasons for their decision, (b) there was an error of law, and (c) the INEDs and NEDs suffered procedural unfairness.

Decision

No failure to give reasons

The INEDs argued that the LAC's letter had only set out its considerations and its conclusion – there had been no reasoning whatsoever, including the reasoning behind the legal approach to assessing director responsibilities. The CFI concluded that the reasons given by the LAC were proper and adequate, and it considered that the letter and news release sent to the lawyers of the NEDs and INEDs should be treated and read together as constituting the entirety of the reasons for the LAC's decision. In the news release,

“delegation of responsibility to senior management does not absolve directors from their responsibilities”

it was expressly stated that the LRC upheld the decision of the LDC, and the LAC upheld the decision of the LRC, and thus the CFI considered it to be clear that the LAC must, in the circumstances, have upheld and endorsed the decision of the LDC, including both the findings of breach and the reasons for those findings.

The INEDs argued that the LAC had not engaged the core issues raised by the INEDs, including but not limited to: (1) the INEDs' duties may be materially different from other members of the Board, and (2) nothing indicated that the Board's order for the loans to cease would not be carried out or would be ineffective. The NEDs argued that the LAC failed to show it had considered the appropriateness of the sanction, given their different individual knowledge and involvement.

The CFI considered that none of these issues would have affected the LAC's conclusion and made the following remarks:

- the INEDs constituted the audit committee, which was specifically responsible for, among other things, reviewing and monitoring the risk management and internal control principles, supervising the ICRM system, and reporting and making suggestions to the Board in relation to any material issues. The degree of

care, skill and diligence reasonably to be expected of the INEDs to see that Kong Sun had established and maintained a proper ICRM system was at least as high as, if not higher than, that of the NEDs and executive directors

- when the Board first learned of the unauthorised Pre-March Loans, any reasonable director should have immediately been concerned with: (i) the recovery of the loans, (ii) prevention of further unauthorised loans, and (iii) investigation of how the unauthorised loans came to be made, along with a review of any deficiencies in the ICRM system, and
- although the NEDs were not members of the audit committee, their duties as directors must at least include a duty to see that proper ICRM systems were established and maintained. The LDC's findings that Kong Sun did not have adequate ICRM systems, and that the Board failed to ensure that Kong Sun had established and maintained effective and appropriate ICRM systems, are justified and cannot be faulted.

No error of law

The INEDs argued that the LAC erred in applying hindsight and failing to ask the right questions when assessing



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directors should not be a passive or ‘rubber stamp’ board, but should take an active approach to overseeing or rectifying the company’s internal compliance procedures and deficiencies
”



whether there was a breach of duty. The NEDs argued that the LAC erred in adopting a collective responsibility approach and in imposing sanctions without considering the individual circumstances of each director.

The CFI did not see that the particular knowledge, skill or experience of the INEDs and NEDs required separate consideration. The Internal Control and Risk Management Failure and the Training Failure were systemic failures, for which all directors were individually responsible, and the Specific Breaches were consequences of those systemic failures. Regarding the Prevention Failure, all directors had the same relevant knowledge at the March Board Meeting. The measures taken by them to prevent the recurrence of further unauthorised loans was so obviously inadequate that no reasonable director could have considered it was sufficient in the circumstances.

The CFI also considered that the absence of written internal control procedures was itself a significant deficiency of Kong Sun’s ICRM systems. The public

censure sanction – which serves to punish wrongdoers – alerts investors and communicates to the market that the required standards of conduct imposed on the NEDs by the Exchange cannot be considered as severe.

No procedural unfairness

It was argued that the INEDs and NEDs were never fairly and properly informed of the true allegations against them. The basis of the case against the INEDs and NEDs, as revealed in the Listing Department’s Report (LD Report), were different from the basis of the findings made by the LDC/LRC/LAC.

The CFI analysed the content of the LD Report and considered that there was no procedural unfairness as alleged. In any event, the INEDs and NEDs had full notice of the allegations made by the Listing Committee, and they had challenged the same at the hearings before the LRC and LAC. Each tier involved a new hearing on the merits of their case. Further, the patently inadequate measures adopted by the INEDs and NEDs inevitably led to the LDC/LRC/LAC’s conclusion that they

had failed to take sufficient or effective action, or to take any proactive action with heightened awareness, to ensure there would be no further breaches.

Lessons for directors

While it is understandable that (independent) non-executive directors might be uncertain about their duties in a company, the Court has once again reminded them of their role in establishing and maintaining a proper system of internal controls and risk management within the company. As this case demonstrates, delegation of responsibility to senior management does not absolve directors from their responsibilities. Directors should not be a passive or ‘rubber stamp’ board, but should take an active approach to overseeing or rectifying the company’s internal compliance procedures and deficiencies.

Sherman Yan

*Managing Partner and Head of
Litigation and Dispute Resolution
ONC Lawyers*

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The Hong Kong Institute of Chartered Secretaries is proud to present:
Corporate Governance Week 2020

CG week

19–26 September 2020

The Hong Kong Institute of Chartered Secretaries (HKICS) is a professional body that qualifies and trains Chartered Secretaries and Chartered Governance Professionals in Hong Kong and the Mainland.

HKICS is hosting its 3rd Corporate Governance Week (CG Week) from 19 to 26 September 2020 with the following activities:



19 September **Corporate Governance Paper Competition and Presentation Awards**



21 September **Governance Professionals Information Session**



23 September **Annual Convocation 2020**



25 September **Corporate Governance Conference 2020 – Building the Modern Board: A 20/20 Vision**



26 September **Corporate Governance Conference 2020 – ESG In Practice (Optional webinar incorporating online site presentations)**

Please join the above activities and engage with company secretaries, governance leaders and aspiring talent on key corporate governance issues from new perspectives!

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



Photographer: Michael Kisler

Careers in Governance

David Simmonds FCIS FCS

What is your role as a governance professional?

'I am the Group General Counsel and Company Secretary for CLP Holdings Ltd, where I lead a team of professionals from various disciplines across legal, insurance, governance and sustainability. I am also a current Vice-President of The Hong Kong Institute of Chartered Secretaries. In that capacity, I really hope to assist promote the value and importance of corporate governance, sustainability and the contribution made by our members to the long-term success of the Hong Kong market.'

What was your career path to your current role?

'I started out as an M&A lawyer at a law firm in Australia, before moving in-house. I first joined the CLP Group as General Counsel and Company Secretary of our Australian business before moving to Hong Kong to become the Group General Counsel around 12 years ago. Since then I have been fortunate to see my role expand in several areas and at the beginning of 2016, I became the Company Secretary of CLP Holdings Ltd and took responsibility for our corporate secretarial operations across the Group.'

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

'Governance is an essential enabler of long-term value creation, so it brings enormous benefit to organisations and, by extension, to society. When you step back from the detail of rules and regulations, governance is fundamentally about human relationships and the way in which an organisation prioritises and makes choices between the demands of different stakeholders. It is also about how an organisation communicates with people about what it is doing and why, how it does things that equate with its values, and who it wants to be as an organisation. In an increasingly complicated and rapidly changing external environment, that is more important than ever.'

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

'A successful governance professional protects and advances the values of an organisation, and the value of that organisation. In addition to the essential governance subject matter expertise, that requires courage and integrity, persistence and a liberal dose of pragmatism, recognising that positive change doesn't happen overnight and is rarely completed in one step.'

“
a successful governance professional protects and advances the values of an organisation and the value of that organisation

”

David Simmonds FCIS FCS, Group General Counsel, Chief Administrative Officer and Company Secretary, CLP Holdings Ltd, and the Institute's Vice-President



How do you think governance will evolve in the future?

'Governance will continue to broaden and evolve from a technical, compliance-oriented discipline to one which is more principles-based and value-adding over a wider subject area. We have already witnessed the growing significance of risk management, ESG and sustainability over recent years, driven in no small part by the risks and opportunities brought by climate change and digitisation. The experience of COVID-19 will further accelerate these trends. That is a great thing for governance professionals because our scope to assist the organisations we work for will continue to expand and become even more valuable.'

What inspires you in your life and work?

'To make a difference by making a positive contribution in whatever I do.'

How do you fill your time outside work?

'I have four children so most of my time outside work revolves around them. I am also a keen runner, traveller and closet foodie with a love of street food from around the world.'

Professional Development

Seminars: July 2020

10 July

Company secretarial practical training series: share capital and capital raising – practice and application



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

14 July

Legal due diligence on a Hong Kong company



Chair: *Susan Lo FCIS FCS(PE)*
Speaker: *Alan Xu, Partner, Zhong Lun Law Firm*

15 July

ESG reporting 2020 – what should directors do?



Speaker: *Albert Lung FCIS FCS, Lecturer, School of Continuing and Professional Studies of The Chinese University of Hong Kong (CUSCS)*

16 July

Directors' duties – understanding how to stay out of trouble



Speaker: *Foster Yim, Barrister-at-law, Liberty Chambers*

22 July

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



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

Speakers: *Connie Lee, Barrister-at-law; and Tommy Cheung, Barrister-at-law; Des Voeux Chambers*

24 July

Governance, risk & compliance series: G in ESG – corporate governance in Asia and why it matters to investors

Chair: *Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research*

Speakers: *Jun Frank, Executive Director, North America and Asia, ICS Advisory; and Dan Cheng, Vice President – Greater China; ISS Corporate Solutions*

27 July

Mainland company secretarial practice series: business entities – basic features, pros & cons

Speakers: *Desmond Lau ACIS ACS, Institute Professional Development Director; and Yvonne Lam, Associate Director, Business Services, Tricor China*

29 July

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

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

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
7 October 2020	6.45pm–8.15pm	Data privacy and cybersecurity – compliance & case studies	1.5
9 October 2020	6.45pm–8.45pm	Company secretarial practical training series: non-Hong Kong company and dormant company: practice and application	2.0
12 October 2020	4.00pm–5.30pm	Hong Kong Limited Partnership Fund Ordinance	1.5
13 October 2020	4.00pm–6.00pm	Company secretarial practical training series: annual reports of listed companies	2

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

Online CPD seminars

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

For details of the Institute's online CPD seminars, please visit the CPD section of the Institute's website: www.hkics.org.hk.
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 membership/graduateship renewal notices for the 2020/2021 financial year, together with the debit notes, were sent to the registered email addresses of members and graduates in early July 2020.

Members and graduates should settle the payment, as well as submit their declaration of character and standing, online via their user account with the Institute as soon as possible, but no later than 31 December 2020. Failure to pay by the deadline will constitute grounds for membership or graduateship removal. Reinstatement by the Institute is discretionary and subject to payment of the outstanding fees, and with levies determined by the Council.

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

Membership (continued)

New graduates

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

Au Siu Yu	Hui Ho Ying	Ng Sze Wai	Wong Tsz Ying
Chan Man Ting	Jiang Ying	Ng Tin Long, Danon	Wong Wai Nga
Chan Ramand Wai Ming	Kwan Mei Shan, Natalie	Shum Hei Yu	Yan Xin
Chan Sin Ying	Lam Kwan Sum	So Chui Yee, Candy	Yan Yaqi
Chan Yee Man	Lam Siu Hung	Tang Ching Yee	Yao Chun Yu
Chan Yee Ting	Lam Yuen Ming	Tsang Man Maan	Yau Chi Chiu
Cheng Nga Wan	Lee Hoi Ying	Tse Man Hei	Yeung Ka Yan, Karen
Chiang Ka Man	Lee Jabe Bik Yin	Wang Pengtao	Yip Yiu Bong
Chiu Wai Hang	Leung Chun Him, Arthur	Wang Xiaohan	Yu Yuanyuan
Choi Hau Bo	Leung Kwai Yan	Wong Chung Wa	Yung Mo Ching
Chong Ting Wai	Li Jiangtao	Wong Pui Man	Zhang Yuan
Chung Kai Cheong	Luo Jingyuan	Wong Samuel Wan Kay	Zhang Yumu
Fung Ho Hin, Howin	Ng Lit Cheuk	Wong Tai Ping	
Han Qing	Ng Sonia Lok Yan	Wong Tsz Yim	

Forthcoming membership activities

Date	Time	Topic
16 September 2020	6.45pm–7.45pm	Fun Et Interest Group – introduction to audio description for the visually impaired (free webinar)
23 September 2020	7.00pm–8.00pm	Annual Convocation 2020 (webinar)

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

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:

- Chan Wai Ling

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

Membership activities: August 2020

12 August

Fun & Interest Group – gum disease and health (webinar)



18 August

Fun & Interest Group – classical music to ease your mind (webinar)



22 August

Fun & Interest Group – cartoon mochi-making workshop (webinar)



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HKICS
Annual Dinner 2021

Thursday 21 January 2021

Ballroom, JW Marriott Hotel Hong Kong

Save the date!

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

Advocacy

12th biennial Corporate Governance Conference – Building the Modern Board: A 20/20 Vision

The Institute's 12th biennial Corporate Governance Conference (CGC) will be held online for the first time ever, on Friday 25 September 2020, with an optional webinar on ESG in Practice, incorporating online site presentations, to be held on Saturday 26 September 2020. You can now attend this important conference from anywhere you wish.

For details, please visit the CGC website: cgc.hkics.org.hk.

Advanced seminars for board secretaries of A+H share companies and the 52nd Affiliated Persons ECPD seminars

The Institute and the Shanghai Stock Exchange jointly organised their 10th advanced seminars for board secretaries of A+H share companies, as part of the 52nd Affiliated Persons (APs) ECPD seminars on 'Information disclosure, transaction regulation and governance', held online for the first time, from 5 to 7 August 2020. These webinars attracted over 200 attendees, mainly comprising board secretaries and equivalent personnel, directors, supervisors and other senior executives from companies listed or to-be-listed outside and in the Mainland.

Eight speakers shared their knowledge and experience on topics ranging from updates on Mainland and Hong Kong information disclosure regulations, to the strengthened liability and accountability for directors and senior management, as well as enterprise value management. Institute Vice-President Dr Gao Wei FCIS FCS(PE) introduced the second edition of the Institute's Guidelines on Practices of Inside Information Disclosure of A+H Companies to the participants. Four senior board secretaries presented an excellent live show through role play, demonstrating how executive directors (chairmen), independent directors, chief financial officers and board secretaries serve in their roles with the necessary due diligence.

The Institute would like to express its appreciation to the coorganiser, the Shanghai Stock Exchange; associate organiser, ShineWing CPA; and cooperative partners, DLA Piper UK LLP, Ernst & Young Hua Ming LLP, and Roadshow China; as well as all participants, for their generous support and participation.



Student Ambassadors Programme summer internship

The Institute invited companies and organisations to offer summer internship positions to undergraduates participating in its Student Ambassadors Programme (SAP), with the aim of promoting the role of Chartered Secretary and Chartered Governance Professional to the younger generation in Hong Kong. The internship lasted for a maximum of eight weeks, from July to August 2020. This year, a total of 18 undergraduates from four local universities – Hong Kong Shue Yan University, The Hang Seng University of Hong Kong, The Open University of Hong Kong and The University of Hong Kong – received internship offers from four companies, listed below in alphabetical order.

- CK Hutchison Holdings Ltd
- Companies Registry
- Securities and Futures Commission
- The Hong Kong Institute of Chartered Secretaries

The Institute would like to thank the companies for their support of the programme.



Advocacy (continued)

Careers in Governance mini webpage

As senior governance practitioners, members of the Institute now play a leading role in advising boards on good governance practices in an increasingly regulated and risk-conscious environment. In May 2020, to raise awareness of the work of governance professionals in Hong Kong, the Institute launched its Careers in Governance project. The project gives a personal and professional portrait of Institute members and students in Hong Kong, featuring their views on governance and their career paths, along with striking portrait photographs by Michael Kistler.

The Careers in Governance project gives a glimpse of the life and work of governance professionals in Hong Kong, but it focuses not only on those who have reached the pinnacle of their careers – there are also portraits of recent Institute graduates and students who represent the future of the profession. The project reveals the people behind the profession and helps to raise awareness of what it means to possess the Chartered Secretary and Chartered Governance Professional dual qualification. Governance professionals can specialise in very different areas of practice and they can hold very different job titles, but they are linked by their dedication to excellence in governance.

Financial Services Network meeting

On 28 August 2020, Institute President Gillian Meller FCIS FCS attended an online Financial Services Network meeting held by the Financial Services and the Treasury Bureau of the HKSAR Government. The online meeting touched on the job creation scheme for the financial services sector, administered by the Financial Services Development Council; the Universal Community Testing Programme arrangements; and how the HKSAR Government will proceed with market development-related legislative proposals after the postponement by a year of the election of the seventh-term Legislative Council.

Careers in Governance

What does it mean to be a Chartered Governance Professional?

The Hong Kong Institute of Chartered Secretaries (the Institute) is a professional institute representing Chartered Secretaries and Chartered Governance Professionals in Hong Kong and the Mainland. The Institute is the China Division of The Chartered Governance Institute, formerly known as The Institute of Chartered Secretaries and Administrators.

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Meanwhile, the Institute has just launched a mini webpage for the Careers in Governance project.

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

Video conference on a stakeholder consultation session under the theme of promoting Hong Kong's services for the 2020 Policy Address

On 4 September 2020, Institute Chief Executive Samantha Suen FCIS FCS(PE) participated in a video conference on a stakeholder consultation session under the theme of promoting Hong Kong's services for the 2020 Policy Address. The consultation session was one of 12 thematic sessions arranged by the HKSAR Government from late August to mid-September, according to the priority policy areas of the current-term government.

Chartered Governance Qualifying Programme (CGQP)

November 2020 examinations diet timetable

The November 2020 examinations diet of the CGQP is open for enrolment from 1 August 2020 to 15 September 2020. All examination enrolments must be made online via the Login area on the Institute's website: www.hkics.org.hk

Week one

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

Week two

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

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

Online learning video-recorded seminars subscription

The Institute has launched online video-recorded examination technique seminars and student seminars to enable students to schedule revision and learning for the CGQP examinations at a time convenient to them. Through the online learning platform, students are able to access selected video-recorded seminars with any smart device, anytime and anywhere.

Examination technique seminars:

- Strategic Management
- Interpreting Financial and Accounting Information
- Hong Kong Company Law
- Corporate Governance
- Boardroom Dynamics
- Corporate Secretaryship and Compliance
- Hong Kong Taxation

Online student seminars:

- An Alternative Introduction to Company Law – Session 1: Key Players in Company Law and Corporate Governance
- An Alternative Introduction to Company Law – Session 2: Interesting Questions about the Corporate Personality

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

Chartered Governance Qualifying Programme (CGQP) (continued)

Survey on alternative delivery modes for CGQP examinations

In late July 2020, the Institute conducted a survey on possible options for future examinations. A total of 626 responses out of 3,311 students (18.9%) were received, with over 300 additional remarks. Stay tuned for a summary of the responses and an update on future examinations, to be posted on Institute's website.

Online student learning support activities: August 2020

18 August

Student Ambassadors Programme:
Mentorship Programme – online
gathering



20 August

Online student seminar: Corporate
Secretaryship and Compliance –
shares and share capital (part 1)



31 August

Student gatherings: session 5 –
updates on the CGQP examinations



Forthcoming activities in September 2020

Date	Event
19 September	Corporate Governance Paper Competition and Presentation Awards 2020 (online)
21 September	Governance Professionals Information Session online (Cantonese session)

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

Notice:

Policy – payment reminder

Studentship renewal

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

Featured job openings

Company name	Position
Conyers Dill & Pearman	Group Secretary
International Christian School	Board Secretary (part-time)
Harneys Corporate Services (Asia) Ltd	Corporate Services Junior Administrator
Tiptop Energy Ltd (Sinopec Int'l Petroleum E&P HK Overseas Ltd	Legal Advisory
The Hong Kong Institute of Bankers	Institute Secretary

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




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Stock Exchange consults on enhancing its powers

Last month, The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), published a consultation paper in relation to proposed changes in respect of the Exchange's disciplinary regime. The consultation paper seeks comments on a number of proposals and enhancements, with a particular emphasis on strengthening the Exchange's powers to hold accountable, and impose appropriate sanctions on, individuals responsible for misconduct and breaches of the listing rules. Amongst other things, this includes proposals to augment the range of reputational sanctions available and to ensure that disciplinary action can be brought against individuals, including members of senior management who are not directors, who cause or knowingly participate in a contravention of the listing rules. A summary of the key proposals is set out below.

Lowering existing thresholds for public statements regarding individuals. Currently, the Exchange's power to issue a public statement to the effect that a director continuing to remain in office is prejudicial to the interests of investors (PII Statement) can only be exercised where there has been wilful or persistent failure by the director to discharge his or her responsibilities under the listing rules. The Exchange is proposing to remove this threshold as it faces evidential difficulties in establishing that an action has been wilful.

Enhanced follow-on actions where a PII Statement is made. The Exchange is seeking to enhance its powers where a PII Statement has been made and the director or member of senior management remains in their position. The same threshold discussed above also currently applies in respect of a listed issuer if the Exchange is seeking to deny the facilities of the market to the company. By removing the need to establish that the listed issuer has wilfully or persistently failed to discharge its responsibilities, the Exchange will have broader scope to impose this sanction. The Exchange would also be able to require the listed issuer to refer to the PII Statement in all announcements and communications until the person ceases to be a director or senior manager (as the case may be). Sanctions against directors will also need to be disclosed in the company's listing documents and annual reports.

New director unsuitability statement. For more serious cases of misconduct where there is a serious or repeated failure by a director to discharge his or her responsibilities, the Exchange is proposing a new sanction which would enable it to issue a public statement that, in its opinion, the director is unsuitable to be a director or member of senior management of a listed company. This is a more strongly worded statement than a PII Statement to enable the Exchange to raise serious concerns about the suitability of a director remaining in office or being in a senior management role. The follow-on actions that apply to PII Statements, discussed above, would also apply to such director unsuitability statements.

Extending existing powers to ban professional advisers from representing a particular entity. The Exchange has the power to ban a professional adviser or its employees from representing a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period. Under the proposals, a ban could be extended to representation of any entity (rather than just the specified entity) and in relation to any matter coming before the Listing Division or Listing Committee.

Other proposals under consultation include:

- enhancing disclosure requirements for directors and senior management members subject to public sanctions
- introducing secondary liability for listing rule breaches, and
- expanding the disciplinary regime to new parties such as guarantors of structured products and parties who enter into an agreement or undertaking with the Exchange.

The consultation paper is available on the HKEX website: www.hkex.com.hk. The consultation period ends on 9 October 2020.



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Global Threat of COVID-19: Is Your Firm Ready for Business Continuity & Staying Resilient? (New)

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