CSj

June 2020

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

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~ Thank You! ~

The long-standing Annual Corporate and Regulatory Update (ACRU) conference was held as the first online ACRU on 5 June 2020. At this 21st ACRU, we welcomed more than 1,900 Chartered Secretaries, Chartered Governance Professionals, chairmen, directors, regulators, other professionals and senior management who joined online.

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Good governance comes with membership

About The Hong Kong Institute of Chartered Secretaries

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of Chartered Secretary and Chartered Governance Professional in Hong Kong and throughout the mainland of China (the Mainland). HKICS was first established in 1949 as an association of Hong Kong members of The Chartered Governance Institute – 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.

Membership and studentship statistics update

As of 30 April 2020 the statistics were as follows:

Students: 3,264 **Associates**: 5,681
Graduates: 436 **Fellows**: 718

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Digital readiness

On behalf of the Institute, I would like to thank everyone who participated in our 21st Annual Corporate and Regulatory Update (ACRU) held earlier this month. The event will be reviewed in next month's journal, but here I would like to thank the speakers – both regulators and professional practitioners – who participated in the sharing sessions. Thanks are also due to our sponsors, panel chairs and our Institute's Secretariat for their contributions to the event.

This year, however, I think special thanks should also go to our ACRU audience. Due to the COVID-19 pandemic, and for the first time in its history, ACRU was held as a webinar. This is, of course, no small change to the usual format, but ACRU's success is an excellent demonstration, not only of the essential role that digital technologies will be playing in our personal and professional lives in the post-COVID world, but also of the importance of digital readiness. Not only was attendance at this year's ACRU on a par with previous years, but also, judging by the deluge of questions we received in the Q&A sessions, the ACRU audience was able to engage with the event in the same way that they would have done in an in-room setting.

This point leads me aptly to the theme of this month's *CSj*. Technology is a regular topic for this journal, but from time to time we also devote an entire edition to it. This month's journal will update you on the role of technology in crisis management, in know your client and customer due diligence compliance for corporate services providers, and in improving and upgrading the global tax system. I would add to these perspectives that digital literacy and readiness have become essential skills for governance professionals. Technology represents a major opportunity for members of our profession, allowing us to spend less time on administrative tasks and more time on the interpretive aspects of our role – providing better governance advice to boards facing increasing complexity and challenges.

This month's theme is also timely as COVID-19 has led to a major shift in our attitudes to technology. The digital transition was already under way before COVID-19 of course, but the pandemic has provided the well-directed nudge we needed to really embrace the digital future. Work-from-home arrangements – something that tended to be regarded with suspicion if not downright hostility by many organisations – have suddenly become a core part of business continuity. A similar pattern can be seen in attitudes to remote learning, virtual meetings and contactless digital payments. Many technologies, which pre-COVID-19 may have been regarded as nice-to-have, have become must-haves.

I don't want to overstate the case; remote working is not an option for everyone and there are still risks that need to be recognised in going digital – cybersecurity and data privacy being two of the most prominent such risks – but there can be no question that technology is now more central to the strategy and operation of organisations in Hong Kong than ever before.

Before I go, and staying on the COVID-19 theme, I would like to highlight the additional relief measures our Institute is now providing for members, graduates, students and Affiliated Persons in view of the current pandemic. Council has decided to extend the current 10% discount on Enhanced Continuing Professional Development (ECPD) webinars/seminars offered to members, graduates, students and Affiliated Persons to 30 September 2020. Moreover, we will be applying a 10% discount to annual subscription and renewal fees for the financial year 2020/2021 for Institute members, graduates and students. Full details can be found on page 41 of this month's journal.

Stay safe and well during these uncertain times.

Gillian Meller FCIS FCS

数字化就绪度

本人谨代表公会感谢各位参与本月初举办的第21届企业规管最新发展研讨会(ACRU)。下月会刊 (*CSj*) 将对本次活动进行回顾，在此，我想先对在分享环节发言的监管机构代表和专业人士表示感谢，同时也要感谢ACRU的赞助商、小组讨论主席和公会秘书处员工对本次活动的支持与贡献。

此外，今年也应向出席ACRU的全体参会者致以特别的感谢。由于新冠疫情，ACRU史上首次以在线会议形式召开。这无疑是超越常规的一次大变革，此次ACRU的成功举办不仅很好地展现了后疫情时代数字技术在我们个人和职业生活中所扮演的重要角色，也反映出数字化就绪度的重要性。今年ACRU的出席人数不仅与往年持平，而且从问答环节收到的大量问题来看，ACRU参会者能够像现场会议那样参与到会议中。

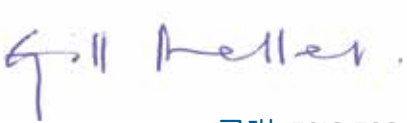
我认为本月会刊的主题非常切合时宜。科技是本刊的常规话题，我们不时也会采用整版进行专题讨论。本月会刊将为您提供以下方面的最新资讯：科技在危机管理中的作用；针对公司服务提供商的“了解您的客户”之合规尽职审查；以及全球税务制度的改善及升级。除这些视角外，我想强调的是，数字化素养和就绪度已成为公司治理专业人士必不可少的技能。科技为我们行业的从业人员带来了重大机遇。借助科技，我们可以花更少的时间处理行政事务，把更多的时间投入到我们的咨询顾问职能——为面临日益复杂和挑战的董事会提供更好的公司治理建议。

本月主题同样非常及时，因为疫情让我们对科技的态度发生了重大转变。技术转型确实在疫情之前就开始了，但是正是此次疫情的精准助推，让我们必须真正地拥抱数字化未来。虽然很多机构曾对此趋势持怀疑态度（如果不是直接抱敌对态度的话），但在家办公的安排突然间成为业务连续性的核心组成部分。对远程学习、虚拟会议和无接触数字支付的态度同样如此。许多在疫情之前可能被认为“也可以使用”的技术，现在都变成了必备技术。

我不想夸大其词：远程办公不是所有机构都可以选用的，在走向数字化的进程中，仍有许多风险有待识别——数字安全和数据隐私是其中最显著的风险——但毫无疑问的是，科技对于香港机构的策略发展和运作，比以往任何时候都更重要。

在结束本文之前，本人想再提一下，在疫情期间，公会为会员、毕业学员、学员和联席成员提供了额外的费用减免措施。理事会决定目前针对会员、毕业学员、学员和联席成员参加强化持续专业发展 (ECPD) 在线讲座及现场讲座给予10%折扣的政策延长至2020年9月30日。此外，我们将为公会会员、毕业学员和学员2020/2021财年的年费和学员身份延续费用给予10%的折扣。更多信息，请查阅本月会刊第41页。

在这充满不确定因素的时期，还望一切保重。



马琳 FCIS FCS

Taxation of the platform-based economy

As economies shift into intangibles as drivers of economic value, is the present global tax system fit for purpose? Dr Jag Kundi, a Hong Kong–based scholar-practitioner active in the FinTech space, looks at the role that blockchain can play in improving and upgrading the global tax system.

This article will consider how taxation on digital economies is limited in its scope, effectiveness and collectability. This last point of collectability is a real threat to governments around the world as the digital economy knows no borders or sovereign territories. There are big impacts on an economy if tax is not collected correctly. These risks would cover:

- loss of revenue for government expenditure impacting on reduced public services
- delayed interest payments on government bonds, which could make sale and holding of government bonds less attractive, and
- depreciation of the national currency thereby impacting international trade.

The role of the blockchain will also be considered as a way of potentially improving and upgrading the tax system.

Is the present tax system fit for purpose?

In today's world, taxes may be considered as a necessary requirement for any civilised society to function. Originally this was not the case. Tax was used as a 'temporary' means by government to finance war. Every war from ancient times to today was paid for by some kind of tax, from the time of Alexander the Great to the American Revolution. You could argue that if you want to end war, end taxes!

Tax is one area that impacts us all. The famous quotation 'Nothing can be said to be certain, except death and taxes' attributed to Benjamin Franklin in 1789 actually has its roots earlier in *The Cobbler of Preston* by Christopher Bullock (1716) who wrote 'Tis impossible to be sure of anything but death and taxes'.

Taxation in a 'bricks and mortar' based economy is relatively simple. The physical presence or permanent establishment test would be applied and the tax calculated. As a local citizen, individual or corporate, being physically located within a defined territory would be the basis for calculating tax – this became known as a territorial-based tax system, that is, one in which a government would usually only tax income earned in that territory. Gibraltar, Hong Kong, Singapore and Macau are examples of territorial-based tax systems.

An alternative taxation system called 'worldwide taxation' simply aggregates all income, regardless of where earned, and taxes it as one lump sum. The US is an example of a worldwide taxation system. The pros and cons of either system are not the focus of this article, as both depend on the physical location of the individual or corporation for the basis of their initial tax assessment.

This approach worked well for the taxation of tangible assets and physical goods within physical borders as indicators of economic value – who owes/owns what. As long as the underlying assets were tangible, that is observable and measurable, it was perfect for tax authorities to use this as the basis for financial record-keeping and thereafter for tax assessment.

Consider the industry development timeline below (see Figure 1) and see how the time periods between each successive period of industrialisation are being squeezed. The whole pace has quickened dramatically with the shift to a digital world where the offline world is now becoming more and more connected online. Originally the process was evolutionary in nature taking, time for progression; today it is more revolutionary in nature, due to rapid and disruptive change. The digital world has impacted/disrupted nearly every industry from media, communication, entertainment, education, finance and logistics. Today physical reality is being displaced by virtual reality and augmented reality.

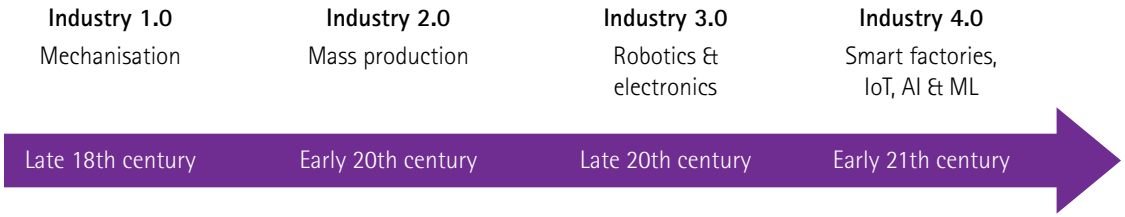
Industry 4.0 has a host of enabling technologies that promises to usher in a golden era in the digitisation of manufacturing. Enabling technologies include:

- Internet of Things (IoT)
- cloud computing

Highlights

- the old model of investing in tangible assets (plant, property and equipment) is quickly being replaced with the concept of being lean, agile and 'asset-light'
- rather than fight the digital economy, government could turn to technology as an ally to improve the tax system
- when the financial details of every transaction become traceable, the ownership of assets and money can be easily determined and tax due thereon easily and automatically calculated

Figure 1: Industry development timline



- artificial intelligence (AI) and machine learning (ML)
- data analytics, and
- advanced smart robotics.

Industry 4.0 will take what was started in Industry 3.0 with the adoption of computers and automation, and enhance this with smart and autonomous systems fueled by big data and machine learning – all intangible. As everything is being done faster, cheaper and at scale, these technological innovations are driving marginal costs to near zero, making goods and services priceless, nearly free and abundant and no longer subject to market forces.

The challenge here for national tax systems will be based on a number of factors:

- absence of physical presence
- strong dependence on intangible assets
- complex nature of transactions conducted digitally, and
- difficulty of qualifying assets, activities and types of income.

In the 21st century, value is being defined, created and shared across digital platforms and much of this value is intangible in nature – such as big data. As part of their digitalisation, companies have been quick to transform part or all of their business operations to a platform where the exchange of value can be done with less friction.

The platform-based economy

As the tech consultancy firm Applico (www.applicoinc.com) puts it, 'A platform is a business model that creates value by facilitating exchanges between two or more independent groups, usually consumer and producers. In order to make these exchanges happen, platforms harness and create large, scalable networks of users and resources that can be accessed on demand.'

Consider the following:

- Alibaba and Amazon are the largest retailers in the world but they don't own any stock or inventory
- Uber is the biggest taxi company in the world but it doesn't own a taxi
- Airbnb has become the biggest accommodation provider but owns no property, and
- Facebook is the largest media company in the world but hardly creates any of its own content.

All of these companies are based on 'digital platforms' and are examples of Unicorns (relatively new companies that quickly attain a market valuation of more than US$1 billion).

As economies shift into intangibles as drivers of economic value, the present financial system as the basis for assessing tax needs an upgrade. Witness companies like Apple that create significant value out of intangible assets through combining design and software – both intangibles. These are then shaped to give the consumer the ultimate user experience – again an intangible. This may help to explain why Apple had a market value in excess of US$1.3 trillion in December 2019, and why Alphabet (the parent company of Google) and Amazon are close to these breathtaking valuations – both companies heavily vested intangibly.

With Industry 4.0, the old model of investing in tangible assets (plant, property and equipment) is quickly being replaced with the concept of being lean, agile and 'asset-light'. A more updated variation of the asset-light model is also referred to as the OPEX model, as opposed to

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the CAPEX model. CAPEX implies leaders make investments in tangible fixed assets, whereas OPEX implies that, wherever possible, leaders should try to rent, lease or outsource the use of assets, rather than buy themselves. A classic example here would be computer storage – rather than keep buying more physical storage, companies are switching to cloud-based storage such as Amazon Web Services. Instead of buying your personal edition of MS Office productivity software, use it on the cloud via a subscription-based model.

> "as economies shift into intangibles as drivers of economic value, the present financial system as the basis for assessing tax needs an upgrade"

One last example here shows the full impact this change is having. According to Statista.com, in 2017 Facebook, Google and Apple employed in total 236,105 full-time employees with a total market capitalisation of about US$2.2 trillion. Compare this to say Walmart employing over 2.3 million people, Volkswagen over 664,000, Hon Hai Precision (Foxconn) over 667,000 and a combined market capitalisation of US$323 billion. The tech companies have a market capitalisation almost seven times that of their old economy peers, but employ 15 times fewer employees. The savings and value dynamics operating here are obvious to the corporates. Now factor in the multiple jurisdictions where intellectual property, cloud storage and a distributed management and employees (recruited via the 'gig' economy) can be based – and the savings, with tax included, can be in the order of magnitudes.

Consider Amazon: in 2017 its UK operations, which handle the packing and delivery of parcels and its related customer services, reported an increase in revenues from £1.46 billion to £1.98 billion and pre-tax profits of £72 million. However, it paid just £4.5 million in corporate tax, which works out at a rate of 6.25% compared to actual corporate tax rates in the UK of 19%. To further complicate matters, sales for Amazon's UK retail sales are reported through a separate company in Luxembourg, but its US filings reveal that UK revenues hit US$11.3 billion last year, a healthy 19% year-on-year rise.

Tax authorities struggle to check and verify the tax liabilities of such global businesses operating worldwide supply lines and complex organisational structures. Many multinational corporations (MNCs), for tax purposes, set up a local operation as an individual company, which then pays the parent (or other subsidiary) company for goods, services and intellectual property. The price they pay is set under a system called transfer pricing. However, the MNC will have an incentive to maximise profits in low-tax jurisdictions and hence pay less tax. The same incentives work in reverse – maximise allowable expenses (for tax purposes) in high-tax jurisdictions.

An example here would be where a French-based subsidiary of an MNC might pay an 'inflated price' for services provided via another subsidiary based in a tax haven such as the British Virgin Islands. This would have the impact of reducing the French subsidiary's tax liability and protect the cash transferred from French tax rates. The overall aim here is to minimise the group tax liability as tax payable involves real cash outflows (to the government) rather than the accounting fiction of tax expenses, which are based on accruals (estimates based on timing differences of cash flows).

The potential role of blockchain

In this context, rather than fight the digital economy, government could turn to technology as an ally to improve the tax system. Blockchain technology has emerged at a time when many in the tax world are rethinking whether the present tax system is still fit for purpose. As mentioned above, the present tax system was designed for the days when physical goods were traded, bought and sold. Digitalisation of tax is gaining traction with both developed and developing countries adopting various electronic tax reporting schemes. Does it still make sense for tax authorities to collect tax as they always have done in the past? This is more likely a question for tax policy rather than technology.

Blockchain provides digital trust. It is a distributed and decentralised ledger technology that permanently and securely records every transaction made on its network. Combined with smart contracts (contracts in the form of computer code that are activated automatically on a blockchain, without the need of a third party, such as a lawyer or bank, when certain conditions are met), blockchain has the potential to revolutionise governance by making the transaction of money, property and shares transparent and conflict free amongst its users. These benefits can be categorised as set out below.

- Transaction processing and data storage costs can be reduced, and a decentralised network can be faster and do more than a centralised server.

- It is almost impossible to overwrite or make changes to the ledger without the related network members being aware or agreeing to such changes. The secure cryptography also improves security.

- Accountability and transparency is enhanced by making the origin of every transaction known and public, which in turn will assist in making the tax computation easier and indisputable.

- Automation of tax transactions driven by smart contracts will make the process of tax compliance less of a worry. Smart contracts can automate the execution transactions upon the satisfaction of predetermined and mutually agreed-upon conditions.

- Blockchain has the potential to make tax payments more secure, and with the addition of artificial intelligence and robotic process automation will also help increase compliance and reduce fraud.

Because blockchain is an objective, mutually agreed-upon record of transactions, multiple parties can verify every step of a process. This will enable a blockchain-based financial ecosystem to carry out all financial transactions in an objective, transparent and decentralised manner. This would imply that the record of every single transaction is visible to anyone on the network. Such records are unchangeable. The implication of this is startling, as when the financial details of every transaction become traceable, the ownership of assets and money can be easily determined and tax due thereon easily calculated – not just easily calculated but also automatically! Thus reducing the opportunity for minimising tax liabilities and reducing costly tax disputes. The 'tsunami-like' impact this will have on the financial, accounting and legal industry cannot be understated.

A further development here would be to automate the tax collection via the smart contracts on the blockchain, resulting in instant settlement of sales tax, value-added tax (VAT) or goods and services tax (GST). For example, a supermarket group could bring together supply, sales and tax within a distributed ledger that records all transactions and automatically pays the associated sales tax/VAT/GST. This approach is gaining interest in the European Union (EU). In November 2018, the European Parliament Special Committee on financial crimes, tax evasion and tax avoidance published a draft report which contains recommendations on fighting cross-border VAT fraud. The report encourages member states to explore the possibility of a plan to place cross-border transactional data on a blockchain and to use a secure digital currency that can only be used for VAT payments.

Smart contracts can be programmed by government or their appointed regulators to act in accordance with the local tax laws. The smart logic of such contracts can allow them to be programmed to maximise all the allowable claims and deductions available to the taxpayer. This means that

> “combined with smart contracts, blockchain has the potential to revolutionise governance by making the transaction of money, property and shares transparent and conflict free”

neither party then needs to keep track of their finances and potential tax liabilities, as the smart contract will automatically handle this by making the relevant deduction (or refund) to the taxpayer's account. Real-time tax reporting and collection would be the logical extension of the smart contracts here.

Another advantage arises from the use of the blockchain-based approach. Corporate fraud can be prevented or significantly reduced, as such systems can account for every transaction, making it easy for tax authorities to calculate taxable earnings and bill them accordingly. This approach will also provide the evidence in case of non-compliance or tax avoidance to support legal action. And in the face of strong, immutable proof such as that offered by blockchain records, trust and fairness will prevail.

While blockchain may provide governments with an alternate method to tax the digital economy, several challenges lie ahead.

1. Due to the decentralised nature of a public blockchain, the computer code is held on many computers/servers simultaneously. To protect and preserve the blockchain data integrity it would rarely be based in just one jurisdiction – most likely the data would be held on multiple computers/servers and based in multiple jurisdictions. Additional issues would arise here around where the severs are located and also the 'miners' who mine (validate) the blocks on the blockchain. So where is the value-added created and where are the assets based for tax purposes?

2. A further complication would be the question of who owns the blockchain. A public blockchain could have multiple ledger owners and therefore this could create potential controversy around the income attributable to participants, and also ownership of the underlying database assets.

3. Linked to point (2) above is the creation of intangible assets – how to measure the value created in different market jurisdictions by the users of the platforms and the digital infrastructures.

Points 1 and 2 above relate to how tax rights can be attributed to any tax jurisdiction when the digital economy can generate profits without physical presence and without setting up a permanent establishment. Governments and regulators facing the challenge of digitalisation of their economy are attempting to deal with these vexing issues both collectively and individually.

In May 2019, the OECD released a document known as 'Programme of Work to Develop a Consensus Solution to the Tax Challenges arising from the Digitalisation of the Economy'. This is currently under discussion among members and should give rise to a final technical paper in December 2020.

The EU in March 2018 issued two proposals that would have delivered new ways to tax the digital economy:

1. an interim measure focused on a Digital Sales Tax (DST) based on 3% gross revenue, followed by

2. a longer-term approach addressing taxation of profits when a company has no physical presence in a country.

To date the EU has not managed to get unanimous agreement from member states and the above proposals have been delayed. However, this has led to individual EU member states moving forward with their own DSTs. Austria, Belgium, France, Italy, Spain and the UK are all in the process of moving forward individually in this respect.

Non-EU countries are also considering ways to tax the digital economy. In October 2018, Australia issued its own discussion paper, followed by New Zealand in February 2019, on how to tax the digital economy. However, to date nothing has been implemented. Governments are wary of introducing a patchwork of similar but different measures.

For now building an entirely new tax system around blockchain is not realistic – we need to start small and look for the human problems that need to be solved. We are in the early stages of understanding how and what blockchain can do for businesses, for consumers and for the world of tax. Similarly tax is not the main priority when businesses think

about using blockchain. Although the focus is blockchain's potential to reduce transactional costs, add digital trust and improve transparency, a resulting more streamlined, efficient and effective tax function would be a significant bonus.

In conclusion, as our businesses migrate more and more onto digital platforms with tax authorities likely to follow, there will be some interesting dilemmas for the regulators. Should they accept digital currencies such as Bitcoin for the payment of tax? As more artificial intelligence and machine learning perform routine employment tasks and gradually replace human workers, then should a robot tax be introduced? How should governments tax the digital natives who work across borders and receive payment for their services in digital currencies?

Even though blockchain is lauded as a revolutionary technology that will impact every industry, and may address some of the above concerns, to be truly transformative on a global scale, then the real advantage will come from a unified global financial platform that companies can 'plug and play' into. This will raise all kinds of national sovereignty issues. As such this would appear some way off in the future.

For now, continued investment in this technology and application of wider tax-use-case examples can help speed up the mainstream acceptance and adoption of blockchain.

Dr Jag Kundi

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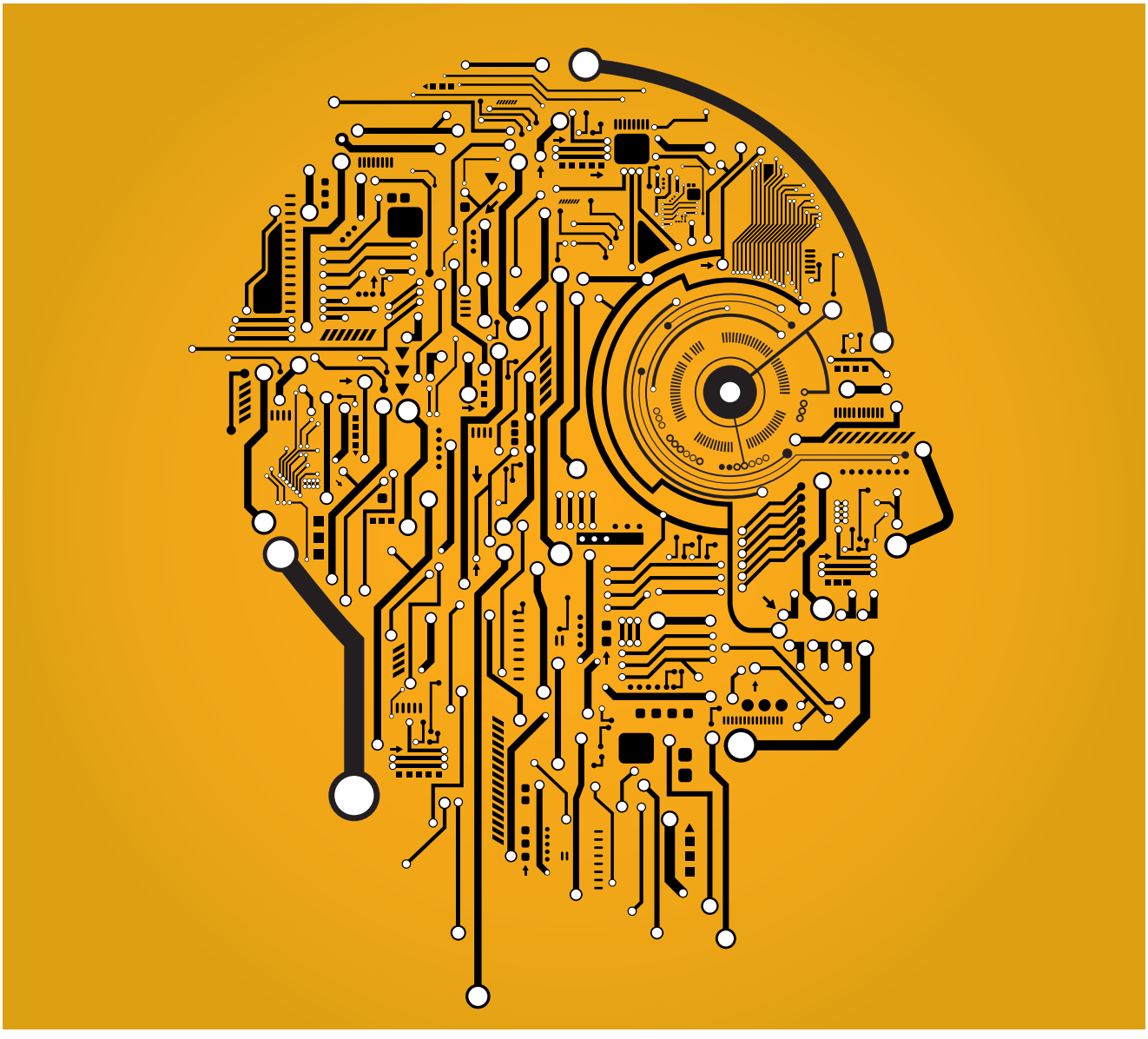
Customer due diligence – how technology can help

Emma Newman, Head of Sales, Veridate, highlights the key factors corporate services providers should consider when seeking the right technology to assist with know your client and customer due diligence compliance.



For people working across the finance industry and related sectors, keeping track of regulatory updates and guidelines, as well as implementing these industry changes, can sometimes feel like you are navigating a minefield – especially in this era of unprecedented regulatory upheaval.

In 2018, Hong Kong witnessed diverse regulatory updates as amendments were made to Hong Kong's principal Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO). Know your client (KYC) requirements for corporate services providers (CSPs) were enhanced, bringing existing anti-money laundering legislation in line with international best practices framed by the Financial Action Task Force (FATF) – an intergovernmental organisation founded in 1989 to develop global policies to combat money laundering and terrorist financing. For the first time, all designated non-financial businesses and professionals (DNFBPs) were expected to observe the same customer due diligence (CDD) and record-keeping requirements as financial institutions. Regulatory hurdles became even higher and more complex for all professional services firms, including CSPs, and almost two years after these changes were made these businesses still struggle with the processes, relying heavily on traditional ways of client onboarding rather than shifting to digital. Many firms seem unwilling to adopt new technologies that could help them with these new regulations. But why? What are the challenges that CSPs now face and what are the key factors to consider when seeking out the right compliance technology for your department?

The compliance requirements

The compliance requirements ask that DNFBPs not only conduct customer risk assessments (or due diligence) before starting a business relationship or business transaction valued at HK$120,000 and above, but also include the ongoing monitoring of business relationships to look for any signs of unusual activity. The amended Schedule 2 of the AMLO also asks that all DNFBPs maintain records related to all transactions and business relationships (with a time period of six years from the date the transaction is completed or the business relationship ends). In other words, the initial client engagement is only the start of regulatory obligations and in order to satisfy the required continued monitoring of clients, CSPs must continually check the status of clients through regular background checks and ensure that their identity documentation (ID) is still valid.

Imagine a local CSP has 100 existing clients (in this case, companies) who they act as a company secretary for. There might be up to five individuals, along with the company name, per client that they are required to run checks on. Depending on the anti-money laundering (AML) risk assessment of each client, CSPs may have to run these checks anywhere from one to four times a year for each individual. Six checks per client for 100 clients just twice a year would mean a total of 1,200 checks on these individuals' and companies' names – in addition to keeping the IDs up to date. This is a tremendously laborious task if these checks are being conducted without technology to help. Not only this, but these manual processes, according to The Fintech Times (https://thefintechtimes.com), could be resulting in significant losses in revenue.

Going digital

Technology has advanced exponentially over the past few years, but when visiting a compliance department one will most likely be greeted by stacks of paperwork and employees inundated with manual tasks. There are many immediate hurdles to consider when embedding new technology into old systems, such as the test-and-learn approaches characteristic of digital transformation, but those who adopt new RegTech solutions will have significant advantages – in particular smarter, cheaper and more efficient administration, risk and compliance frameworks, as well as improved customer service experience. An advanced risk reporting framework that uses automated processes can

Highlights

- know your client and customer due diligence requirements have become ever more complex for professional services firms
- many firms still rely heavily on traditional ways of client onboarding rather than shifting to digital
- those who adopt new RegTech solutions will have significant advantages – in particular smarter, cheaper and more efficient administration, risk and compliance frameworks, as well as improved customer service experience

provide organisations with real-time risk and business data to help improve both business and risk decisions. For example, some compliance technology can filter clients according to a scoring matrix when answering certain questions and allocate them a 'risk colour': red, amber and green (RAG) or high, medium and low. This would mean that the client's risk is more easily visible when conducting research, saving both time and effort. Scoring is in line with the framework used by the Companies Registry and refined by the CSPs level of risk acceptance for ease.

Another challenge faced by CSPs is the client onboarding process. Digital onboarding begins the moment a customer wants to use your services and requires a careful mix of both technology and data. Speed, security and convenience are of the utmost importance from a user's standpoint. However, there are opposing forces requiring stringent documentation for this process, which can slow down the much sought after quick onboarding process. According to the first edition of the 'Digital Onboarding and KYC Report 2020' – published by The Paypers (https://thepaypers.com) – inappropriate digital onboarding and lack of KYC practices affect the rate of customer onboarding. By using RegTech and putting an emphasis on data-driven onboarding, CSPs are more easily able to manage risk assessments when taking on new businesses. For example, they may be able to view their whole client portfolio risk, which would reveal how many politically exposed persons (PEPs) are already on the books, in addition to creating a guided journey for clients to apply for a new company themselves in digital form (or created by staff on behalf of the client). This makes it easier to understand what is required,

> "technology has advanced exponentially over the past few years, but when visiting a compliance department one will most likely be greeted by stacks of paperwork and employees inundated with manual tasks"

when it's required and most importantly, means one only needs to capture the data once to avoid duplication and transcription. More data means more analysis, so focusing on this data-driven onboarding is key for businesses.

Regulatory obligations do not stop once the client has been onboarded and regular background screening is essential to meet these regulatory requirements. Whilst there is only one law laid out by the regulator for CSPs, there are several requirements to be met and certain information required that adds a significant level of complexity to even the most straightforward screening process. Moreover, it is also down to interpretation of the requirements to create internal policies, which is inevitably open to variation as no CSP operates in the exact same way. It is, however, applicable to all licensed CSP companies in Hong Kong and is a vital cog in the compliance process.

Using automated software solutions to track, assess and gather data on a client across various key criteria, such as criminal records, past indiscretions, adverse media, PEP lists or any other specific, individual anomalies databases can help save time and make processes more efficient. Once this information has been gathered, presenting it appropriately can further aid CSPs to make more informed decisions. For example, certain parameters can be programmed to filter the search results according to how relevant that person might be to the client you are looking to do business with, or continue doing business with. These different segments can all be appropriately labelled for ease of decision-making and relevance, to ensure CSPs are able to prioritise accordingly. Modern technology is also capable of automatically rerunning screening checks on 'active' clients to drive further efficiencies in this otherwise manual search process. If a client's status does not change, where is the logic in having to repeat the same screening process and check through the same data across different databases every time the recheck event needs to occur? By automating this process, CSPs can manage by exception and concentrate on the higher risk clients that need more attention when potential 'red flags' are raised.

It is also extremely important when conducting these checks to ensure that client IDs are up to date in order to comply with these ongoing obligations. New technology can aid CSPs with this by running a search across all client profiles and checking for IDs that are close to expiring. An automated email can then be triggered asking the client to log into their account to update

the ID. Not only would this mean CSPs do not have to spend time manually contacting the client, but all email communications are tracked and logged, giving them peace of mind for audit and accountability of activity.

The customer experience

The pressure placed on compliance personnel today is tangible. Managing the rapidly increasing data requirements whilst implementing new policies and maintaining a document management system is not easy. However, by using RegTech to help streamline this process, the overall client experience and journey will be greatly improved. As Jérôme Dahan, Head of Legal Affairs at Webhelp Payment Services, puts it: 'More than a regulatory requirement, the KYC has become an essential component of the customer experience. The digitisation of company/customer exchanges requires that customers be given an easy and fast accreditation or identification experience'. Digitisation and automation are the keys to unlocking a better customer experience.

By providing clients with a dynamic digital form, rather than paper, PDFs or word documents, they can be guided through an application for a new account or company by asking only specific questions which need to be answered, something not possible with physical forms. Furthermore, if a local CSP is completing the application on behalf of the client, the client can easily log into their account to submit any additional information required by them. Once CSPs have this information, the database can be maintained and managed in a central source of truth that is safer and easier to manage than traditional, historic databases and spreadsheets.

Using technology allows for data to be reused and therefore makes the process less time-consuming not only for CSPs, but also for the clients filling out this information. There is also less chance of error when using digital forms as there are less transcription errors from reading handwriting and mistakes can be easily corrected without needing to restart the process. If the application for a new company can also be signed off by the client in the same journey, in addition to using the same data already captured from the client to create certain frequent use forms, then efficiency increases and completes full cycle onboarding in one step rather than fragmenting this otherwise simple journey.

Most often, companies and service providers fail to capitalise on a customer's full digital engagement potential and instead focus on only one aspect of a customer's digital lifecycle, whether that is onboarding, validation or identification. PDFs and paper-based processes, as well as manual internet searches, are not only difficult to manage, but are unsustainable processes in the long term. Redundant pages, repeated questions and transcription errors all lead to wasted resources and a negatively impacted client experience. By adopting new technologies to capture data that can be used elsewhere in internal operations, CSPs can benefit from more streamlined, time and cost efficient processes. First impressions not only count, they set the tone for a future client relationship, so it's important to set yourself up to succeed from the start.

The future of RegTech

RegTech will most definitely continue to build on the advancements made in recent years, and this growth will come from new technologies that are now being built to serve the specific needs of all CSPs, rather than any one specific services industry. According to Deloitte, analysts are predicting an increase in client demand for innovative RegTech solutions, with a market potential of US$76.3 billion and US$10.7 billion in Europe alone by 2022 ('Digital Onboarding and KYC Report 2020', The Paypers). To remain competitive with other jurisdictions and attract new companies to Hong Kong, it is important to accept modern technology in the workplace. Ongoing regulations remain – and will continue to remain – tough, unless new ways of complying are adopted through new technologies. However, companies that develop and commercialise these RegTech solutions will continue to update their services by incorporating lessons that are continually being learned, making their service more efficient and user friendly to the underlying client at the heart of their business.

“ongoing regulations remain – and will continue to remain – tough, unless new ways of complying are adopted through new technologies”

Emma Newman, Head of Sales
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Crisis management

Tips for boards, management teams and governance professionals

From cybersecurity breaches to natural disasters and worldwide pandemics, the impact of a crisis can be unpredictable. Andrew Carrick, VP Customer Success – Asia Pacific, Diligent, offers tips for board members, management teams and governance professionals on developing decisive yet flexible response plans that can accommodate a wide variety of scenarios.

When crisis response plans are triggered, cascading actions are set into motion across the business. Executives must trust the plans they put in place. Board members, management teams and governance professionals must stand ready to support business continuity. In the end, the impact of a crisis is rarely determined by the crisis itself, but rather the quality of the organisation's response.

Technology is a critical enabler during times of uncertainty. Crisis response teams must have secure channels of communication. Data must be accessible. Sensitive documents must remain protected. Virtual meeting technology must keep teams connected. In the simplest terms, company leaders must have the right information at their fingertips to make the right decisions. This article explores two primary components of crisis response – preparedness and agility – and the technology structures that support them.

Crisis response tips for management teams and governance professionals

Communicate early, often and with transparency. Even if you don't have all the answers, the importance of communication is elevated during crisis times. Consider each stakeholder group (for example employees, shareholders, investors, suppliers, regulators and government) over both short- and long-term horizons. How are their fears and uncertainties shifting and how must your message evolve in the weeks ahead? Connect and engage often with purpose and humility.

Be decisive, yet flexible. Identify the areas that need attention and allocate resources accordingly, but have plans for pivoting quickly, as needed. The crisis response team should include diverse members who gather the insights required for better decision-making.

A CEO cannot lead alone during times of crisis. Organisations should be prepared to empower leaders across the company to step up and support the executive team with consistent actions and messages. Open lines of communication are critical to ensure alignment.

Crisis response tips for board members

Activate your experience. Boards possess unique sets of experiences and 'lessons learned' that they can draw on in times of crisis. Directors should stand ready to galvanise their network of contacts and resources in response to the needs of management.

Be available. Make it clear that the board is 'on call' – ready and willing to engage. Support management in carrying out the crisis plan. Think twice about probing into areas that don't support the task at hand – ask whether the issue warrants distracting executives from addressing crisis priorities, or whether those issues could wait for another day.

Stay focused on the long-term. As management attends to day-to-day crisis response, how can board members ensure a stronger organisation emerges on the other side? From supply chains to employee relations, organisations can't miss the opportunity to become more flexible, sustainable and resilient.

> "the impact of a crisis is rarely determined by the crisis itself, but rather the quality of the organisation's response"

Responding to a crisis

Organisations don't always have the luxury of advanced preparation. Even when they can draw on existing crisis plans, boards and management teams must remain nimble, focused, connected – and uncompromising on safety and security. Here's what that workflow could look like.

1. Contact response teams using secured channels

- Notify the board and any relevant internal stakeholders and external stakeholders (such as PR agencies and law firms).

Highlights

- organisations must anticipate a range of crisis scenarios that could negatively impact the business
- the crisis response team should include diverse members who gather the insights required for better decision-making
- don't overlook the importance of data integrity and security in crisis times

> “technology is a critical enabler during times of uncertainty”

- Establish or activate secure communication channel(s) for the crisis response team. Limit these channels to important, crisis-related updates only.
- Brief the crisis response team. Share all relevant information, current details and documents via secure channels.

2. Establish processes for meetings and information flow

- Establish intelligence sources to inform ongoing crisis response (such as news coverage, public sentiment and crisis developments).
- Determine the format and cadence for providing updates to key stakeholders (for example daily stand-ups, dashboards and regular CEO updates to the board).
- Determine how information and important updates will flow through the organisation.
- Continue to maintain secure channels for all communication and document sharing.

3. Communicate with all stakeholders

- Ensure communication is tailored to each stakeholder group (such as employees, customers, shareholders, regulators and communities).
- Be aware of laws and regulations related to notification timelines (for example cyber breach regulations).
- Monitor stakeholder responses and ongoing developments.

Preparing for a crisis

Crisis response planning is a crucial exercise by the board, management teams and governance professionals. Organisations must anticipate a range of crisis scenarios that could negatively impact the business, and they must establish the company's response strategy spanning stakeholder communication, operational contingencies, and board involvement. Here's what that process could look like.

1. Anticipate crises and develop response plans

- Anticipate potential crises and rank them by business impact. Identify those that would require a similar company response.
- Outline a few core response plans that could be adapted for different scenarios. Consider response triggers, communication strategies and key players (both internal and external).
- Establish a central location, which must be secure and accessible remotely by board members and management, for these crisis plans to live.

2. Build a rapid response infrastructure

- Establish a communication infrastructure for crisis situations (that is, channels for secure messaging and document sharing).
- Don't overlook the importance of data integrity and security in crisis times. Ensure important subsidiary and regulatory information is up to date and accessible. Remember that cyber risk tends to increase in times of crisis.
- Conduct authentic run-throughs of your crisis plans to patch gaps and ensure the readiness of all parties involved.

3. Monitor systems for red flags

- Develop a system for crisis monitoring that maps back to each crisis scenario.
- Establish various intelligence sources and define what constitutes red flags or triggers for your response plans.
- Extend these reports or tools to appropriate members of the board, management teams and the crisis response team.

Andrew Carrick, VP Customer Success – Asia Pacific
Diligent

CHARTERED SECRETARIES 特許秘書

The Hong Kong Institute of Chartered Secretaries is proud to present:

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19 September — Corporate Governance Paper Competition and Presentation Awards

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The Mainland's new Personal Information Security Specification

Hogan Lovells highlights how the Mainland's new Personal Information Security Specification, which will come into force on 1 October 2020, raises the stakes for data protection in the Mainland.

Less than two years after the implementation of the 'GB/T 35273-2017 Information Security Technology – Personal Information Security Specification' (2017 Specification), the Mainland's National Information Security Standardization Technical Committee (commonly known as TC260) released the final amended version on 6 March 2020 (2020 Specification), after issuing several drafts of amendments, which will come into force on 1 October 2020.

Although the 2017 Specification is not a mandatory standard, it is highly influential as a compliance tool for businesses active in the Mainland, as the authorities appear to be using it as a compliance yardstick in practice. Most laws in the Mainland, such as the Cybersecurity Law, only address data protection in very general terms. The more detailed requirements set out in the 2017 Specification (and now the 2020 Specification) serve an important role in bridging the gap between principles and practice, providing organisations with useful guidance on how to align their data protection programmes in the Mainland with the increasing demands of international data protection practice.

One of the most striking features of the 2020 Specification is how far its guidelines seek to move the Mainland's data protection landscape towards the accountability requirements seen under the European Union's General Data Protection Regulation (GDPR). But more significantly, in some respects the 2020 Specification threatens to exceed GDPR requirements. In particular, the 2020 Specification moves towards a forced 'unbundling' of consents, requiring separate, explicit 'opt-in' consents to each purpose for which personal data is being processed, with a specific focus on third-party access, biometric personal information, advertisement personalisation and other forms of digital marketing.

Fully forced unbundling of consents under the 2020 Specification

The 2017 Specification requires that information controllers who intend to collect personal information must obtain consent of information subjects. Moreover, voluntary, specific, and unambiguous consent from information subjects is required for the collection of sensitive personal information after informing them of how the information will be processed as part of:

- the core functions of the information controller's product or service, and
- any ancillary processing purposes.

The 2020 Specification further develops the guidance in respect of unbundling by requiring information controllers to provide unbundled consents for the collection of all types of personal information (not just sensitive ones) relating to each separate business function offered to the individual.

Specifically, a single consent is sufficient for processing for all 'basic' purposes; however processing for 'extended' purposes would need unbundled and separate consent for each use case. The 2020 Specification recommends that a distinction be drawn between 'basic' and 'extended' processing purposes. 'Basic' processing purposes are defined based on the information subject's primary needs and expectations of using the products or services. Though not expressly defined, 'extended' purposes should be taken to mean any other purposes not based on such primary needs and expectations, such as profiling and retargeting.

The 2020 Specification entitles information controllers not to provide products and services to information subjects that refuse to consent to collecting personal information for 'basic' purposes. To restrict information controllers from unreasonably expanding the scope of 'basic' purposes, the 2020 Specification clarifies that information controllers cannot subjectively determine the information subjects' primary needs and expectations. Typically, upgrading services, enhancing the user experience and the research and development of new products are not 'basic' processing purposes.

Highlights

- the Mainland's Cybersecurity Law addresses data protection in general terms – the more detailed requirements set out in the new Personal Information Security Specification serve an important role in bridging the gap between principles and practice
- the new Specification requires unbundled consents for the collection of all types of personal information relating to each separate business function offered to the individual
- the new Specification mandates an opt-out from advertisement personalisation

Manufacturing consent – recommendations under the 2020 Specification

The 2020 Specification sets out further recommendations as to how organisations should obtain requirements on consent from information subjects.

- **Affirmative action**: consent must be based on the information subject's affirmative action (such as voluntary clicking, ticking or entering the relevant information), as the condition for commencing the provision of specific business functions.
- **Opting out**: information controllers must provide easy-to-follow means through which business functions can be turned off or allow opting out.
- **Requests to reconsider opt-outs**: where information subjects refuse to opt in or opt out from any specific business function, information controllers must not send repeat consent requests within 48 hours.
- **No reduction in quality**: where information subjects refuse to opt in or opt out from any specific business function, information controllers must not suspend other business functions for which the information subject has opted in, or lower the service quality of such business functions.
- **No forced participation in research and development**: information controllers must not force an information subject to agree to the collection of his/her personal information for the sole purposes of improving service quality, enhancing user experience, developing new products, increasing security or other such purposes.

New requirements for personalised display and targeted advertising

'Personalised displays' are defined under the 2020 Specification to include features of digital interfaces such as personalised research results and other displays based on the information subject's web browsing history, personal interests and so on. The 2020 Specification adds requirements on information controllers specifically targeting tailored results.

- Information controllers that provide 'business functions' must prominently differentiate personalised displays and non-personalised displays (for instance, by indicating words such as 'pushing').
- E-commerce operators that provide personalised recommendations or targeted search results shall also provide a means of opting out of such recommendations.
- Information controllers that push personalised news or information services must provide a straightforward opt-out method enabling the user to receive generic content instead. At the time of such opt-out, information controllers must also provide the information subject with an option to delete or anonymise personal information used for targeted advertising.

New requirements for access to platform data

If an information controller includes third-party products or services with personal information collection functions in its

> "although [the Mainland's new Personal Information Security Specification] is not a mandatory standard, it is highly influential as a compliance tool for businesses active in the Mainland"

products or services, for example enabling businesses to operate applications and mini-programmes within its platform ecosystems, the following requirements under the 2020 Specification will apply:

- establish procedures for enabling secure access to data and access conditions, such as conducting security assessments
- specify, by entering a contract with the third-party product or service provider, the security responsibilities of both parties and the personal information security measures to be implemented
- indicate to information subjects that such products or services are provided by a third party
- preserve contracts and management records relating to third-party platform access, and ensuring that such information is made available to the relevant parties

- require third parties to obtain consent from information subjects and, when necessary, verify the methods through which said third parties satisfy this requirement
- require third parties to establish procedures for responding to requests for information and complaints made by information subjects
- monitor third-party information protection practices, require remediation where necessary and disable platform access if the third party fails to implement the information security requirements, and
- where a product or service is embedded in, or connected to, third-party automated tools (such as software development kits and mini-programmes), technical inspections and audits are recommended to be carried out, and access should be disabled if third-party activities exceed the scope of what has been agreed.

If the third parties do not obtain separate consents from information subjects for processing their personal information, then information controllers will be deemed as joint controllers with such third parties. Consequently the following requirements will apply:

- the personal information controller must confirm with the third party the personal information security requirements to be met, their respective responsibilities and duties in relation to personal information security, and expressly inform information subjects of the same, and

- failing to expressly inform the information subjects of the above required information, the information controller must assume liability for any personal information security issues created by the acts or omissions of such third party.

> "in some respects the [new Specification] threatens to exceed the European Union's 'General Data Protection Regulation' requirements"

New requirements regarding processing by a third party

Under the 2020 Specification, an information controller is responsible for taking immediate action against a third-party processor who processes data on its behalf if it becomes aware that the processor has failed to process personal information according to its requirements, or has failed to perform its duties to protect the security of personal information.

Also, if an information controller discovers that a data recipient that has received, shared or transferred data has processed the personal information in violation of laws or agreements between the parties, the information controller must take immediate actions, such as requiring the third-party processor or data recipient to discontinue the relevant conduct and, when necessary, terminating its business relationship with the third-party processor or data recipient.

Revising the examples list of sensitive personal information

The scope of 'sensitive personal information' under the 2020 Specification is broader than the concept typically seen in the international context, including identification card numbers, biometric information, bank account details, communications records, property details, credit reference information, location data, transaction data and personal data of children under the age of 14.

Compared to the 2017 Specification, the 2020 Specification removed personal phone numbers, email addresses, online identity information and information relating to personal health from the list of sensitive personal information, but at the same time, added address books, friends lists and lists of groups into the list.

Separate requirements on processing of biometric personal information

The 2020 Specification adds new requirements regarding biometric personal information, which is now widely used in many identity authentication scenarios, such as unlocking smart phones and paying bills. Due to its nature of uniqueness, additional protections are urgently needed to secure biometric data from unauthorised access and misuse.

- **Definition**: biometric personal information is defined as personal genes, fingerprints, voice prints, palm prints, auricle, iris, facial recognition features and so forth.

- **Collection of biometric personal information**: the collection of biometric personal information faces more stringent requirements than those for sensitive personal information, including (i) separately informing the information subject regarding the purpose, method, scope and the storage period for which such information is collected and used, and (ii) obtaining explicit consent prior to collection and use.

- **Processing of biometric personal information**: biometric personal information must be stored separately from identification information. In principle, raw biometric personal information (for example, samples and images) must not be stored. Furthermore, biometric personal information must not be shared or transferred unless it is necessary to do so due to business needs and explicit consent has been obtained from information subjects. Lastly, no biometric personal information may be publicly disclosed.

Elevating the position of data protection officer

The 2020 Specification requires information controllers to appoint a dedicated data protection officer (DPO) in cases of organisations principally engaged in the processing of personal information and employing more than 200 individuals, organisations processing the personal information of more than one million individuals, or processing sensitive personal information of more than 100,000 individuals. It further requires the DPOs to be experienced and knowledgeable in

personal information protection – such officers shall be involved in important decision-making relating to the processing of personal information, and will directly report to the chief person-in-charge of the organisation.

Conclusions

Overall, what emerges from the 2020 Specification is that the Mainland appears to see some value in hitching a ride on the GDPR train, but with heavier emphasis on certain 'hot button' issues that are perceived as particularly problematic in the Mainland, like 'pushed' personalisations and empowering information subjects to opt out. In that sense the Mainland may have partially decoupled from the GDPR train, pursuing its own agenda for data protection.

The direction of travel is clear from the 2020 Specification. The amendments in relation to unbundled consents are largely directed at online data collection, striving to seek a balance between allowing the Mainland's internet economy to continue to grow and innovate, and at the same time providing transparency and security to internet users. These changes raise the stakes for data protection in the Mainland significantly. Forcing an unbundling of consents for these types of 'extended' processing models and mandating an opt-out from advertisement personalisation will have a significant impact on the Mainland's internet economy, both for the leading platforms who maintain thriving ecosystems based on these technologies, and for the brands and marketers seeking to extract data-driven business value from platform interactions. The amendments in this area to the 2020 Specification have raised a significant debate in the Mainland and this area in particular is one to watch.

Andrew McGinty, Philip Cheng, Sherry Gong, Mark Parsons, Maggie Shen, Jing Wang

Hogan Lovells

Non-performance of commercial contracts during COVID-19

Tim Parker and Abigail Liu, Barristers at Denis Chang's Chambers, take an in-depth look at the legal ramifications of the non-performance of commercial contracts during the current coronavirus pandemic.

The rapid spread of COVID-19 has developed into a global threat. The pandemic and the laws and regulations enacted to stem its spread are causing unprecedented disruption to businesses.

This article addresses the way in which the coronavirus pandemic will affect the continuing validity of contractual obligations. We set out the legal principles governing the circumstances in which contracting parties may be released from their obligations by:

1. the operation of a force majeure clause, or

2. invoking the common law doctrines of frustration and impossibility.

The discussion inevitably addresses the general principles only, and as always, specific legal advice should be sought about the application of these principles to any particular contract.

1. The operation of a force majeure clause

A force majeure clause is a type of contractual term that is triggered by an exceptional event beyond the parties' control, and usually operates to excuse non-performance by parties of their obligations under the contract where the event has prevented or hindered their fulfilling their end of the bargain.

This will only apply if the contract includes such a term. Whether or not COVID-19 will amount to such an event turns entirely on the wording of the clause in the contract in question. Where a contract contains a force majeure clause, the party seeking to invoke it will need to show that:

- COVID-19, and/or the governmental measures adopted in response to it, constitute events of force majeure within the meaning of the contract

- performance of the relevant obligation was prevented, hindered or delayed (depending on the wording) by COVID-19/the governmental measures, and/or

- in many cases, it will also be necessary for the party seeking to rely on the clause to show that they took reasonable steps to mitigate any losses arising out of their non-performance.

We expand on each of these elements below.

Is COVID-19 an event of force majeure?

In analysing whether or not a given event constitutes a force majeure, one can begin by looking at the specific wording of the clause. Many force majeure clauses contain a list of force majeure events. Common examples include war, revolution or acts of terrorism.

If the clause in question includes wording such as 'pandemic', 'epidemic' or 'disease', it is likely that COVID-19 will qualify. Depending on the context, a reference to 'plague' may potentially also cover COVID-19.

Some clauses may contain a general category, for example: 'all events outside the reasonable control of the parties'. As COVID-19 is an event beyond the parties' control, it is likely to fall within a widely drafted clause like this. It is also an event that is of the type that would likely have been within the contemplation of reasonable parties agreeing to a general clause of this nature.

Another commonly used term is 'acts of god'. An act of god refers to the operation of natural forces (as opposed to acts of man) not reasonably possible to foresee and guard against. Whether COVID-19 will be caught by this phrase is debatable. While the emergence of a disease itself may be an unforeseeable natural disaster, it may be argued that its spread between humans involves human agency and is not per se an act of god. It might also be contended that any disturbance caused to businesses by regulatory government measures adopted in response to the outbreak of COVID-19 is not caused by an act of god, even if the disease itself meets the definition.

Highlights

- care must be taken to comply with any procedural requirements detailed in a force majeure contract prior to halting performance
- to invoke the 'frustration and impossibility' grounds for termination of a contract under the common law, it is necessary to show more than mere inconvenience, hardship or reduced profitability
- frustration will apply where performance of the whole contract has become illegal – this is likely to be highly relevant in the context of COVID-19

> “there must be a causal relationship between the force majeure event and the non-performance of the contract”

Governmental acts in response to COVID-19

Many force majeure clauses will be triggered where performance is inhibited by 'government orders', 'government action' or 'government acts or priorities'. Such terms are likely to be relevant in the context of COVID-19, given the highly restrictive governmental measures adopted in response to it.

The HKSAR Government has promulgated regulations which, among other things, severely restrict public gatherings, require places of entertainment to cease business, and limit capacity at restaurants (see Cap 599F and Cap 599G). These have been followed up by further measures ordering the closure of pubs and bars. Such regulations are likely to constitute 'government orders' or 'government acts', or other similar phrases used in force majeure clauses. As are the government-imposed quarantine of incoming travellers, infected persons and their close contacts.

Required impact of the force majeure event on performance

The fact that an event of force majeure has arisen does not of itself excuse performance of a contract. There must be a causal relationship between the force majeure event and the non-performance of the contract. Precisely what is required by way of causation turns on the wording of the contract.

The contract may require, for example, that the force majeure event has 'prevented' performance, or 'rendered [the party] unable' to carry out its obligations. In such case, the party seeking to rely on the force majeure clause must show that performance has become physically or legally impossible – as opposed to merely more difficult, more expensive or less profitable.

If the force majeure clause provides relief where performance is 'hindered' or 'delayed', this is a significantly less stringent standard. The benefit of the clause may be available when the event of force majeure renders performance substantially more difficult and financially burdensome. Where the words 'materially hindered' were used, parties are not required to prove that completion had been prevented or become impossible (see *Goldlion Properties Ltd and Others v Regent National Enterprises Ltd* (2009) 12 HKCFAR 512).

As a matter of legal policy, the courts will not lightly conclude that non-performance is excused by an event of force majeure. The mere fact that the market or economic situation attendant on a force majeure event has made performance of the contract more onerous or difficult, or less profitable, will not excuse a party from fulfilling it. Parties are taken to contract on the basis that, within reasonably foreseeable limits, the risk that more resources may have to be allocated to perform the bargain than those originally contemplated – and thus diminishing one party's profits is part and parcel of doing business.

Duty to mitigate

There is no general duty to mitigate the effects of a force majeure event. In practice, however, many force majeure clauses impose such a requirement.

Where the term does require mitigation, it will be incumbent on the non-performing party to try to avoid as far as possible the adverse consequences of the event of force majeure and minimise the losses it causes, and in the present case, to minimise the impact of COVID-19 on the performance of the relevant obligation(s) and the damage that will do. The failure to do so may mean that the force majeure clause cannot be relied upon.

Relief conferred by a force majeure clause

Where a party is able to rely on a force majeure clause, the relief that flows

CHARTERED SECRETARIES 特許秘書

Mainland Company Secretarial Practice Series

Hong Kong incorporated companies are commonly used as investment vehicles for holding business entities in the Mainland. Overseeing compliance issues of Mainland entities has become an important part of the work of company secretaries and other practitioners in Hong Kong, who should be aware of the regulatory differences between Hong Kong and the Mainland.

HKICS is pleased to run a series of Mainland Company Secretarial Practice sessions (from July to December 2020), which aims to provide members, graduates and students with an overview of the requirements and practices applicable to Mainland entities. The series comprises six sessions and will be delivered by HKICS Professional Development Director Mr Desmond Lau as the main speaker. Interested parties are invited to join any or all of the following six sessions:

Session 1: Business Entities - Basic Features, Pros & Cons
Session 2: Setup Procedure - Wholly Foreign Owned Enterprise
Session 3: Bank Accounts & Fund Flow - Wholly Foreign Owned Enterprise
Session 4: Alteration in Corporate Structure - Wholly Foreign Owned Enterprise
Session 5: Voluntary Liquidation - Wholly Foreign Owned Enterprise
Session 6: Representative Office - Setup, Compliance, Alteration & De-registration

Speaker:	Mr Desmond Lau ACIS ACS, Director, Professional Development, HKICS
Language:	Cantonese
Venue:	This is via online webinar mode. No physical attendance is required.
HKICS Accreditations:	1.5 ECPD points per session
Fee:	HK$320 per session per HKICS member HK$230 per session per HKICS student HK$420 per session per non-member

Register Now!

For enquiries, please contact the Institute's Professional Development Section: 2881 6177, or email: cpd@hkics.org.hk.

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

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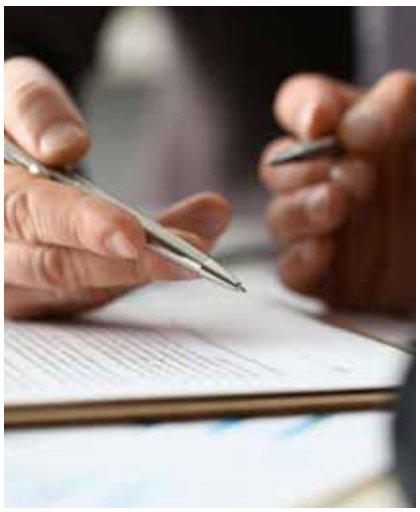
(Incorporated in Hong Kong with limited liability by guarantee)
3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong
Tel: (852) 2881 6177 Fax: (852) 2881 5050 Email: cpd@hkics.org.hk Website: www.hkics.org.hk

> other options should always be considered – renegotiation or terminating the agreement by mutual consent can reduce or eliminate the risks of wrongful termination



depends entirely on what has been specified in the contract. Common formulations include the following:

- that certain obligations under the agreement will be suspended for a given period of time – usually until the relevant event ceases to prevent or hinder performance
- that one or both parties is entitled to terminate the contract, and/or
- that the contract is suspended for a period of time, after which it can be formally terminated.

A force majeure clause will almost invariably provide a defence for the non-performing party in the event they are sued for a breach which has been precipitated by the event of force majeure.

Points to note before invoking force majeure clauses

Apart from mitigation (see above), care must also be taken to comply with any procedural requirements detailed in the contract prior to halting performance, for example, to give formal notice within a time limit, or exhaust a specified disputes procedure prior to any termination.

Depending on the wording of the relevant clause, such procedural requirements may be interpreted to be preconditions to a valid exercise of the right, and if not complied with, the right to invoke the force majeure clause may be lost.

Accordingly, any procedural requirements should be strictly complied with in form and substance. Moreover, parties wishing to terminate should generally do so promptly to avoid any suggestion that they have sat on or waived their rights.

2. Grounds for termination at common law – frustration and impossibility

Frustration and impossibility (which for convenience we refer to collectively as frustration) apply where events outside the control of the parties render performance of the contract legally, physically or commercially impossible, or transform the obligations under it into something radically different from what was contracted for (see *Li Ching Wing v Xuan Yi Xiong* [2004] 1 HKLRD 754). This is a high threshold: it is necessary to show more than mere inconvenience, hardship or reduced profitability.

Frustration will apply where performance of the whole contract has become illegal. This is likely to be highly relevant in the context of COVID-19, given the regulations introduced by the HKSAR Government mentioned above, which restrict many activities previously taken for granted. For example, a contract with a concert venue to hold a large concert will, while the regulations banning gatherings remain in force, likely be held frustrated by supervening illegality. If performance becomes unlawful only in part, it is a question of fact and degree whether the whole contract should be treated as frustrated.

Relationship between force majeure and frustration

The presence of a force majeure clause in a given contract may preclude the operation of the doctrine of frustration. The logic is this: the doctrine of frustration is concerned with supervening events unforeseen at the time of the entry of the contract. If the contract contains express provisions that cater for the event in question, for example a force majeure clause that covers the outbreak of COVID-19, the doctrine of frustration would not be lightly invoked as an event of that nature has been foreseen and the risks allocated.

Whether a given force majeure clause excludes the possibility of relying on frustration entirely turns on the specific wording of the clause and the implicit assumptions of the parties about the allocation and assumption of risk under the terms of the contract.

Consequences of invoking the doctrine of frustration

Frustration brings an end to the contract automatically and all parties will be released from their obligations. At common law, the court has no power to allow the contract to continue or to modify its terms.

The courts have various powers under Section 16 of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23) to give relief where a contract is discharged for frustration. For example, the court may order that the purchase price be returned, or that a party be compensated for expenses incurred before the contract was frustrated.

Deciding to terminate a contract – and considering alternatives

An unanticipated, catastrophic event such as the coronavirus outbreak will inevitably lead to the termination of many commercial contracts and great care should be taken when deciding to terminate. Serving a notice of termination in circumstances where grounds for termination are not objectively made out may, in certain circumstances, be treated by the other party as a repudiatory breach of contract – entitling them to terminate and claim damages.

Other options should always be considered – renegotiation or terminating the agreement by mutual consent can reduce or eliminate the risks of wrongful termination.

The application of principles relating to force majeure and frustration is highly fact-sensitive and requires careful analysis. If in doubt, it is wise to approach your legal advisers early in the process.

Tim Parker and Abigail Liu, Barristers
Denis Chang's Chambers

Disclosure of inside information – a timely reminder

Debevoise & Plimpton looks at a recent Market Misconduct Tribunal decision concerning late disclosure of inside information and makes practical suggestions on steps listed companies can take to ensure compliance with Hong Kong's inside information disclosure regime.

On 25 March 2020, the Market Misconduct Tribunal (MMT) found Magic Holdings International Ltd (Magic) and certain of its directors culpable of late disclosure of inside information. In recent weeks, the spread of the coronavirus has created great uncertainty about many listed companies' future performance and viability (resulting in extreme share price volatility) and the MMT's decision is a timely reminder to companies listed on the Hong Kong Stock Exchange to ensure that inside information is disclosed promptly.

The MMT decision

In March 2013, Magic entered into discussions with L'Oréal S.A. (the French cosmetics group) in relation to a proposed acquisition of Magic by L'Oréal. The proposed acquisition (which constituted inside information) was leaked. However, Magic did not disclose the information relating to L'Oréal's acquisition proposal to the public until August 2013.

The MMT found the following.

- Magic did not take reasonable precautions for preserving the confidentiality of the information arising from the negotiations.
- Magic did not take reasonable measures to monitor the confidentiality of the inside information.
- In circumstances where (i) confidentiality had not been preserved; and (ii) Magic had not taken reasonable precautions for preserving the confidentiality of the information, Magic was not entitled to rely on the 'incomplete proposal or negotiation' safe harbour under Section 307D of the Securities and Futures Ordinance (SFO).
- Accordingly, contrary to Section 307B (1) of the SFO, Magic did not disclose to the public the inside information as soon as reasonably practicable after the inside information had come to its knowledge. This breach of the disclosure requirements was due to the fact that its directors were not informed in a timely manner of all information relevant to the determination of whether it was necessary to make disclosure about the potential acquisition by L'Oréal to the public.
- The chairman and company secretary (both of whom were directors) failed to exercise the requisite skill and diligence, having regard to their respective knowledge, skill and experience. The MMT further found that five of the directors had failed to take all reasonable measures to ensure that proper safeguards existed within Magic to prevent it from breaching its disclosure obligation.
- Two of the directors (whose functions focused on business operations rather than regulatory matters) were not culpable of negligent conduct in relation to Magic's breach of the disclosure requirement. That notwithstanding, the MMT indicated that their conduct was far from competent. It noted that they had failed to engage properly with the proposed acquisition, including failing to ask the right questions about the proposed transactions and failing to open and read relevant emails.
- Certain of the non-executive directors, who had taken a proactive approach in seeking to inform themselves of the operations of Magic (including suggesting an internal controls review), had taken all reasonable measures to ensure that proper safeguards existed to prevent the breach of Magic's disclosure requirement.

The inside information disclosure regime

In essence, 'inside information' is non-public information about a listed corporation that is likely to materially

Highlights

- the Market Misconduct Tribunal found that Magic Holdings International Ltd had not taken reasonable precautions for preserving the confidentiality of information in relation to a proposed acquisition of the company
- the chairman and company secretary (both of whom were directors) failed to exercise the requisite skill and diligence, having regard to their respective knowledge, skill and experience
- in the context of the increased market volatility as a result of the global coronavirus pandemic there is a heightened need for companies to monitor inside information

> “the Market Misconduct Tribunal's decision is a timely reminder to companies listed on the Hong Kong Stock Exchange to ensure that inside information is disclosed promptly”

affect the share price. Section 307A(1) of the SFO states that inside information, in relation to a listed corporation, means specific information that:

(a) is about (i) the corporation; (ii) a shareholder or officer of the corporation; or (iii) the listed securities of the corporation or their derivatives, and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would, if generally known to them, be likely to materially affect the price of the listed securities.'

There are many events and circumstances that may affect the price of the listed securities of a corporation. In its 2012 guidance, the Securities and Futures Commission (SFC) set out some examples of events or circumstances where a corporation should consider whether a disclosure obligation arises. The examples that are particularly relevant to the current market conditions are 'changes in performance, or the expectation of the performance, of the business' and 'changes in financial condition, for example a cash flow crisis'.

The core obligations in relation to dealing with inside information are found in Part XIVA of the SFO. In particular:

- a listed corporation must, as soon as reasonably practicable after any inside information has come into its knowledge, disclose the information to the public (Section 307B)
- disclosure must be made in a manner that can provide for equal, timely and effective access by the public (Section 307C)
- compliance is achieved through an electronic publication system operated by a recognised exchange company, and
- officers must ensure that proper safeguards exist (Section 307G).

The SFO contains various 'safe harbour' exceptions for which, if applicable, disclosure of inside information is not required. These safe harbours include, among other things, information that relate to trade secrets and incomplete proposals or negotiations, for example contract negotiations, corporate divestment, share placing and so on (Section 307D(2)).

Further, a listed corporation is not deemed to have failed to preserve the confidentiality of any inside information if disclosure is required for the purposes of allowing a person (for example lawyers, accountants and financial advisers) to perform functions in relation to the corporation or if disclosure is required by law (Section 307D(3)).

There are various penalties for companies and directors that fail to disclose inside information promptly.

Recent market volatility and heightened need to monitor inside information

As the coronavirus has spread to become a global pandemic, many listed companies have experienced extreme share price volatility. As the severity and impact of the pandemic develops and government responses evolve on an almost daily basis, the future performance and financial position of many listed companies remain highly uncertain. This period of stress will be a new experience for more recently listed companies and the economic effects of the coronavirus will no doubt present different challenges to listed companies that survived previous crises, such as the global financial crisis.

In these circumstances, the need to monitor inside information closely and take steps to promptly disclose that information is more important than ever. Indeed, the SFC and the Stock Exchange are keeping a close eye on this issue. On 16 March 2020, they issued an updated joint statement – 'FAQs to Joint Statement in relation to Results Announcements in light of Travel Restrictions related to the Severe Respiratory Disease associated with a Novel Infectious Agent'. The FAQs specifically note that 'if the issuer's business operations, reporting controls, systems, processes or procedures are materially disrupted by the Severe Respiratory Disease outbreak and/or the related travel restrictions, management should assess whether any inside information has arisen [under the SFO]... and, if so, make a separate announcement as soon as reasonably practicable'.

We note that other financial regulators are also taking a close interest in the management of price-sensitive information. In particular, on 23 March 2020, the U.S. Securities and Exchange Commission issued a reminder to publicly traded companies of their regulatory obligations to guard against improper dissemination and use of material non-public information.

Handling inside information in times of crisis

Set out below is a selection of practical steps that can be taken to ensure that inside information is handled correctly and, where necessary, disclosed.

- Directors should be reminded of their duties in relation to the need to monitor and disclose inside information. Training refreshers should be provided if necessary.
- The current market conditions could be a timely juncture to review the company's policy for determining what information is sufficiently significant for it to be price sensitive and its procedures for disclosure. Many companies operate a 'sensitivity list' for categories of price-sensitive information. Responsibility for disseminating price-sensitive information should be clearly delegated.
- Depending on the nature of the operations of the company, the board will likely need to pay close attention to changes in the current and future financial position of the company. This could include frequent (that is, daily) calls among the board. The fact that directors may be unable to hold physical board meetings (due to social distancing protocols) will not be an acceptable reason for failing to disclose inside information. Alternative arrangements for effective communication between board members will need to be established.
- If monitoring of the coronavirus is delegated to a board subcommittee, an effective system of communication will be required to keep other board members informed of the situation.
- To ensure that the financial position of the company can be properly assessed, the company will need access to management and financial information that is accurate and up to date. In some cases, the directors will need to assess whether the company is facing insolvency (which could occur very quickly). Additional personnel could be required to ensure the accurate and timely production of such information.
- The discussions between board members and any decisions in relation to disclosure or non-disclosure of inside information should be properly documented, especially the reasons for any non-disclosure or delay in disclosure.
- The board should involve its compliance and legal advisers in discussions about potential inside information and whether it should be disclosed.
- Insider lists should be kept under review and insiders should keep up to date as to what information is public and what is inside information.
- Use and distribution of inside information should be restricted to relevant personnel (for example, ensure that distribution lists are accurate and kept under review).
- Avoid communications and announcements that blur price-sensitive information with public information. Announcements should include all the relevant information that shareholders and potential investors need to know, including what steps the company intends to take to address current financial or operational difficulties.

Gareth Hughes, Partner; Mark Johnson, Partner; Emily Lam, International Counsel; Allison Lau, Associate; Ralph Sellar, Associate

Debevoise & Plimpton

Photographer: Michael Kistler

Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE)

What is your role as a governance professional?

'As a governance professional, I see my role as a builder, an implementer, an enforcer and an upgrader. As a builder, I spearhead the establishment of governance policies, procedures and practices (governance instruments) within my group companies. In so doing, I procure the assistance of relevant departments, such as finance, treasury, human resources and public relations, to set up governance instruments for deployment, with head office taking the lead and business units to adapt and apply as appropriate.

I am also involved in providing instruction, explanation and guidance to business units, enlisting the assistance of colleagues in other departments as necessary. As an enforcer, together with relevant executives, I review and assess compliance with established governance parameters. In addition, the governance instruments need to be updated periodically against application to ensure that they are pertinent, updated and compliant with new laws, requirements and rules.'

What was your career path to your current role?

'I intended to go into teaching and, while pursuing a doctoral degree in applied linguistics, I decided to change course and became a lawyer. I trained with Cameron McKenna in London and returned to Hong Kong to join Johnson Stokes and Masters (now Mayer Brown) as an associate. After five years, I was head hunted to join the investment bank of the Cheung Kong Group at the time – CEF Capital. In 1991, I was transferred to Hutchison Whampoa at which I set up the Legal Department in 1993 and was its first Head Group General Counsel. I took on the position of Company Secretary as well in 1997, and in 2017 I was appointed Executive Director of CK Hutchison. I oversee the Group's legal, corporate secretarial, corporate finance and compliance functions.'

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

'Governance is not just about adopting best practices; it also entails a moral and ethical mindset. An organisation might excel in governance due to good compliance with legal and regulatory requirements, but the value of governance doesn't stop there. With a moral and conscionable mindset, people practising good governance are likely to bring such mindset to their family, social and professional circles, as well as the community in which they

> "governance is not just about adopting best practices; it also entails a moral and ethical mindset"

Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE), Executive Director and Company Secretary of CK Hutchison Holdings Ltd, current International President, The Chartered Governance Institute, and former Institute President

live, thereby instilling moral and ethical behaviour in society and hopefully contributing to a better world.'

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

'Governance is both a science and an art. Governance professionals should have a moral and ethical mindset and be equipped with the requisite knowledge and skill set in implementing good governance relevant to the organisations they are in. They have to be adaptive to the specific requirements of their organisations and be able to think outside the box without being pedantic or obstinate. However, where there are absolute standards to be adhered to, one should never compromise for inferior yardsticks.'

How do you think governance will evolve in the future?

'With the world becoming more complex in the face of severe damage to the world economy in the near term as a result of the pandemic, I believe governments will likely impose heightened governance measures to ensure a fair and orderly market. Governance professionals would accordingly be involved in this process. We need to be even more vigilant in guarding the good record we have achieved and be very watchful of possible irregularities or breaches that might be committed to enhance or misrepresent performance or achievements. I also foresee governance parameters being applied more widely – to new businesses and industries emerging from the digital economy for example, but also to charitable organisations, the healthcare sector and NGO operations, to name a few.'

What inspires you in your life and work?

'When I was a junior executive, I used to question why so many tasks always ended up on my desk. Now I believe that welcoming an expanded role is the way for one to grow and learn. The inspiration at work comes from getting involved and bringing value to the organisation. After over 30 years with the same Group, I am thankful that I still look forward to going to work every day. In life, I hope to have made a difference – be it at my workplace, performing public service, mentoring young people and watching them grow, or being there for my family and friends especially in times of need.'

How do you fill your time outside work?

'While there is not much time left outside work, I attend choir rehearsals every week, which is most relaxing, and I also sing as a soloist from time to time. I love playing the piano, cooking, scuba diving and skiing. Finally, I love to see the world – with the aim of visiting at least one new place every year.'

Extending further care and concern to Institute members, graduates, students and Affiliated Persons in view of the challenges of COVID-19

Dear members, graduates, students and Affiliated Persons,

In view of the ongoing challenges brought by COVID-19, the Council has decided to continue providing certain relief measures, as well as to offer further relief to show our care and concern.

Extension of 10% discount on Enhanced Continuing Professional Development seminars/webinars

The 10% discount on the regular enrolment fees for Enhanced Continuing Professional Development (ECPD) seminars/webinars from 1 April 2020 to 30 June 2020 previously offered to members, graduates, students and Affiliated Persons has been extended to 30 September 2020.

For those of you who have already paid for any webinar(s) to be held between 1 July 2020 and 30 September 2020 at the original enrolment fee (that is, prior to the 10% discount), the Institute will send an email regarding the refund procedure in due course.

10% discount on annual subscription and renewal fees for the financial year 2020/2021 for Institute members, graduates and students

The annual subscription fee for members and graduates, and the annual renewal fee for students, for the financial year 2020/2021 will be reduced by 10%. The revised fees, which will apply from 1 July 2020 to 30 June 2021, are set out in the table.

Members and graduates

	Amount (HK$) (after 10% discount)
Annual subscription	
Fellows	2,355
Associates	2,015
Graduates (holding the status for less than 10 years, ie on or after 1 August 2010)	1,735
Graduates (holding the status for more than 10 years, ie before 1 August 2010)	2,355
Concessionary subscription	
Retired rate	450
Reduced rate	450
Senior rate	90

Students

	Amount (HK$) (after 10% discount)
Renewal fee	720

The renewal notice, together with the invoice, for the annual subscription fee for members and graduates will be sent to all members and graduates by email in July 2020.

The renewal notice, together with the invoice, for the annual renewal fee for students will be sent to all students by email according to their studentship expiry dates. For students whose studentship will expire in July 2020 and who have already paid the 2020/2021 renewal fee, you will receive an email from the Institute regarding the refund procedure in due course.

All other fees will be maintained at the same level as for the financial year 2019/2020.

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

Institute events

The Institute will continue to organise online gatherings/webinars in the coming months and may resume certain physical events when the situation allows. Please check the Events section of the Institute's website regularly.

If you have any questions about the above, please contact:
Hong Kong Office: (852) 2881 6177; ask@hkics.org.hk
Beijing Representative Office: (86) 10 6641 9368; bro@hkics.org.hk

Or email:
Membership matters: member@hkics.org.hk
Studentship registration matters: student_reg@hkics.org.hk
Examination and Exemption matters: student@hkics.org.hk
Professional Development matters: cpd@hkics.org.hk

Wishing all of you good health and safety in these difficult times!

Warm regards,

Samantha Suen FCIS FCS(PE)
Chief Executive
The Hong Kong Institute of Chartered Secretaries

Professional Development

Seminars: April 2020

2 April

Connecting & creating an ESG environment beyond compliance

Chair: *Desmond Lau ACIS ACS, Institute Professional Development Director*
Speakers: *Zonta Yung, Business Development Assistant Manager of Certification and Business Enhancement, SGS Hong Kong Ltd*

3 April

Global threat of COVID-19: is your firm ready for business continuity and staying resilient?

Chair: *Desmond Lau ACIS ACS, Institute Professional Development Director*
Speakers: *Mike Chan ACIS ACS, Institute Professional Development Committee member, and Fraud Control Officer & Head of Operational Risk Management; and Vicky Wong, Assistant Vice President, Operational Risk Management Department; CMB Wing Lung Bank Ltd*

16 April

Beyond listed company governance

Chair: *Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research*
Speaker: *Peter Greenwood MA FCIS FCS, Institute Technical Consultation Panel member, and former Executive Director, CLP Holdings Ltd*

21 April

Legal shadow over moonlighting – employer perspective

Chair: *Desmond Lau ACIS ACS, Institute Professional Development Director*
Speaker: *Dominic Wai, Partner, ONC Lawyers*

22 April

Transfer pricing documentation in Hong Kong

Chair: *Desmond Lau ACIS ACS, Institute Professional Development Director*
Speaker: *Henry Kwong, Partner, Cheng & Cheng Taxation Services Ltd*

23 April

Business valuation for listed companies: practice, application & case study

Chair: *Desmond Lau ACIS ACS, Institute Professional Development Director*
Speaker: *William Yuen, Director, Ascent Partners Valuation Service Ltd*

24 April

Continuing obligations of listed companies: practice and application

Chair: *Desmond Lau ACIS ACS, Institute Professional Development Director*
Speaker: *Ricky Lai FCIS FCS, Company Secretary, HKC (Holdings) Ltd*

27 April

How technological risk, cybersecurity and digital workforce affect corporate governance

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

Speakers: *Jason Yau CPA(US), Head of Technology and Management Consulting, RSM; and Simon Tai, Managing Director, Automation Anywhere*

28 April

2020 regulatory trends (over the next 12 months)

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

Speakers: *Jill Wong, Partner, Howse Williams; and Mohan Datwani FCIS FCS(PE)*

Online CPD seminars

Some of the Institute's previous ECPD seminars 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.

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
19 June 2020	6.45pm–8.15pm	Incident or crisis management: lifecycle & practices in our daily business resilience	1.5
22 June 2020	6.45pm–8.45pm	Doing business in Hong Kong – compliance and regulations	2
26 June 2020	6.45pm–8.45pm	Connected transactions: practice and application	2
30 June 2020	6.45pm–8.15pm	What you need to know about IT governance, cybersecurity and cloud computing	1.5

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

Membership

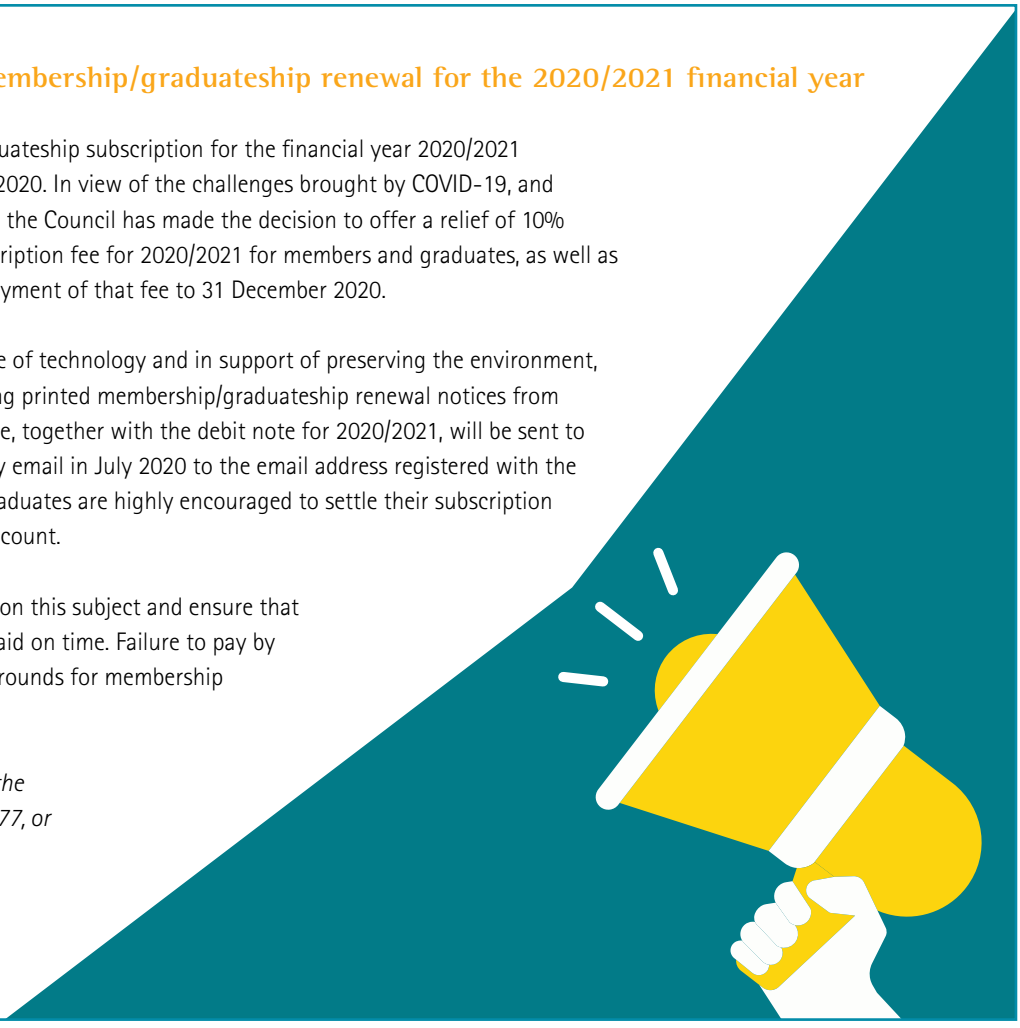
Important Notice: Membership/graduateship renewal for the 2020/2021 financial year

The annual membership/graduateship subscription for the financial year 2020/2021 (2020/2021) is due on 1 July 2020. In view of the challenges brought by COVID-19, and as a caring professional body, the Council has made the decision to offer a relief of 10% discount on the annual subscription fee for 2020/2021 for members and graduates, as well as extending the deadline for payment of that fee to 31 December 2020.

In line with the increasing use of technology and in support of preserving the environment, the Institute will cease sending printed membership/graduateship renewal notices from 2020/2021. The renewal notice, together with the debit note for 2020/2021, will be sent to all members and graduates by email in July 2020 to the email address registered with the Institute. All members and graduates are highly encouraged to settle their subscription online via their HKICS user account.

Please look out for our email on this subject and ensure that your annual subscription is paid on time. Failure to pay by the deadline will constitute grounds for membership or graduateship removal.

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



Forthcoming membership activities

Date	Time	Topic
16 June 2020	6.45pm–7.45pm	Use of essential oils for boosting immune system (free webinar)
20 June 2020	10.30am–12.00pm	Mentorship Programme Mentees' Training – goal setting and power of feedback (webinar, by invitation only)
23 July 2020	6.45pm–9.00pm	Fun & Interest Group – candle-making workshop

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

Membership activities: April and May 2020

28 April

Fun & Interest Group – How to maintain mental health during the coronavirus outbreak (webinar)

9 May

Fun & Interest Group – Stretching exercises at home (webinar)

Advocacy

Nominations for the HKICS Prize 2020

Nominations are now open for The Hong Kong Institute of Chartered Secretaries Prize (HKICS Prize) 2020. This is an opportunity to recognise individuals who have made significant contributions to the Institute and to the Chartered Secretary and Chartered Governance profession. Members are invited to submit nominations on or before Wednesday 30 September 2020.

For details of the HKICS Prize and nomination procedure, please visit the News section of the Institute's website: www.hkics.org.hk.

Webinar on 'Hybrid AGM under the Companies Ordinance'

The Hong Kong Council of Social Service (HKCSS) held a webinar entitled 'Hybrid AGM under the Companies Ordinance' on 29 April 2020 to explore issues relating to the holding of annual general meetings (AGMs) amidst the COVID-19 pandemic and social distancing regulations. HKCSS invited April Chan FCIS FCS, Institute Past President and Chairman of the Technical Consultation Panel, and Mohan Datwani FCIS FCS(PE), Institute Senior Director and Head of Technical & Research, as well as Catharine Wong, Head of Share Registry & Issuer Services, Tricor Hong Kong, to speak at the webinar. The speakers discussed the relevant law and regulations, as well as the logistical arrangements and technology for holding hybrid AGMs, and shared their experiences. Over 130 participants, mainly working in non-governmental organisations (NGOs), attended the webinar. The participants had the opportunity to experience the online meeting and e-voting platform provided by the Tricor Group.

Approximately 30% of the attendees provided feedback on the webinar. All respondents agreed that the webinar was relevant to their work, whether an NGO or not.

The Institute would like to thank HKCSS for their kind invitation to speak at this webinar.

Advocacy (continued)

First CPD webinar held in the Mainland

On 26 April 2020, the Institute held its first continuing professional development (CPD) webinar for audiences in the Mainland. The webinar entitled 'Amendment of H share Companies' Articles of Associations and the Practical Focus of Information Disclosure under the COVID-19 Epidemic Situation' attracted over 200 participants. Its aim was to provide support to board secretaries and senior management personnel of H share companies regarding amendments to their articles of association and how to tackle the information disclosure conundrum precipitated by COVID-19.

The webinar, chaired by Institute Vice-President Dr Gao Wei FCIS FCS(PE), was joined by Tom Chau FCIS FCS, Managing Partner of the Beijing Branch, Herbert Smith Freehills LLP; Lawrence Wang, Senior Counsel, Fangda Partners; and Wood Zhang, Audit Service

Partner, and Yang Fei, Professional Service Partner, of Ernst and Young LLP, China Branch, who shared their expert knowledge of these topics.

The Institute would like to thank the four speakers for their informative and practical sharing of their professional knowledge and experiences.

Corporate Governance Week – mark your diary

The Institute is organising its third Corporate Governance Week (CG Week), from Saturday 19 to Saturday 26 September 2020, as a major event providing opportunities to engage with aspiring talent, company secretaries, governance leaders and regulators on key corporate governance issues and new perspectives. During this CG Week, a series of activities will be held, including: the Corporate Governance Paper Competition and Presentation Awards; a Governance Professionals Information Session; the Annual Convocation; and the 12th biennial Corporate Governance Conference.

For details, please refer to the CG Week flyer on page 21.

12th biennial Corporate Governance Conference

Mark your diary

12th Corporate Governance Conference (CGC) – Building the Modern Board: A 20/20 Vision

Stay tuned and book early for this biennial signature event as places fill quickly.

- Friday 25 September 2020: conference at the Hong Kong JW Marriott Hotel (6.5 ECPD points)
- Saturday 26 September 2020: site visits for conference participants (3.0 ECPD points)

Synopsis: An effective board is required for good governance and this signature conference examines the topic of building a modern board from a myriad of perspectives, including onboarding, motivating and protecting, as well as planning measured responses to internal and external challenges. We will also bring together thought leaders, regulators and other professionals to consider related governance, risk and compliance issues. The conference will be of value to governance professionals, directors and senior management, accountants, lawyers, consultants and other professionals.

For details, please refer to the CGC flyer on page 9. You can also visit the Institute's website: www.hkics.org.hk.

Chartered Governance Qualifying Programme (CGQP)

Governance Professionals Information Session

A Governance Professionals Information Session was held online on 7 May 2020.

This session was video-recorded. To view the video, please visit the Studentship section of the Institute's website: www.hkics.org.hk.

Forthcoming activities in June and July 2020

Date	Event
27 June 2020	Governance Professionals Virtual Career Day 2020
29 June 2020	Student seminar on 'An alternative introduction to Company Law – Session 1: Key players in Company Law and corporate governance' (webinar)
2 July 2020	Governance Professionals Information Session (Putonghua session) (webinar)
6 July 2020	Student seminar on 'An alternative introduction to Company Law – Session 2: Interesting questions about the corporate personality' (webinar)

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

CSj goes green

As part of its commitment to helping preserve the environment, the Institute made *CSj* available on its website (www.hkics.org.hk) from August 2015. To support this green initiative, the Institute will send *CSj* as an electronic version (eCSj) to all students from July 2020 onwards, each of whom will receive an email with eCSj attached as soon as the publication is ready.

Corporate Governance Paper Competition and Presentation Awards 2020

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

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

Current undergraduates of all disciplines in Hong Kong are eligible to enrol for this competition in teams comprising two to four members. Each enrolled team is required to submit a paper on the theme of not more than 5,000 words in English. The six finalist teams will present their papers on Saturday 19 September 2020 to compete at the Best Presentation Awards.

Important dates

- Enrolment deadline: Friday 26 June 2020
- Paper submission deadline: Friday 31 July 2020
- Presentation competition: (for the six finalist teams) Saturday 19 September 2020

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

Chartered Governance Qualifying Programme (CGQP) (continued)

Postgraduate Programme in Corporate Governance in the Mainland

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

Two virtual PGPCG information sessions have been organised, one of which was held on 11 June, while the other is scheduled for 9 July 2020. For enrolment, please contact Ms Wang Yuan (王媛) of Shenzhen Campus, Harbin Institute of Technology (哈尔滨工业大学深圳研究院).

For more details, interested parties may contact:

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

Notice:

Policy – payment reminder

Studentship renewal

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

Featured job openings

Company name	Position
Macquarie Services (Hong Kong) Ltd	Executive/Manager, Global Entity Management - Hong Kong
The Hong Kong Polytechnic University	Associate Director of Finance (Enterprise and Company 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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特許秘書

The Hong Kong Institute of Chartered Secretaries Prize 2020

Call for Nominations

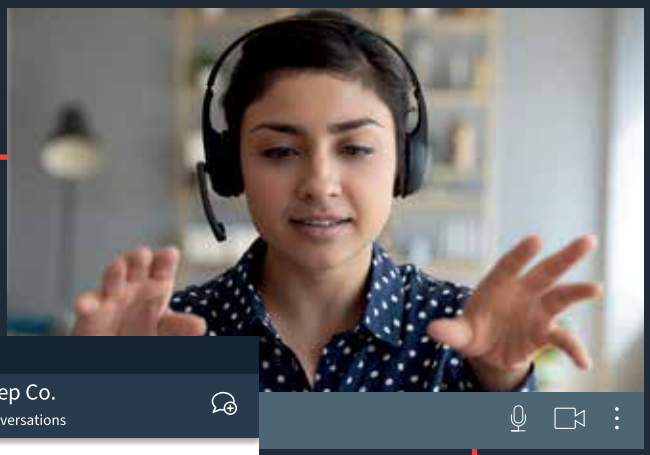
The Hong Kong Institute of Chartered Secretaries Prize will be awarded to a member or members who have made significant contributions to the Institute, and the Chartered Secretary and governance profession over a substantial period.

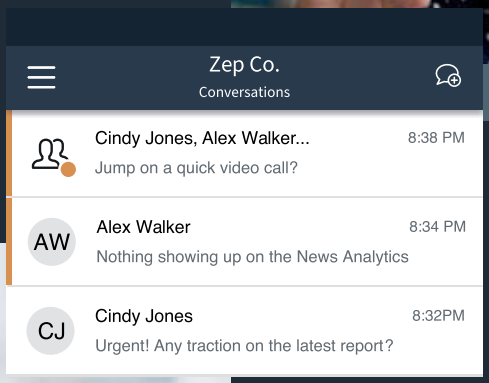
Awardees are bestowed with the highest honour – recognition by their professional peers. We urge you to submit your nominations now!

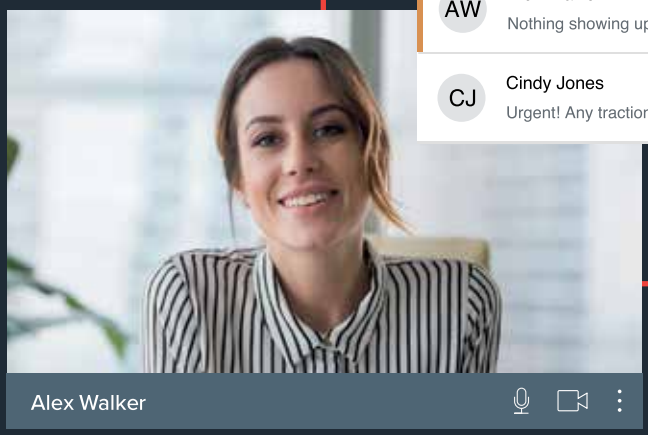
The nomination deadline is Wednesday 30 September 2020.

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

Please act now!







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