

CSj

June 2021

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



Why culture matters

Organisational culture
and purpose

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

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The Hong Kong Institute of Chartered Secretaries

(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: ask@hkics.org.hk (general) cpd@hkics.org.hk (professional development)
member@hkics.org.hk (member) student@hkics.org.hk (student)
 Website: www.hkics.org.hk

Beijing Representative Office

Rm 15A04A, 15A/F, Dacheng Tower, No 127 Xuanwumen West Street, Xicheng District, Beijing, 100031, PRC
 Tel: (86) 10 6641 9368 Fax: (86) 10 6641 9078 Email: bro@hkics.org.hk
 Website: www.hkics.org.cn

The Chartered Governance Institute

Governance Institute of Australia
 Level 10, 5 Hunter Street
 Sydney, NSW 2000
 Australia
 Tel: (61) 2 9223 5744
 Fax: (61) 2 9232 7174

Governance New Zealand
 PO Box 444
 Shortland Street
 Auckland 1015
 New Zealand
 Tel: (64) 9 377 0130
 Fax: (64) 9 366 3979

The Chartered Governance Institute
 c/o MCI UK
 Durford Mill, Petersfield
 Hampshire, GU31 5AZ
 United Kingdom
 Tel: (44) 1730 821 969

The Chartered Governance Institute of Canada
 202–300 March Road
 Ottawa, ON, Canada K2K 2E2
 Tel: (1) 613 595 1151
 Fax: (1) 613 595 1155

The Singapore Association of the Institute of Chartered Secretaries & Administrators
 149 Rochor Road
 #04–07 Fu Lu Shou Complex
 Singapore 188425
 Tel: (65) 6334 4302
 Fax: (65) 6334 4669

ICSA: The Chartered Governance Institute
 Saffron House, 6–10 Kirby Street
 London EC1N 8TS
 United Kingdom
 Tel: (44) 20 7580 4741
 Fax: (44) 20 7323 1132

MAICSA: The Governance Institute
 No 57 The Boulevard
 Mid Valley City
 Lingkaran Syed Putra
 59200 Kuala Lumpur
 Malaysia
 Tel: (60) 3 2282 9276
 Fax: (60) 3 2282 9281

The Chartered Governance Institute of Southern Africa
 PO Box 3146
 Houghton 2041
 Republic of South Africa
 Tel: (27) 11 551 4000
 Fax: (27) 11 551 4027

The Institute of Chartered Secretaries & Administrators in Zimbabwe
 PO Box CY172
 Causeway Harare
 Zimbabwe
 Tel: (263) 4 702170
 Fax: (263) 4 700624

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Editorial Board

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Kieran Colvert Editor	Harry Harrison Illustrator (cover)
Ester Wensing Art Director	Images 123rf.com

Contributors to this edition

Hsiuwen Liu Journalist	Damien Laracy
Fiona Donnelly Red Links	Nicole Wong Hill Dickinson Hong Kong

Kevin Bowers
bowers.law
Dominic Wai
 ONC Lawyers

Advertising sales enquiries

Ninehills Media Ltd
 Tel: (852) 3796 3060
Jennifer Luk
 Email: jennifer@ninehillsmedia.com
Frank Paul
 Email: frank@ninehillsmedia.com

Ninehills Media Ltd

12/F, Infinitus Plaza
 199 Des Voeux Road
 Sheung Wan
 Hong Kong
 Tel: (852) 3796 3060
 Fax: (852) 3020 7442
 Internet: www.ninehillsmedia.com
 Email: enquiries@ninehillsmedia.com
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Culture, purpose and governance

There is often a reluctance to talk about the role that culture plays in delivering on organisations' goals. As with other intangibles, such as stakeholder trust and brand recognition, it is not the easiest thing to measure and therefore effectively manage, but it is no less integral to the long-term viability of organisations.

This month's journal looks at the role of the board and governance professionals in aligning organisations' culture with their strategy, purpose and values. As our first cover story points out, there is nothing intangible of course about the harmful effects of an unhealthy culture. The article cites the debacle which engulfed Wells Fargo back in 2016 as an example, but there have been numerous similar examples in recent years. Where organisations develop a culture solely geared to maximising profit without any recognition given to wider values and stakeholder interests, this, knowingly or unknowingly, can create an environment in which misconduct and unethical practices can thrive.

On a more positive note, there are also very persuasive arguments in favour of developing a healthy corporate culture based on the positive benefits this can bring. The context in which organisations operate today sets a much higher bar

when it comes to the issues that stakeholders care about – this might relate to environmental, social and governance (ESG) performance and disclosure; it might relate to ethical issues in the way businesses operate (such as their treatment of customers and employees); and it might relate to the structure and diversity of an organisation's board. However stakeholder interests affect a business, there are significant competitive advantages to be gained by being, and being seen to be, an organisation that engages with stakeholders and respects the broader environment and society in which it operates.

As you would expect from this journal, our cover story attempts more than an introductory tour of this topic – it offers practical guidance to governance professionals on how to ensure that organisations get the benefits of, and avoid the potential damage resulting from, this aspect of governance and risk management. It is the board's role to determine the purpose of an organisation and to ensure that its culture is aligned to its purpose, values and strategy. Members of our profession can play a key part in ensuring that the role played by culture in ensuring the long-term viability of the organisation receives due attention by the board. We can also play a key role in establishing the right internal controls regarding the organisation's code of conduct, its recruitment and remuneration policies and whistleblowing channels.

Finally, for anyone still unconvinced, our second cover story this month makes it clear that addressing corporate culture and purpose might soon become a regulatory requirement (subject to comply-or-explain) here in Hong Kong. The article reviews the consultation paper published by Hong Kong Exchanges and Clearing Ltd in April this year, proposing changes to the Corporate Governance Code and Listing Rules that, among other things, focus on the responsibility of boards to align culture with the company's strategy, values and purpose. Our Institute's submission on this consultation, also covered in our second cover story, is available on the Institute's website: www.hkics.org.hk.

Before I go, I would like to remind readers that next month we will be holding a general meeting to enable members to vote on the proposed name change for our Institute. Adoption of the new name – The Hong Kong Chartered Governance Institute 香港公司治理公會 – will bring us in line with the global transition of our profession to our new identity as Chartered Secretaries and Chartered Governance Professionals (CS/CGPs). I would like to take this opportunity to urge all members to exercise your vote in favour of the name change.

Gillian Meller FCG FCS

文化、愿景与治理

人们通常不愿探究文化对于实现组织目标所发挥的作用。事实上，与利益相关者信任及品牌知名度等无形资产一样，组织文化难以简单衡量，因而亦难以有效管理，但是它对组织的长期生存发展却是不可或缺。

本期刊中，我们来探讨董事会和治理专业人士如何确保组织文化与组织战略、愿景和价值观保持一致。第一篇封面故事告诉我们，不健康的文化遗患无穷，文章列举了2016年那场席卷富国银行的灾难为例证，但是近年来类似的事件依然层出不穷。很多企业片面追求利润最大化，忽视了更广范围的价值创造以及利益相关者的利益。这在有意无意间为不当行为和不正当的做法提供了滋生的土壤。

值得肯定的是，也有很多有说服力的论点支持建立健康的企业文化，因为它能带来很多好处。如今，组织所处的环境对于利益相关者所关心的议题有更高的要求，这些议题包括：环境、社会和治理 (ESG) 绩效与信息披露，企业运营中的道德伦理问题（例如企业对待客户和雇员的方式），以及董事会的结构与多样性。无论利益相关者的利益如何影响企业，只要一个组织是，而且能展现出对其运营所处的更广大的环境与社会的尊重，积极为利益相关者着想，企业就能获得巨大的竞争优势。

如大家料想，本期封面故事并不是仅试图对此主题进行简要介绍，它为治理专业人士如何确保组织通过风险管理和公司治理来趋利避害提供了实用指引。董事会的职责是设定组织愿景，确保组织的文化与其愿景、价值观和战略保持一致。组织文化可以为组织的长远发展保驾护航，我们的会员可以在确保董事会充分关注企业文化方面发挥关键作用。在针对组织的行为准则、招聘与薪酬政策以及举报渠道建立内控体系方面，公会会员也同样扮演关键角色。

如尚有疑惑，不妨参阅第二个封面故事。该文明确指出，对于企业文化与愿景的要求可能很快就会成为香港的一项监管要求（“不遵守就解释”原则）。文章介绍了香港交易及结算所今年4月发布的咨询文件，该文件建议对《企业管治守则》和《上市规则》进行修订，其中重点强调董事会负责任采取措施使企业文化与公司战略、价值观和愿景保持一致。公会对该咨询文件的建议在这第二个封面故事中也有阐述。有关建议亦公布于公会网站 www.hkics.org.hk。

最后，谨请读者留意，公会将于下月举行会员大会，届时将请会员就公会更名一事进行投票。新名称“The Hong Kong Chartered Governance Institute 香港公司治理公会”顺应国际发展趋

势，有利于打造“特许秘书”和“公司治理师”(CS/CGP)的崭新形象。借此机会，本人促请全体会员积极投票支持公会更名。



马琳 FCG FCS



Organisational culture and purpose



CSj looks at the role that culture and purpose plays in the long-term success of organisations, and at the role of boards and governance professionals in building a sound organisational culture and sense of purpose.

In 2016, an investigation found that employees of Wells Fargo, an American multinational financial services company with headquarters in Southern California, were engaging in aggressive tactics to meet their daily cross-selling targets. According to a report published by *The New York Times*, from 2002 to 2016, employees of the company opened millions of accounts under customers' names without their knowledge, signed account holders up for credit cards, forged signatures and even secretly transferred customers' money to meet impossible sales goals. In court papers, prosecutors described a pressure-cooker environment at the bank, where low-level employees were squeezed tighter and tighter each year by increasing sales goals. The bank later paid US\$185 million to settle the lawsuit filed by regulators and the city and county of Los Angeles.

This case highlights the tensions between organisational culture, values and financial goals, and the impact that this tension has on outcomes. Popular opinion has shifted

in recent years from viewing the purpose of corporations as generators of value for shareholders towards a more stakeholder-focused approach. Many jurisdictions around the world, Hong Kong included, have sought to give expanded scope to directors to consider stakeholder interests, as well as long-term environmental, social and governance (ESG) factors.

Aligning culture with purpose, value and strategy

Hong Kong Exchanges and Clearing Ltd (HKEX) published a consultation paper on 16 April this year outlining proposed enhancements to the Corporate Governance Code and Listing Rules. In addition to addressing the areas of director independence, diversity, and ESG disclosures and standards, the proposals include new measures aimed at aligning listed companies' culture with their purpose, value and strategy to deliver long-term sustainable performance.

'At HKEX, we believe that sustainability is a key factor in determining a company's

Highlights

- company culture and purpose are integral to delivering long-term sustainable performance and are increasingly considered by asset managers in their investment decisions
- governance professionals can facilitate this discussion at the board level and highlight the often complex issues involved
- establishing the right organisational culture and purpose requires stakeholder engagement and understanding the changing demands of society

“
Culture is formed by how people collectively behave and operate. Companies need to listen to not only their shareholders but also other stakeholders, including employees and customers.
 ”

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



growth prospects. A company cannot achieve its long-term goals without embracing corporate purpose and also considering the needs of all its stakeholders,' says Kelly Lee, Vice-President, Policy and Secretariat Services Unit, HKEX Listing Division.

Gillian Meller FCG FCS, Institute President and Legal and Governance Director of MTR Corporation Ltd, welcomes the increased emphasis on organisational culture and purpose by regulators in Hong Kong. 'As a company, you need to understand your purpose, and part of that is to understand that the value you are generating is not just for your shareholders, but for all of your stakeholder groups,' she says.

She cites the MTR's purpose of 'keeping Hong Kong moving' as an example. This dates back to the principal reason the MTR was founded back in the 1970s – to enable the people of Hong Kong to move around efficiently and affordably. 'We recently restated this as our company purpose, and it sits behind and is aligned

with our company strategy and our values and culture. It also impacts the way we think about creating value for our different stakeholders,' she says.

Including stakeholders in the discussion

Katherine Ng, Chief Operating Officer and Head of Policy and Secretariat Services Department in the HKEX Listing Division, explains the importance of two-way communication to the long-term success of companies. 'Culture is formed by how people collectively behave and operate. Companies need to listen to not only their shareholders but also other stakeholders, including employees and customers. It's important to engage constructively with them, innovate for their needs, build a trusted, long-term relationship and understand the changing demands of society. All of these help to engineer long-term sustainable growth of the company,' she says.

However, getting the balance right between the sometimes competing interests of different stakeholder groups, including shareholders, is not always an

easy task. Zoe Lau, BlackRock Investment Stewardship Vice-President, shares her observations regarding the potential for misalignment of interest between the controlling and the minority shareholders in family controlled companies. She notes that, while family controlled companies may be well placed to create long-term value, they will benefit greatly from good governance structures to protect stakeholder interests. 'BlackRock has been advocating for a lead independent director as a point of contact for shareholders to reach out to and communicate with the board. This will help to ensure that their interests are taken into account at board level discussions. We think that important piece is still missing,' she says.

She also welcomes the increased focus on corporate culture and purpose in Hong Kong. 'Purpose is definitely one of the key issues that generates long-term value, alongside long-term strategy, capital management and sustainability,' Ms Lau says. 'By clearly defining what a company's purpose is, it is easier for

management to have a more holistic approach to the risks they are managing. Having a clear purpose supported by a long-term strategy can naturally lead to a culture that keeps a company healthy and more resilient over time,' she adds.

Ms Meller believes there is ultimately no conflict between addressing long-term shareholder value and taking stakeholder concerns into account. 'I think it makes business sense. It is in a company's interest to operate in a thriving society and a healthy environment. I think, in some ways, companies are the only entities that have the resources, influence and cross-border presence to really

address issues such as climate change that we are currently facing,' she says.

She adds that the demand for stakeholder-led leadership is now ubiquitous. For example, at MTR, investors ask about carbon reduction targets, and younger employees care about the values and purpose of the company they work for and whether it is aligned with their own values.

Pru Bennett, Partner, Brunswick, agrees that taking a multiple stakeholder approach is essential to generating longer-term returns to shareholders. 'Your employees are critical; you won't have long-term returns unless you look

out for your employees. The environment is also important. If you are going to dig minerals out from the earth and destroy the environment in the process, it might generate short-term values but certainly not longer-term ones when the cost to repair the environmental damage will be reflected in the profit and loss statement. Taking a multi-stakeholder approach is essential if you want to generate long-term success for shareholders,' she says.

Ms Bennett also highlights that company culture and purpose are increasingly considered by asset managers in their investment decisions, and that it is critical for companies to go beyond

Questions for boards

The report published by the UK's Financial Reporting Council in 2016 – Corporate Culture and the Role of Boards – is a highly useful resource for governance professionals seeking to raise awareness of the critical role played by boards in addressing organisational culture. In particular, the report, which is freely available online, sets out the key questions boards should be asking to ensure their oversight of this area is effective.

- How are we demonstrating that the board's behaviour reflects the behaviour we expect throughout the company?
- Are we leading by example?
- Are we clear about the values and behaviours we expect when recruiting new executives?
- Do we hold the chief executive to account where we see misalignment?
- Are we discussing culture in sufficient depth at board meetings?
- How are we taking account of culture in our board effectiveness reviews?
- How can we ensure we consider the impact on culture in all the decisions we take?
- Do the committees support the board on culture?
- Is there a need for a specific conduct, ethics or culture committee?
- What is the company telling the outside world about what it stands for and how it conducts business?
- Has the company made a public commitment to its values?
- What behaviours are being driven when setting strategy and financial targets?
- What percentage of board time is spent on financial performance management against targets and on behavioural performance management? Is the balance right?
- Is company tax policy consistent with stated values?
- How are we challenging 'group think' and testing key decisions for cultural alignment?
- Are we seeing evidence of subcultures or pockets of autonomy in the business that could undermine the overall culture?

“
**companies can have
 the right policies
 but what investors
 are looking for is
 evidence that shows
 they are effective**
 ”

Pru Bennett, Partner, Brunswick



minimum disclosure compliance with ESG requirements and stakeholder engagement.

'Companies can have the right policies but what investors are looking for is evidence that shows they are effective. Take Macquarie Bank, a very large Australian-based global financial services company, as an example. They disclose the number of misconduct breaches every financial year and their consequences, and that gives investors a level of comfort to show that, yes, they've got the policies and there is evidence that they are effective,' she says.

The roles of boards and governance professionals

The discussion of organisational culture is not always an easy one to have and this is one area where governance professionals can make a huge contribution. Ms Meller points out that governance professionals can facilitate this discussion at the board level and highlight the often complex issues involved.

She cites the decision boards have been facing as to whether to apply for

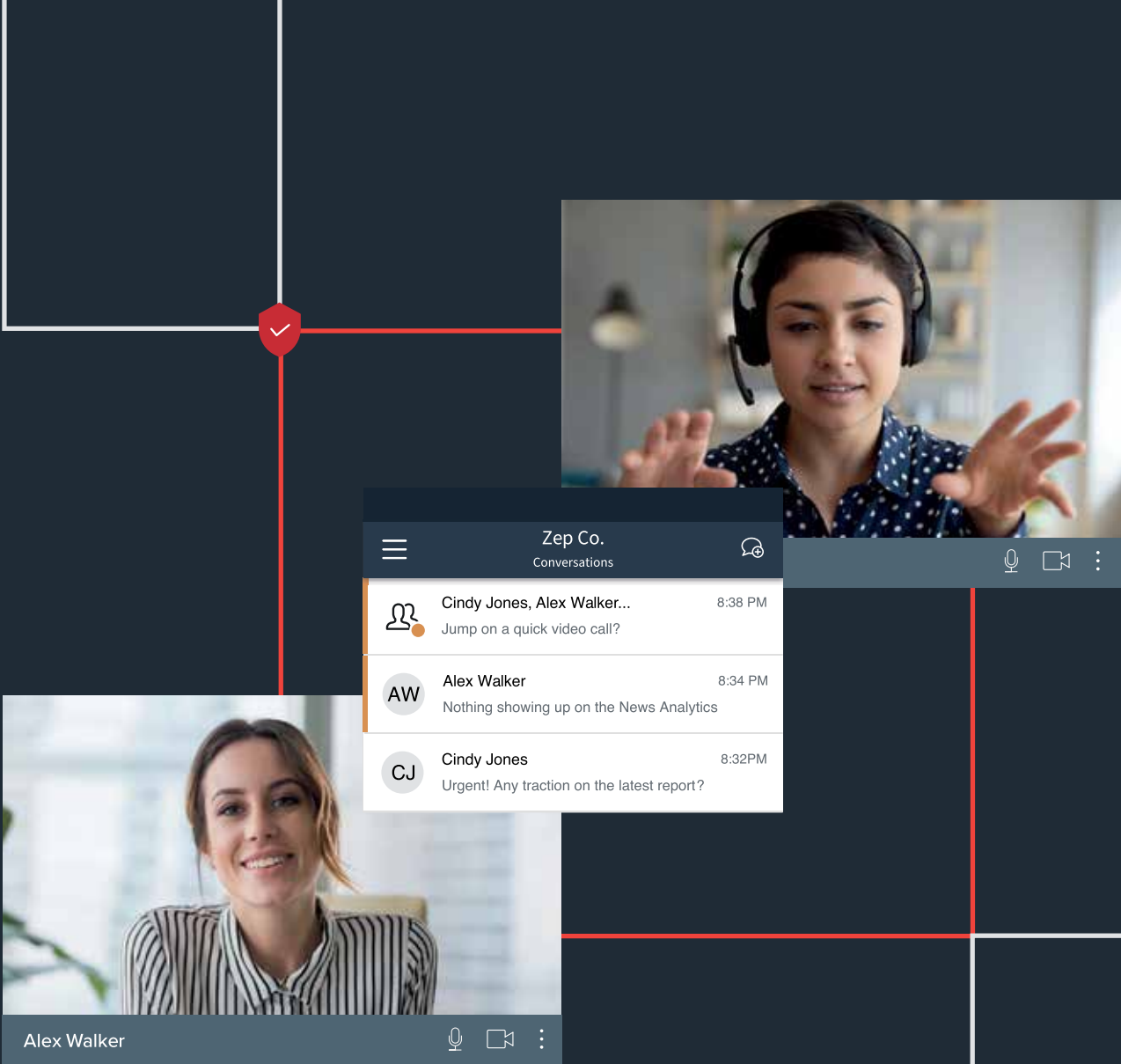
government financial support during the Covid-19 pandemic. Applying for these funds could be seen as natural to a director's duty to act in the best interests of the company, but some companies have actually benefited from the pandemic as people's purchasing behaviour has changed – should these companies also apply for financial assistance? Since companies have to confirm that they won't make any employees redundant to benefit from the financial assistance, making an application would also seem to be in the employees' interests, but what is the right thing to do? The ultimate decision is for the board, but where directors need to balance different, and sometimes competing, interests of stakeholders, governance professionals can be instrumental in making sure that all relevant considerations are taken into account and that no stakeholder group is overlooked.

Katherine Ng also emphasises the important role governance professionals can play. 'We see governance professionals, such as company secretaries, as champions of good corporate governance. They need to

offer advice to boards on what needs to be discussed and put the issues on the agenda,' she says. She adds that, as an important bridge between directors and management, company secretaries can also play an important role in ensuring that directors are aware of the culture that exists in the organisation.

As for the directors themselves, Ms Meller points out that the board, as the leadership of the company, has the primary responsibility for role modelling and promoting the desired culture, ensuring alignment between culture and incentives, and conducting regular reviews to make sure the culture remains aligned with the company's purpose, strategy and values. 'In Hong Kong, people understand that the board focuses on strategy, but I think it's important to realise that corporate culture is a very important asset and, if your purpose, strategy, culture and values aren't aligned, the chances of you really achieving your strategy are diminished,' she says.

Hsiuwen Liu
Journalist



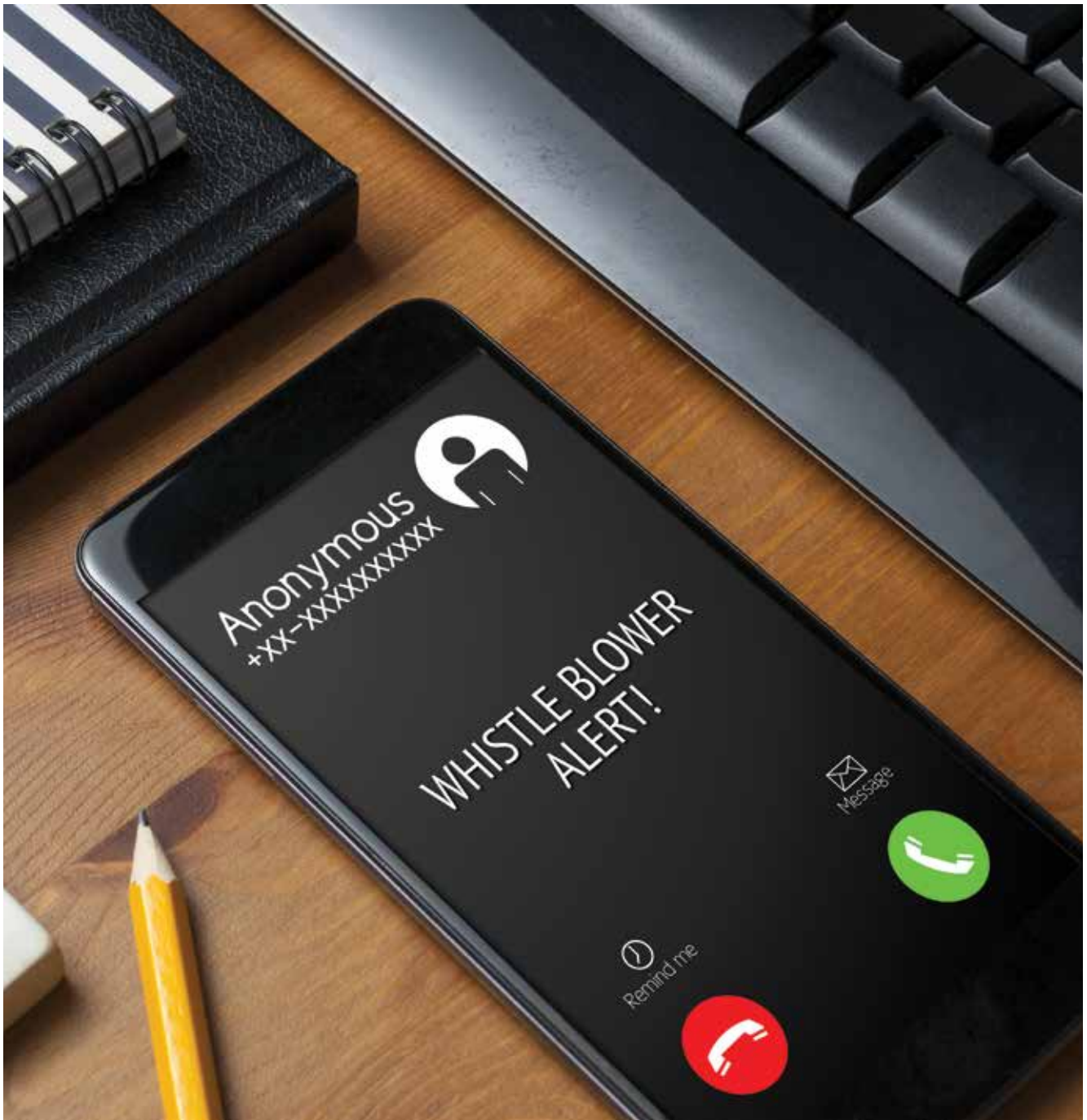
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Governance reform: new HKEX proposals



Hong Kong Exchanges and Clearing Ltd (HKEX) published a consultation in April this year proposing changes to Hong Kong's Corporate Governance Code and Listing Rules to enhance standards in a number of key areas of governance. CSj takes a look at the proposals and the views expressed by The Hong Kong Institute of Chartered Secretaries (the Institute) in its submission to the consultation.

Regulatory consultations provide a good weather vane for governance professionals – helping practitioners to not only forecast changes in the regulatory environment but also to get a sense of where wider governance and ethical expectations will be heading in the years ahead.

The latest consultation by Hong Kong Exchanges and Clearing Ltd (HKEX) is a good example of this. The Review of Corporate Governance Code and Related Listing Rules, published in April this year, proposes new measures to enhance corporate governance standards in a number of frontier governance areas. These include proposals relating to corporate culture, director independence, board diversity, communication with shareholders, and environmental, social and governance (ESG) matters.

The Hong Kong Institute of Chartered Secretaries (the Institute) published a submission to the consultation earlier this month.

In a two-part article starting this month, CSj will look at the proposals of the consultation and the Institute's views in tandem.

Organisational culture

The influence of organisational culture on both the ethical behaviour of employees and officers, and the ability of organisations to deliver long-term

sustainable performance, has been gaining increasing attention in recent years. 'A healthy culture plays a pivotal role in good governance, and the board should demonstrate good practice in the boardroom and promote governance throughout the business. The company as a whole must demonstrate openness and accountability, and should engage constructively with shareholders and wider stakeholders about culture to achieve the two-way communication,' the consultation states.

The HKEX consultation notes that the UK, Singapore, Australia and Japan have recently introduced corporate governance requirements relating to organisational culture. The new requirements focus on the board's responsibility to establish an appropriate culture which reflects the company's strategy, values and ethical standards. This is also the focus of the proposed changes to the Corporate Governance Code (the Code), which forms

Appendix 14 of the Listing Rules in Hong Kong. The consultation proposes to:

1. introduce a new Code Provision (CP) to the Code to require listed company boards to align their company's culture with its purpose, value and strategy, and
2. to introduce new a CP requiring establishment of an anti-corruption policy and to upgrade an existing recommended best practice (RBP) to a new CP requiring the establishment of a whistleblowing policy.

1. Getting culture onto the board's agenda

The consultation emphasises the role of the board in setting the tone and defining the company's purpose and strategy. 'The board is responsible for setting the company's culture. As the leadership of the company, the board plays an important role in promoting, monitoring

Highlights

- the proposed changes to the Corporate Governance Code focus on the board's responsibility to establish an appropriate culture which reflects the company's strategy, values and ethical standards
- the consultation proposes to tighten the existing requirements relating to the establishment of anti-corruption and whistleblowing policies
- the Institute has been promoting the benefits of having effective whistleblowing channels for some years

“ as the leadership of the company, the board plays an important role in promoting, monitoring and assessing the culture, and making sure the desired culture is embedded at every level of the organisation ”



and assessing the culture, and making sure the desired culture is embedded at every level of the organisation,' the consultation states.

It also highlights some key considerations for boards in meeting this responsibility. These include the need to review the company's remuneration policies to ensure that incentives, financial and non-financial, reinforce maintenance of the company's desired culture. It is also important for the board to monitor these issues on a continuous basis. 'The board is expected to conduct periodic reviews to make sure the culture is aligned with the company's purpose and value, and is able to deliver long-term sustainable growth', the consultation states.

Another key consideration is how to manage disclosures relating to organisational culture. The consultation emphasises that such disclosures should be precise and succinct. Moreover, there should be a discussion of:

- the vision, value and strategy of the company, alongside the company's culture, and how all these affect the business model

- how the company's desired culture affects or contributes to the company's performance
- the measures used for assessing and monitoring culture (for example, any specific indicators such as turnover rate, whistleblowing data, employee surveys, breaches of the code of conduct and regulatory breaches)
- the measures in place to ensure the desired culture and expected behaviours are clearly communicated to all employees (for example, through developing a code of conduct)
- the forum(s) available for sharing ideas and concerns on any misconduct or misalignment identified and how they are dealt with, and
- the company's financial and non-financial incentives that support the desired culture.

The Institute welcomes the emphasis on corporate culture being an important element of a corporate governance

framework and the recognition that the board of a listed company has a role to play in relation to corporate culture. However, the Institute's submission highlights some caveats. In particular, given the intangible nature of corporate culture, the submission asks whether the board can be expected to 'set' culture – culture is not something that can be codified or set like a budget. 'It is also unclear how compliance with this CP could be properly measured, rendering it incapable of being properly applied and enforced,' the submission states.

Instead, the submission suggests that listed companies could be asked to disclose how their boards have sought (in conjunction with the management team):

- to understand the corporate culture of the issuer
- to ensure alignment between the corporate culture and the issuer's purpose, strategy and values
- to measure the corporate culture, and



- to align incentives and rewards to support and encourage behaviours consistent with the company's purpose, values and strategy.

'Such an approach might enable boards to understand the role they can and should play in relation to corporate culture and also lead to more meaningful disclosure,' the Institute's submission states.

2. Anti-corruption and whistleblowing

A key part of a healthy organisational culture is the creation of an open and transparent environment in which employees and officers at all levels understand the core values of that culture and can report any breaches. Hence the proposed requirements relating to companies' anti-corruption and whistleblowing policies in the consultation.

Listed companies are currently required, on a comply-or-explain basis, to make disclosures relating to their anti-corruption policies, whistleblowing procedures, as well as compliance with relevant laws and regulations, under the HKEX ESG Reporting Guide. The audit committee is also recommended to establish a whistleblowing policy and

system for employees and those who deal with the issuer under the Code. The consultation proposes to tighten these existing requirements, as mentioned above, by introducing new a CP requiring establishment of an anti-corruption policy and to upgrade an existing RBP to a new CP requiring the establishment of a whistleblowing policy.

The Institute agrees with these proposals. The Institute has been promoting the benefits of having effective whistleblowing channels for some years. 'Whistleblowing serves as an important mechanism for issuers to learn of issues and to manage them, as part of risk mitigation,' the Institute's submission states. It adds that a properly designed whistleblowing policy should also contain protections for the whistleblower against retribution.

Regarding the establishment of an anti-corruption policy, the Institute believes that this is fundamental to good corporate governance. The implementation of this proposal by listed companies in Hong Kong will also, the Institute submits, enhance the reputation of Hong Kong as an international financial centre. The submission also welcomes HKEX's aim to publish guidance on this area of practice. It points out, however, that in certain markets or jurisdictions where issuers carry on business, there may already be legal provisions concerning whistleblowing and anti-corruption. In such cases, the HKEX guidance must be subject to those overriding obligations.

Board independence

The consultation proposals relating to board independence were reviewed in the May edition of this journal. To recap, the consultation proposes to:

1. create a new CP to require issuers to have a policy to ensure that independent views are available to the board and to review the policy's effectiveness annually
2. revise an existing CP to require independent shareholders' approval for the re-election of an independent non-executive director (INED) who has served more than nine years (Long-Serving INED), and to require additional disclosures of the factors considered in recommending the INED for re-election
3. create a new CP requiring the appointment of a new INED at the next annual general meeting (AGM), if all INEDs on the board are Long-Serving INEDs, and to disclose the length of tenure of the Long-Serving INEDs on a named basis, and
4. introduce a new RBP that an issuer generally should not grant equity-based remuneration (for example share options or grants) with performance-related elements to INEDs as this may lead to bias in their decision-making and compromise their objectivity and independence.

The Institute agrees with proposal three. The Institute's submission points out that there are significant benefits to bringing fresh perspectives to the board via the appointment of a new INED, particularly where the existing INEDs are all Long-Serving. Moreover, the extra disclosure requirement also has the Institute's support. The Institute's submission points out that this will facilitate access to the information by shareholders in the interests of greater transparency.

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The Institute also has caveats, however, regarding the other proposals. For example, the Institute questions whether having a policy stating that independent views are available to the board (proposal one above) will be of any use. The Institute's submission points out that there are two aspects of 'board independence': independence of an individual director from other influences (such as their connections with family shareholders or professional advisers) and the independence of directors from the company. 'The reasoning for the proposal discusses the former, but the proposal of the Consultation Paper appears to relate to the latter,' the submission states.

'Boards are not independent and every director, including the "independent" directors, is there to serve the company, the submission points out. 'Moreover, HKEX has developed and greatly expanded the role and importance of INEDs and that is the route by which independent views and input are available to the board,' the submission states.

The submission also has reservations regarding proposal two – requiring independent shareholders' approval (and additional disclosure) for the re-election of Long-Serving INEDs. The submission points out that a balanced board is one which includes, amongst other areas of individual differences, a mix of long-serving and more recently appointed directors. 'No one would suggest that the management of a company would best be entrusted to a senior executive team which did not have a considerable measure of experience and knowledge of the business. Equally, no one should expect the oversight of the business and its management to be entrusted to a board which was not allowed to possess and retain a similar level of experience and knowledge,' the submission states.

There is also a danger, the submission suggests, that this proposal moves towards creating two classes of shares – those held by 'independent' shareholders and those that are not. Moreover, it points out that all directors owe a similar duty to the company and all its shareholders. 'A provision which requires certain

directors to be appointed by only certain shareholders cuts across this,' the submission states.

Regarding proposal four, (discouraging the granting of equity-based remuneration with performance-related elements to INEDs), the Institute's submission suggests that this issue needs to be seen in the wider context of INEDs' remuneration. 'Whilst appropriate in itself, this proposal should really be accompanied by a further measure to ensure that INEDs are properly paid for the work they do, the responsibilities they bear and the potential liabilities they incur,' the submission states.

The Consultation Paper – Review of Corporate Governance Code and Related Listing Rules – is available on the HKEX website: www.hkex.com.hk. Next month's CSj will review the HKEX consultation proposals and the Institute's views regarding board diversity, nomination committees, stakeholder engagement and ESG matters.



CHARTERED
SECRETARIES
特許秘書

Enforcement Series – Practical Review of Major Enforcement Regimes and Themes (Six Online Webinars)

An important regulatory tool for regulators is enforcement. It educates the marketplace that regulators not only have the powers, but more importantly, will exercise them. The governance professional most certainly will not want their organisations, nor people associated with them, to be at the receiving end of enforcement. This is because being investigated is costly and stressful, and being found in breach carries pecuniary, reputational and/or personal repercussions. HKICS is accordingly delighted to package and run a series of enforcement sessions from June to September 2021, with participation by regulators and seasoned professionals, to provide a review of major enforcement regimes and themes. Interested parties are invited to join any or all of the following six sessions:

DATE	TIME	TOPIC	SPEAKER(S)
30 June 2021	4.00pm–5.30pm	Competition Law Enforcement	Mr Steven Parker, Executive Director (Legal Services), Competition Commission Mr Stephen Ryan, Head (Legal Advisory), Competition Commission
14 July 2021	4.00pm–5.30pm	SFC Enforcement	Mr Alan Linning, Partner, Mayer Brown
3 August 2021	4.00pm–5.30pm	FRC Enforcement	Mr Marek Grabowski, Chief Executive Officer and Executive Director, Financial Reporting Council
18 August 2021	4.00pm–5.30pm	HKEX Enforcement (Part 1)	Ms Ellie Pang, Chief Executive, HKICS
7 September 2021	4.00pm–5.30pm	HKMA Enforcement: Update	Ms Jill Wong, Partner, Howse Williams
28 September 2021	4.00pm–5.30pm	HKEX Enforcement (Part 2)	Ms Donna Wacker, Partner, Clifford Chance Mr Michael Wang, Consultant, Clifford Chance

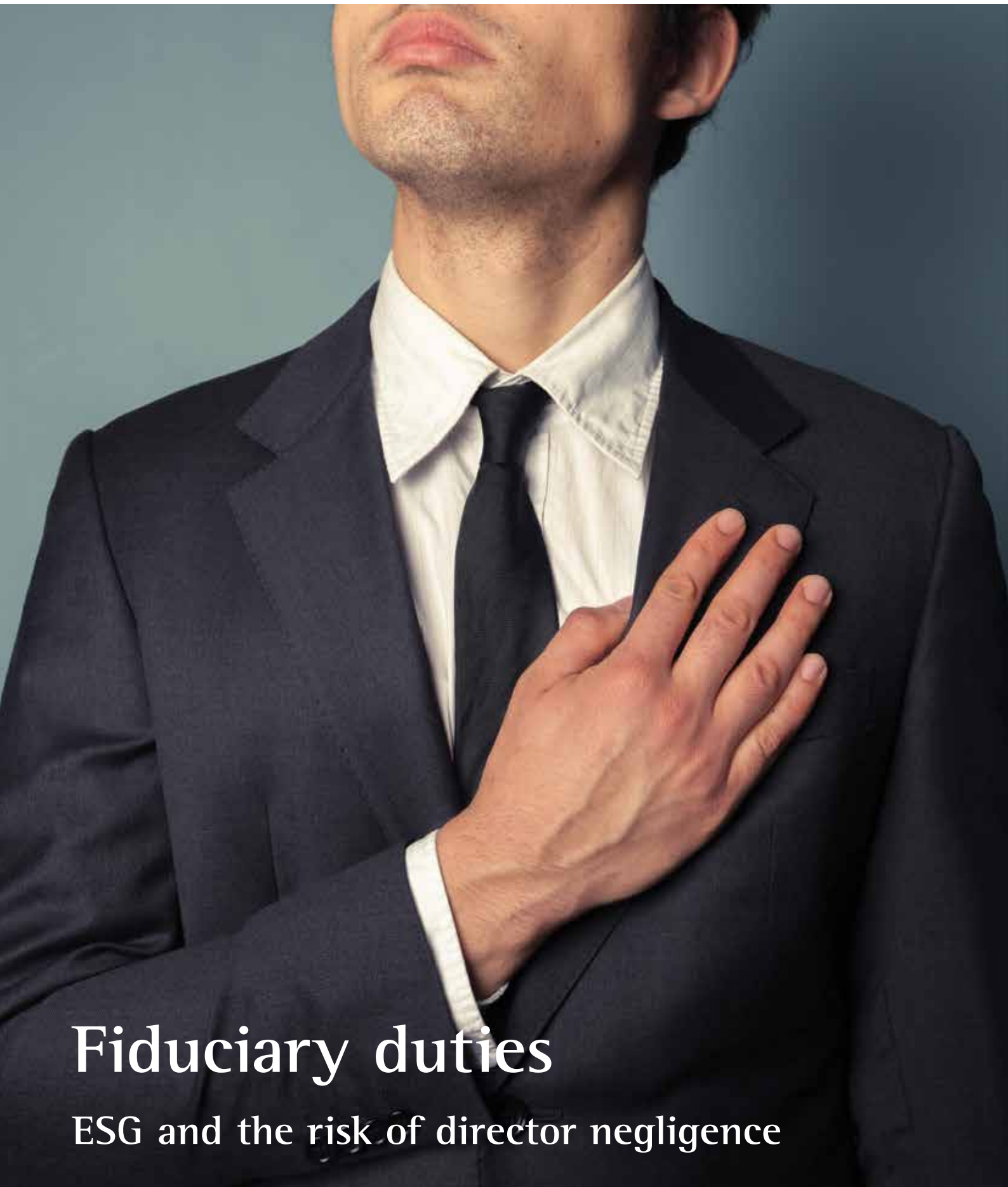
Language:	English
Venue:	This is via online webinar mode. No physical attendance is required.
HKICS Accreditations:	1.5 ECPD points per session
Fee:	HK\$320 per session per HKICS member HK\$230 per session per HKICS student HK\$420 per session per non-member

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.

Register Now!





Fiduciary duties

ESG and the risk of director negligence

Fiona Donnelly, Director, Red Links, and Kevin Bowers, Partner, bowers.law, explain how the need for directors to give appropriate consideration to environmental, social and governance (ESG) issues is not a matter of choice – it's an integral part of being a board member.

The stewardship role and responsibilities of board members are built into the very structure of how companies are established. That is, board members take care of the assets on behalf of, and are accountable for their actions regarding a corporate vehicle to, the owners of that corporate – the shareholders. This responsibility to act in the best interests of another person or entity is a fiduciary duty.

Fiduciary duties and ESG

This means that, as part of their fiduciary duties, directors have a responsibility for material ESG issues – to ensure these risks are tracked, that opportunities are maximised and that value creation areas are optimised. Directors who fail to comprehensively and systematically consider ESG matters could well be deemed to be negligent in the performance of their fiduciary duties.

This may not be welcomed by ESG naysayers, who often see sustainability as a cost and a 'nice to have'. But owners require, and increasingly stakeholders expect, organisations to look broadly and take a long-term and responsible perspective on the holistic sustainability of the enterprise. Financial success, whether in the short, medium or long term, is now only one measure that matters.

A surprising feature of the corporate world today is the widespread lack of awareness and understanding of the ESG risks and opportunities relevant to organisations like cybersecurity and existential megatrends such as climate

change. The ferocity and frequency of extreme weather events is well documented and understood, but many companies have not undertaken an evaluation of the business-specific climate impacts of this trend and factored them into business decisions. It could be that board members of these companies could be found to be in breach of their fiduciary duties just in terms of this element of ESG alone.

Mind the fiduciary duties gap

Setting fiduciary duties aside, integrating ESG into business strategy is increasingly recognised as sound risk management and essential for the long-term success of businesses. There are more and more proof points that ESG does not come with a performance penalty – often it comes with multiple quantitative and qualitative upsides, including reputational gains, better staff retention and engagement, lower costs of capital and overhead savings. As noted in one recent BlackRock Investment Institute research analysis, '[sustainability] substitutions have little impact on the portfolio's diversification or

risk/return properties, strengthening our conviction that ESG integration is a "why not?" proposition' (see 'Online links').

Board members are also individually and personally motivated to give ESG appropriate consideration, looking beyond fiduciary duties.

Executive compensation is increasingly under scrutiny. There is a growing trend to align executive pay to performance and long-term strategy in order to protect and create value. Including metrics relating to material ESG matters in executive pay decisions can help incentivise the achievement of sustainable business goals and show the conviction with which an enterprise is trying to achieve certain ESG outcomes. While this area is tricky when it comes to execution – issues include which ESG areas are relevant for a business and incentivise only the right strategic decisions, how to set and measure targets and over which timeframe – the principles can be straightforward. Businesses that properly integrate ESG

Highlights

- company directors are being held to higher levels of personal accountability, responsibility and liability
- directors now have personal exposure if they allow their companies to operate without ESG policies and procedures
- owners require, and increasingly stakeholders expect, organisations to look broadly and take a long-term and responsible perspective on the holistic sustainability of the enterprise

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 ”

will have material sustainability issues built into the core of the business, so structuring compensation in this way should not be a stretch.

Directors' duties

With changes having been made to Hong Kong's Companies Ordinance in 2014, company directors are being held to higher levels of personal accountability, responsibility and liability. The Hong Kong Companies Registry Guide on Directors' Duties (see 'Online links') identifies the following broad principles (of which all Hong Kong directors should make it their business to be familiar):

1. to act in good faith for the benefit of the company as a whole
2. to use their powers for a proper purpose for the benefit of the members as a whole
3. not to delegate powers except with proper authorisation and retaining a duty to exercise independent judgement
4. to exercise care, skill and diligence

5. to avoid conflicts between personal interests and the interests of the company
6. not to enter into transactions in which directors have an interest except in compliance with the requirements of the law
7. not to gain advantage from their positions as directors
8. not to make unauthorised use of the company's property or information
9. not to accept personal benefit from third parties conferred because of their positions as directors
10. to observe the company's articles of association and resolutions, and
11. to keep proper books of account.

The fourth principle in this list is the most pertinent in terms of boards of directors devising and implementing ESG policies and procedures. The exercise of the directors' care, skill and diligence is subject to both objective and subjective legal tests:

- the objective test relates to the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and
- the subjective test relates to the general knowledge, skill and experience that the individual director has.

The subjective element of this directors' duty means that when directors are appointed to the board due to their special

knowledge, skill or experience, they have a higher standard of care. Thus, when a company appoints a director to oversee its ESG policies and procedures, that person should be sufficiently qualified for the role and must then perform that function up to at least the standard of that individual's

An aside – fiduciary duty and investment managers

The UN Principles for Responsible Investment and UN Environment Programme Finance Initiative undertook a multi-stakeholder and multi-jurisdiction research, development and engagement exercise around fiduciary duties in the asset management industry. This entire project set out to end the ongoing debate on whether fiduciary duty is a legitimate barrier to the integration of ESG issues in investment practices and decision-making.

The first report – issued in 2014 – found that 'failure to consider all long-term investment value drivers, including ESG issues, is a failure of fiduciary duty'. It was replaced by the second report, *Fiduciary Duty in the 21st Century*, issued in 2019. This asserts that the conceptual debate around whether ESG issues are a requirement of investor duties and obligations is now over, and the fiduciary duties of investors require them to incorporate ESG into investment analysis and decision-making processes.

More information is available at: www.unpri.org.

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qualifications. Essentially, the ESG director should have experience in ESG issues, so this function should not just be delegated to a random member of the board!

Furthermore, in a world where sustainability and ESG issues should be at the forefront of corporate decision-making, directors now have personal exposure if they allow their companies to operate without ESG policies and procedures, and without giving specific directors the role to oversee the ESG function.

ESG and crisis management

In extreme cases, if ESG matters go significantly awry, executives have been known to lose their positions. The pressure from shareholders among others led to the chief executive and two senior executives of Rio Tinto (see 'Online links') stepping down following the destruction of historically significant Juukan Gorge rock shelters and the way it managed its response. There was no way they could

rebuild trust and confidence following their spectacular governance failure that saw this labyrinth of caves, which were thousands of years old, being irreparably damaged for the expansion of an iron ore mine. Even once those who have been held responsible have departed an entity, the new board then has to start the process of rebuilding reputation and trust in the brand and with the organisations' various stakeholders, itself a lengthy, fragile and costly process.

The role of governance professionals

Governance professionals are clearly crucial to directors' complying with their fiduciary duties. As a way to reflect on the appropriateness of board fiduciary behaviours towards ESG, governance professionals may want to reflect on the following questions.

- Are directors appropriately familiar with ESG matters that are material to the business, particularly in



terms of strategy, policy, issues and activities?

- Is the board taking a forward-looking approach to ESG oversight, in particular by tracking emerging issues? Is the ESG risk/opportunity tracking appropriately holistic and based on an appropriate timeframe?
- Are ESG matters delegated to appropriately knowledgeable individuals who are held to account?
- When it comes to communicating and engaging with shareholders and broader stakeholders, are ESG matters shared to an appropriate level of detail?

Fiona Donnelly, Director

Red Links

The Red Links Sustainability Consortium provides bespoke sustainability services. Fiona can be contacted at fiona.donnelly@redlinks.com.hk.

Kevin Bowers, Partner

bowers.law

bowers.law is an independent law firm that provides legal services on a fixed, staged or retainer fee basis. Kevin can be contacted at kevin.bowers@bowers.law.

Online links

- www.blackrock.com/corporate/insights/blackrock-investment-institute/publications/esg-fixed-income
- www.cr.gov.hk/en/companies_ordinance/docs/Guide_DirDuties-e.pdf
- www.riotinto.com/news/inquiry-into-juukan-gorge

The Mainland's Alibaba Anti-monopoly Law incident

Would the same
happen in Hong Kong?

The Alibaba logo, a stylized orange 'A' with a black outline, is centered in the upper half of the image. A red arrow from the bottom left points towards the logo, and a network of grey lines radiates from the point of impact, creating a cracked glass effect over the logo and the text below.

Alibaba.com

Dominic Wai, Partner, ONC Lawyers, outlines the recent incident with Alibaba in relation to the Mainland's Anti-monopoly Law, and provides an overview of similar legislation in Hong Kong, notably the Second Conduct Rule of Cap 619.

Established in 1999, Alibaba has become a tech giant and one of the most well-known businesses in the Mainland. Recently, Alibaba was found to have abused its market dominance, hence breaching the country's anti-monopoly laws, which resulted in a record-high RMB18.23 billion fine.

The Mainland's Anti-monopoly Law

The Anti-monopoly Law of the People's Republic of China (Anti-monopoly Law) was passed on 30 August 2007. The introduction of this law was largely induced by the explosive growth of the Mainland's economy. This rapid development made it necessary for regulations to be put in place so as to prevent monopoly, which may ultimately hinder the growth of the market.

On 7 February 2021, with a view to regulating e-commerce and digital payments industries, the Mainland's State Administration for Market Regulation (SAMR) issued the finalised Guidelines

for Anti-monopoly in the Platform Economy (Guidelines). The Guidelines were largely centred around prohibition of (1) monopoly agreements (agreements which exclude or restrict competition) and (2) abuse of market dominance.

In particular, platform operators with dominant market positions are prohibited from abusing their dominance. A dominant market position is defined as 'a market position held by operators that are capable of controlling the prices, quantities of commodities or other transaction terms in a relevant market, or preventing or exerting an influence on the access of other operators to the market'. Apparently, this was how Alibaba found itself in trouble.

What happened to Alibaba?

The SAMR began its investigation into Alibaba in December 2020, and primarily focused on the company's practice of forcing merchants to choose one of two e-commerce platforms. According

Highlights

- tech giant Alibaba was recently found to have breached the Mainland's Anti-monopoly Law by abusing its market dominance, resulting in a record-high fine and other regulatory injunctions
- any conduct similar to that of Alibaba would equally raise concerns in Hong Kong, notably under the Second Conduct Rule (SCR) of Cap 619
- to determine any 'abuse' of the competition laws in Hong Kong, the Competition Commission first defines and assesses the 'relevant market', with a focus on substitutability, and 'substantial market power'

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it is... important
to know that
'substitutability' is
the central factor in
competition analysis
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to the SAMR's findings, by abusing its dominance and power in the market, Alibaba had, since 2015, been prohibiting merchants from opening up branches at or participating in events of other e-commerce platforms. In order to ensure that the merchants abided by its rules, Alibaba also adopted various measures including but not limited to data-monitoring and use of algorithms, as well as award and punishment mechanisms. All this was done with the sole purpose of securing and eventually expanding its market share.

The SAMR found that such policies stifle competition in the Mainland's e-commerce market, and infringe on the rights and interests of the merchants and consumers. In particular, the SAMR found that Alibaba had breached Article 17(4) of the Anti-monopoly Law, which reads as follows: 'Undertakings holding dominant market positions are prohibited from doing the following by abusing their dominant market positions – (4) without justifiable reasons, allowing their trading counterparts to make transactions exclusively with themselves or with the undertakings designated by them.'

Having considered the nature of Alibaba's breach, and its extent and duration,



the SAMR ordered Alibaba to cease any illegal conduct, along with paying the RMB18.23 billion fine. The SAMR also ordered Alibaba to abide by the existing regulations, strengthen internal management, maintain fair competition, and protect the interests of merchants and consumers. Moreover, Alibaba is now required to file its own investigation report with the authority within three years to fulfil its reporting responsibility.

While the figure looks substantial, the fine actually amounts to a mere 4% of Alibaba's domestic revenue in 2019. Hence, Alibaba appears to have not been significantly affected by the fine. That said, the incident not only sounded the alarm for Alibaba and its fellow competitors, but also shed light on the business environment in Hong Kong.

Competition regime in Hong Kong

Hong Kong has a similar piece of legislation regulating competition in

the market, namely the Competition Ordinance, Cap 619 (Ordinance). This Ordinance provides for two conduct rules: the first conduct rule prohibits anti-competitive agreements and concerted practices between two or more undertakings, whereas – more relevantly in this case – the Second Conduct Rule (SCR) targets undertakings with substantial market power and prevents the abuse of such power that has the object or effect of preventing, restricting or distorting competition in Hong Kong. The term 'undertaking' is broadly defined in the Ordinance, covering all types of entities regardless of their legal status or the way in which they conduct their economic activities. Any conduct similar to that of Alibaba would definitely raise concerns under the SCR.

How can it be determined whether an undertaking has abused its substantial market power and would therefore be found to be in breach of the SCR? The

Competition Commission (Commission), as the principal competition authority responsible for enforcing the Ordinance, uses an analytical framework that consists of defining the relevant market, assessing the substantial market power and then determining whether a conduct amounts to 'abuse', and provides a detailed explanation of such framework in the SCR guidelines.

Relevant market

In competition analysis, the term 'relevant market' has both a product dimension and a geographic dimension. In this context, the relevant product market comprises all those products which are considered interchangeable or substitutable by buyers, while the relevant geographic market comprises all those regions or areas where buyers would be able or willing to find substitutes for the products in question.

Without going through the technical analysis of defining the relevant product or geographic market, it is more important to know that 'substitutability' is the central factor in competition

analysis. Simply put, the borders of the relevant market may be expanded until the Commission is of the view that there are enough customers being able to switch to substitutes.

Substantial market power

In considering if an undertaking possesses a substantial market power, the Commission will consider the extent to which that undertaking faces constraints on its ability to profitably sustain prices above competitive levels. Section 21(3) of the Ordinance gives some examples that may be taken into consideration in determining whether an undertaking has a substantial degree of market power, including the market share of the undertaking, the undertaking's power to make pricing and other decisions, and any barriers to entry to competitors into the relevant market.

Abuse

Having defined the relevant market and assessed the substantial market power, the Commission will determine whether such power has been abused. Broadly speaking, abusive conduct is potentially

any conduct that has the object or effect of harming competition in Hong Kong. The Commission does not need to demonstrate that conduct has or is likely to have anti-competitive effects, as long as it is shown that the conduct has the object of harming competition. Some examples that are likely to be regarded as abusive conduct include predatory pricing, tying and bundling, margin squeeze conduct, refusals to deal and exclusive dealing.

Conclusion

Healthy and effective competition benefits society as a whole. While the market giants may have the ability and a great deal of power to profit from and influence the market, the authorities in the competition regime are there to find a balance between a free market and a regulated economy. On 21 December 2020, the Commission filed the first abuse of substantial market power case against Linde HKO Ltd and Linde GmbH under the SCR in the medical gases supply market in Hong Kong, in terms of being to the detriment of competition in the downstream medical gas pipeline system maintenance market.

Under Hong Kong's competition regime, if a case similar to that of the Alibaba incident happened in Hong Kong, it would likely be prosecuted by the Commission, given the undertaking's large market power and its ability to prohibit merchants from operating business with its competitors. Such exclusivity definitely attacks the core of substitutability and would therefore be found to be in breach of the SCR.

Dominic Wai, Partner
ONC Lawyers

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New guidance notes



CSj highlights the latest additions to the guidance note series of The Hong Kong Institute of Chartered Secretaries (the Institute), providing guidance on anti-competitive information exchange, conflicts of interest and managing the signing stage of merger and acquisition transactions.

The Institute's seven Interest Groups, set up under the Technical Consultation Panel in June 2016, have built up a substantial body of practical guidance on the Institute's website (www.hkics.org.hk) for the benefit of the Institute's members, and the wider profession and community. This article highlights the latest additions to this series.

Anti-competitive information exchange

The First Conduct Rule of Hong Kong's Competition Ordinance (Cap 619) prohibits anti-competitive agreements which have the object or effect of preventing, restricting or distorting competition in Hong Kong. As well as prohibiting obvious cartel conduct, such as price-fixing, market sharing, bid-rigging and output limitation, the First Conduct Rule also prohibits certain types of information exchange. One example of such prohibited conduct is the exchange of competitively sensitive information (CSI) between competitors.

Because this area of competition law is not clear cut, and because information exchange is so prevalent across all sectors of the economy, this area remains an ongoing risk that companies need to manage. The sixth in the series of guidance notes published by the Institute's Competition Law Interest Group highlights the risks of anti-competitive information exchange and provides some practical steps that can be taken, facilitated by the governance professional, to ensure compliance with the competition rules in Hong Kong.

Defining competitively sensitive information

CSI includes any information which would reduce uncertainty in the market if shared with a competitor. The guidance note points out that sharing information relating to price and quantity would be particularly high risk from a competition law perspective, and the more recent and contemporaneous the information,

Highlights

- governance professionals would be well advised to keep up to date with enforcement actions to get a sense of how broadly competition authorities can interpret what constitutes competitively sensitive information
- identifying and managing conflict of interest situations is crucial to good governance in any organisation
- parties to M&A transactions should be sensitive as to whether the transaction may constitute inside information

the more valuable the CSI might be to a competitor when determining its future conduct. Genuinely public or historic information is less of a concern and can generally be shared. The competition law risk is also reduced when the information is anonymised and aggregated before being exchanged, unless the relevant market is concentrated and competitors can easily reverse-engineer the data.

Governance professionals would be well advised to keep up to date with enforcement actions, both locally and globally, to get a sense of how broadly competition authorities can interpret what constitutes CSI. The guidance note looks at two cases that will assist in this regard. It also addresses the question of how the exchange of CSI can take place – a question relevant to determining whether a breach of the First Conduct Rule has taken place. The highest risk usually lies in parts of a business where employees have direct contact with competitors, but risk can also arise in the context of trade association meetings and industry events, or even in less formal settings such as social events and casual conversations with ex-colleagues or friends. CSI can also be communicated indirectly via a third party.

Enforcement actions in Hong Kong

The guidance note reviews a recent First Conduct Rule enforcement action in Hong Kong and makes the point that the consequences of contravening the First Conduct Rule are serious. A company can be fined up to 10% of the Hong Kong turnover of its wider corporate group for each year of the contravention, for up to three years. If a contravention spans more than three years, the fine will be capped at 10% of the Hong Kong turnover of the three years that generated the highest turnover.

The guidance also makes it clear that the Competition Commission (the Commission) in Hong Kong is determined to enforce individual accountability for breaches of the competition law. Individuals may be subject to financial penalties and directors can also face disqualification for up to five years in certain circumstances, including where a director did not know but ought to have known that the conduct of the company constituted a contravention. Senior management, including company secretaries, can also potentially be liable.

Practical compliance tips

Following the remit of the Institute's guidance note series, the guidance also suggests steps that can be taken to mitigate compliance breaches in this area with the involvement/facilitation of the governance professional. The following are some practical steps that companies can take to deal with the competition law risk.

- Train staff to avoid sharing CSI such as pricing or volume data, and remember that anti-competitive information exchange can occur even in informal settings.
- Establish a clear policy for the identification and handling of CSI – access to CSI should be limited.
- Always consider whether the information to be shared with a third party is CSI, and why it is being shared. Is it for a legitimate reason? If not, avoid sharing it. If it has to be shared, are adequate protective mechanisms in place?
- Identify the teams/individuals most at risk of engaging in anti-competitive information exchange

and provide them with targeted antitrust training.

- If CSI is received unintentionally, the company should publicly distance itself from the receipt of the CSI and make it clear that it was not requested and will not be used. If the incident happens during a meeting, a company's representative should ask for his or her objection to receiving the CSI to be minuted and report it to the legal or compliance team immediately. A record of this public distancing should be made in case the conduct is ever scrutinised by a competition authority.
- Ensure staff know who to speak to if they have any queries or concerns regarding CSI.

Conflicts of interest

Identifying and managing conflict of interest situations is crucial to good governance in any organisation. The seventh in the series of guidance notes published by the Institute's Ethics, Bribery and Corruption Interest Group gives guidance on identifying the types conflicts of interest to be aware of, the possible legal implications for organisations, and some recommended practical measures which companies, and in particular governance professionals, should consider adopting to prevent and manage such conflicts.

Managing conflicts of interest

Managing conflicts of interest requires an understanding of the diverse scenarios that might be involved. The guidance note starts by looking at actual conflicts of interest – where the private interests of members of organisations compete with the interests of their organisations, or are in conflict with their official duties or responsibilities. The

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the Competition Commission in Hong Kong is determined to enforce individual accountability for breaches of the competition law
 ”



guidance warns that 'private interests' can include both the financial and personal interests of members, and those of their connections, including family and other relations such as personal friends and the clubs and societies to which they belong. Their connections may also include any person to whom they owe a favour or to whom they may be obliged in any way.

The picture becomes further complicated in cases of perceived or potential conflicts of interest. In perceived conflicts of interest, the actions and decisions of the persons involved are perceived by a third party to be under the influence of their private interests. Perception of conflicts of interest is critical because this may cast doubt on the integrity of the person involved and cause damage to the reputation of the organisation. In a potential conflict of interest situation, the persons involved may, in the future, be influenced by their private interests when performing their official duties.

The consequences of getting it wrong

If not handled properly, conflicts of interest may have very serious

consequences. The guidance note highlights the possible legal implications where fraudulent acts are involved (for example, falsifying documents to cover up the conflicts involved). This may lead to criminal offences such as deception, fraud and false accounting. If an advantage is offered or accepted in a conflict of interest situation, it may lead to a breach of the Prevention of Bribery Ordinance enforced by the Independent Commission Against Corruption (ICAC).

Even where conflicts of interest situations do not involve wrongdoing, however, mishandling them may distort and cast doubts on the reliability of the professional judgement and decisions, independence and impartiality of those involved. The guidance note also points out that many professional institutes require members to commit to ethical practices. Professionals failing to handle conflicts of interest properly may contravene the respective professional code of ethics and be subject to disciplinary sanction, for example suspension of their professional qualification.

The role of company secretaries

The guidance note also highlights the role of company secretaries in managing conflicts of interest. It points out that, as the eyes and ears of the chairman, the chief executive and other members of the board, company secretaries have an influential role to play in ensuring the right ethical culture in an organisation and to act as the guardian of the ethical values of the organisation. They also have specific duties to ensure that the board is fully aware of its responsibility to avoid engaging in any market misconduct practices. This includes the expectation for company secretaries to perform their professional role in managing connected transactions and disclosure of interest among directors. Being in a unique position to create the right culture for good governance through guiding management and the board to fulfil their responsibilities, company secretaries are far more than just playing a compliance role. Some practical takeaways for company secretaries to consider are set out below.

- It should be made clear to directors that they have an obligation to disclose fully and fairly any conflict

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company secretaries have an influential role to play in ensuring the right ethical culture in an organisation and to act as the guardian of the ethical values of the organisation
 ”



of interest at the earliest possible time and, if possible, before discussion of the issue by the board. They should be aware that being negligent in disclosing conflicts of interest may carry possible legal liabilities.

- If there is likely to be a conflict of interest, it is recommended that the director involved should not be present at related discussions and refrain from voting on the issue.
- When conflict of interest situations arise, the company secretary should ensure that management deals with it in an effective and transparent manner.
- Regular business practice reviews for the organisation should be implemented. Also, ethics training for all levels of staff, including directors, should be conducted regularly in order to ensure they know how to handle conflicts of interest properly.
- A whistleblowing policy should be introduced, implemented and widely understood by all levels of staff.

Managing the signing stage in M&A transactions

The 'signing' stage in mergers and acquisitions (M&A) transactions signifies an agreement of terms and conditions among the parties. The 'closing' stage occurs upon the satisfaction of agreed conditions. In some cases, there may be a lengthy gap between the two stages, in particular when multiple regulatory approvals are required for the consummation of the transaction. These could include antitrust clearance and a change of controllers in regulated industries.

The sixth in the series of guidance notes published by the Institute's Takeovers, Mergers and Acquisitions Interest Group revisits the scenario of a split signing and closing situation in M&A transactions, and walks the governance professional through some key issues to facilitate a smooth signing process.

Obtaining the necessary approvals

The guidance starts by addressing the process for obtaining the necessary approvals – a prerequisite for all corporate entities entering into the signing of an M&A transaction. Typically, internal approvals include those from the board

of directors and in some cases investment committees (if one has been established). For joint ventures and deals involving listed companies, shareholders' approvals may well be required, as well as specific shareholders' consents or waivers in relation to any pre-emption rights.

In this connection, the corporate entities' constitutional documents and agreement among shareholders are the primary sources for identifying the necessary internal approvals. For listed companies, references should also be made to the compliance requirements of the Listing Rules.

Internal approvals are obtained when the terms and conditions of the transaction are still being negotiated. The parties may also agree to amend the terms to deal with unforeseen circumstances after signing but before closing. In addition, regulatory authorities may impose conditions when providing their consents.

In view of these potential obstacles to a successful signing and/or closing of the transaction, flexibilities permitting changes to the agreed terms are usually built into the internal approvals. For board and shareholder approvals, a

common way of doing this is by granting power to authorised persons to approve amendments or modifications to the terms and conditions of the transaction as they consider 'necessary or desirable'.

An alternative way to allow flexibility, but within a predetermined scope, is to give the authorisation subject to satisfying certain conditions. By way of example, to preempt situations where a regulator grants its approval subject to conditions, the internal approvals may specify that they are given subject to meeting conditions imposed by regulators.


Making the necessary disclosures

The guidance also addresses the legal requirements relating to disclosure of M&A transactions. In particular, where one or more parties to the transaction are Hong Kong listed companies, they should be sensitive as to whether the transaction may constitute inside information and whether it is of a substantial size where additional compliance requirements such as an announcement may need to be published.

The Securities and Futures Ordinance (Cap 571) requires a Hong Kong listed company to disclose any inside information to the market as soon as reasonably practicable. The Hong Kong Listing Rules also contain obligations on the company to disclose information to avoid a false market in its securities.

M&A transactions are commonly viewed as important transactions of a listed company and news of the company entering into such transactions may affect the trading price or volume of the company's listed securities. If the senior management or directors of a listed company considers entering into the proposed M&A transaction to be inside information, it is crucial to maintain its confidentiality until it is ready for release by way of a full announcement (usually immediately after the deal has been signed). If the necessary degree of confidentiality cannot be maintained or confidentiality may have been breached, the inside information must be disclosed immediately by the

publication of a holding announcement and, if necessary, requesting a temporary suspension of trading prior to the holding announcement being published.

In addition to being considered inside information, an M&A transaction may constitute a notifiable transaction and/or a connected transaction pursuant to Chapters 14 and 14A of the Listing Rules which, among other compliance requirements, may need to be disclosed by issuing a deal announcement on the HKEXnews website and the listed company's own website. 

The guidance notes reviewed in this article are available on the Institute's website: www.hkics.org.hk. More information relating to managing conflicts of interest is available on the Independent Commission Against Corruption website: www.icac.org.hk, and that of the Hong Kong Business Ethics Development Centre: <https://hkbedc.icac.hk>.

Credits

The Institute would like to thank everyone involved in the guidance notes reviewed in this article, in particular the members of the Institute's Interest Groups set out below.

Competition Law Interest Group

David Simmonds FCG FCS (Chairman), Adelaide Luke, Alastair Mordaunt, Brian Kennelly QC, Mike Thomas and Neil Carabine. Gratitude is expressed to Adelaide Luke, Partner, Herbert Smith Freehills, as the author of the guidance note reviewed in this article.

Ethics, Bribery and Corruption Interest Group

Dr Brain Lo FCG FCS (Chairman), Anna Lam, Jeremy Birch, Michael Chan, Ralph Sellar and William Tam ACG ACS. Gratitude is expressed to the Hong Kong Business Ethics Development Centre, ICAC, as the author of the guidance note reviewed in this article.

Takeovers, Mergers and Acquisitions Interest Group

Michelle Hung FCG FCS (Chairman), Dr David Ng FCG FCS, Henry Fung, Kevin

Cheung, Lisa Chung, Patrick Cheung and Philip Pong. Gratitude is expressed to Kevin Cheung, Partner, Linklaters, as the author of the guidance note reviewed in this article.

Mohan Datwani FCG FCS(PE), Institute Deputy Chief Executive, serves as Secretary to the Institute's Interest Groups. If you have any comments and/or suggestions relating to the Institute's Interest Groups, he can be contacted at: mohan.datwani@hkics.org.hk.

No jab, no job

Can employers in Hong Kong require employees to get vaccinations as a condition of work?



Damien Laracy, Partner and Head of the Hong Kong Office, and Nicole Wong, Associate, Hill Dickinson Hong Kong, summarise the most salient issues of the 'no job, no job' debate, and discuss whether an order for employees to receive the Covid-19 vaccination could be considered lawful and reasonable.

With hopes of a gradual return to normality through achieving herd immunity, the HKSAR Government has implemented a territory-wide Covid-19 vaccination programme free of charge for all Hong Kong residents. However, vaccination rates remain suboptimal. As the government considers ways to encourage vaccination uptake, by conditionally relaxing social distancing measures, many employers are contemplating the idea of 'no job, no job'.

In this context, 'no job' pertains to summary dismissal by employers only – as opposed to employment termination by notice (or payment in lieu of notice) – where no motive for termination needs to be disclosed.

'You're fired!'

Summary dismissal is the immediate termination of the employment contract by the employer without notice or payment in lieu of notice. The employee, often disgruntled, is usually asked to leave the workplace immediately with no notice or monetary compensation. This is a serious disciplinary procedure and employers should exercise caution in order to reduce exposure to legal claims in the Labour Tribunal.

Section 9(1) of the Employment Ordinance (Cap 57) entitles an employer to dismiss an employee summarily, only if they:

- wilfully disobey a lawful and reasonable order

- misconduct themselves
- are guilty of fraud or dishonesty, or
- are habitually neglectful in their duties, or
- if there are any other grounds on which the employer would be entitled to terminate the contract without notice at common law.

Barack Obama: 'I make no apologies for being reasonable'

Obama may not have had mandatory vaccinations for his staffers in mind when he made this statement on 15 August 2011, but what follows in his remarks is equally relevant to the present topic: 'lives are at stake and the economy is at stake and our children's future is at stake'.

So considering actual and potential ravages of the Covid-19 pandemic, would an order for employees to receive

Covid-19 jabs be considered lawful and reasonable?

The first point of reference is naturally the relevant employment contract, which contains the terms agreed between the employer and the employee. If there has been a prior agreement in respect of vaccinations (or more broadly, aspects of the employee's health), it may be easier for the employer to infer (or assert) that an order to get inoculated is legal and reasonable.

However, in reality, most employment contracts do not contain sufficiently precise terms for such conclusive determinations to be formed. Without a clear and unambiguous clause on vaccination in the contract, there is no definitive confirmation that it is lawful and reasonable for employers to demand that employees receive vaccinations (and to fire them if they fail to comply). While employers have an obligation to create a safe and healthy workplace pursuant

Highlights

- as the HKSAR Government considers vaccination a condition of relaxed social distancing, employers contemplate the idea of 'no job, no job'
- summary dismissal is a serious disciplinary procedure and employers should exercise caution to reduce potential Labour Tribunal claims, while care should be taken to remain lawful and reasonable in their approach
- employers should not treat employees more or less favourably, based on whether they have been inoculated

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there is no definitive confirmation that it is lawful and reasonable for employers to demand that employees receive vaccinations
 ”



to the Occupational Safety and Health Ordinance (Cap 509), a plethora of uncertainties plagues this area of law.

Generally, it is not unlawful for someone to take (or to encourage another person to take) the Covid-19 vaccine. However, in cases where the employee has a pre-existing condition that renders it unsafe for him or her to take the vaccine, instructions that he or she does so would likely be considered unlawful if it resulted in a reasonable apprehension of danger to the employee's life.

In respect of reasonableness, an employee has no obligation to follow instructions that do not relate to the job capacity in which they were employed. Accordingly, the job nature and work responsibilities of the employee will be highly relevant in determining reasonableness. For example, the Fair Work Commission of Australia concluded very recently that it could be lawful and reasonable to compel employees working at childcare centres and elderly care homes to receive a flu vaccination, and failure to comply could justify termination of employment.

The considerations become more complex where social distancing restrictions imposed on businesses such

as restaurants and bars are conditional upon the vaccination rates of their staff members. Typically, employees have an obligation under common law not to act in such a way as to cause loss to, or disrupt the operation of, the employer's business. A breach of any common law duty could justify summary dismissal under the Employment Ordinance.

Consider the following scenario: 9 out of 10 employees are vaccinated and the remaining employee refuses to do so, such that the employing restaurant is unable to enjoy relaxed social distancing measures pursuant to the government's Covid-19 vaccine incentive programmes, resulting in loss of profits for the restaurant. It may well be that ordering the remaining employee to be vaccinated could be deemed as reasonable.

Ultimately, whether an instruction from an employer is lawful or reasonable will be assessed based on the facts on a case-by-case basis. Wrongful termination may lead to monetary compensation being awarded to the employee. Employers are advised to seek legal advice.

Is a vaccinated employee preferable over one who is not?

Since the Hong Kong legal system offers protection against direct and indirect

discrimination against disability, the definition of which includes the presence of organisms causing (or capable of so doing) disease or illness, employers should take care not to treat employees (or future hires) more or less favourably, based on whether they have been inoculated. Discrimination allegations may result in investigations being conducted by the Equal Opportunities Commission.

It is worth noting that it is not unlawful to discriminate against an employee with an infectious disease (including severe respiratory disease associated with a novel infectious agent) if it is reasonably necessary for the protection of public health.

In addition, in recording which employees have taken the Covid-19 jab and which have not, employers should bear in mind the requirements under the Personal Data (Privacy) Ordinance (Cap 486) in respect of collecting, handling and using personal data. In particular, employers should take all practicable steps to ensure that personal data collected is:

- accurate and not kept longer than is necessary
- used only for the purpose for which it is collected
- protected against unauthorised or accidental access, use or loss, and
- accessible by the employee to which the data relates.

Damien Laracy, Partner and Head of the Hong Kong Office, and Nicole Wong, Associate

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The Hong Kong Institute of Chartered Secretaries

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Qualified lawyers or accountants with more than five years of relevant post-qualifying experience may now be eligible for membership of CGI and HKICS by completing only two of the seven modules, namely Corporate Governance and Risk Management, of the qualifying programme (CGQP) of CGI and HKICS. Please visit the Institute's website for more information on the Fast Track Professional route!

All applications are subject to the final decision of the Institute. For details, please visit the Fast Track Professional page under the Studentship section of the Institute's website: www.hkics.org.hk.

For enquiries, please contact Leaf Tai: 2830 6010 or Lily Or: 2830 6039, or email: student@hkics.org.hk.



Professional Development

Seminars: April 2021

13 April

Corporate governance for listing in Hong Kong



Chair: Polly Wong FCG FCS(PE), Institute Qualification Development Panel Vice-Chairman and Disciplinary Tribunal member, and Company Secretary and Group Financial Controller, Dynamic Holdings Ltd

Speaker: Eric Lee, Director – Risk Advisory Services, RSM Hong Kong

14 April

Shareholder activism in Hong Kong

Chair: Wendy Ho FCG FCS(PE), Institute Council member, Professional Development Committee Vice-Chairman, Professional Services Panel Vice-Chairman, AML/CFT Work Group member and Rebranding Working Group member, and Executive Director, Corporate Services, Tricor Services Ltd

Speaker: Ian Mann, Partner, Harney Westwood & Riegels

15 April

Company secretarial practical training series: dissolution of a Hong Kong private limited company – liquidation versus deregistration



Chair: Alberta Sie FCG FCS(PE), Institute Professional Services Panel member and AML/CFT Work Group member, and Company Secretary and Director, Reanda EFA Secretarial Ltd

Speaker: Frances Chan FCG FCS, Institute Professional Services Panel member, and Founder and Director, K. Leaders Business Consultants Ltd

20 April

Bermuda: corporate law practice points and recent trends



Chair: Polly Wong FCG FCS(PE), Institute Qualification Development Panel Vice-Chairman and Disciplinary Tribunal member, and Company Secretary and Group Financial Controller, Dynamic Holdings Ltd

Speakers: Jo Lit, Partner, and Nicholas Davies, Partner; Walkers (Hong Kong)

21 April

Fraud risk management/ mitigation



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

Speaker: Jessica Li, Partner, Forensic Services, PwC

27 April

Company secretarial practical training series: common ways of establishing a presence in Hong Kong



Chair: Desmond Lau ACG ACS, Institute Professional Development Director

Speaker: Jenny Choi FCG FCS, Institute Professional Services Panel member and AML/CFT Work Group member, and Associate Partner, Ernst & Young Company Secretarial Services Ltd

28 April

《民法典》对企业人力资源管理的影响及应对



Chair: 陈俊雄 FCG FCS(PE), 中南腾飞顾问有限公司首席顾问
Speaker: 廖海燕律师, 的近律师行合伙人

29 April

An introduction to the codes on takeovers and mergers in Hong Kong



Chair: Mohan Datwani FCG FCS(PE), Institute Deputy Chief Executive
Speakers: Stephen Chan, Partner, and Charles Lam, Associate; Dechert

Video-recorded CPD seminars

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

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

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
24 June 2021	6.45pm–8.15pm	AML/KYC requirements for trust & company service providers: practical review, pain points & RegTech solutions	1.5
30 June 2021	4.00pm–5.30pm	Enforcement series: competition law enforcement	1.5
6 July 2021	4.00pm–5.30pm	The future of corporate energy affairs governance: 3 massive transitions - ESG, energy transition & climate change	1.5
8 July 2021	4.00pm–5.30pm	Being stuck because of Covid-19 – did you think of the tax consequence?	1.5

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

Membership

Membership/graduateship renewal for the 2021/2022 financial year

The annual membership/graduateship subscription for the financial year 2021/2022 (2021/2022) is due on 1 July 2021. 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 2021/2022. The renewal notice, together with the debit note for 2021/2022, will be sent to all members and graduates by email in July 2021 to the email address registered with the Institute. All members and graduates are highly encouraged to settle their subscription online via their 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 Institute's Membership Section: 2881 6177, or email: member@hkics.org.hk.

New graduates

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

Chiang Ho Chun
Hui Lai Ching
Ma Sui Hong
Wang Shuxuan
Wong Sin Tung Elo
Zhang Feng

Membership activities: May 2021

26 May
**Run better:
correct running
posture and
techniques
(free webinar)**



Forthcoming membership activities

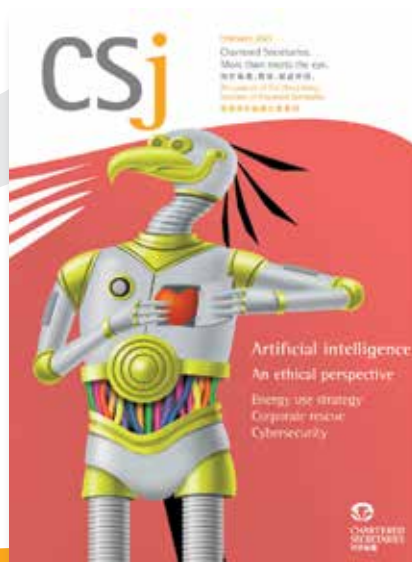
Date	Time	Event
9 July 2021	1.00pm–2.00pm	Easy recycling tips to save the environment and money (free webinar)
7 August 2021 and 14 August 2021	10.30am–11.30am	Full body workout for office workers (free webinar)

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

A bird's eye view

Company secretaries need to be proficient in a wide range of practice areas. *CSj*, the journal of The Hong Kong Institute of Chartered Secretaries, is the only journal in Hong Kong dedicated to covering these areas, keeping readers informed of the latest developments in company secretarial practice while also providing an engaging and entertaining read. Topics covered regularly in the journal include:

- regulatory compliance
- corporate governance
- corporate reporting
- board support
- investor relations
- business ethics
- corporate social responsibility
- continuing professional development
- risk management, and
- internal controls



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Please contact:

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Advocacy

Name change initiative – FAQs

Four forums on the Institute's name change initiative were successfully held in April 2021, attended by over 1,800 members, graduates and students. The Institute would like to thank everyone for their support and comments relating to the initiative.

The Institute has now collated all questions and comments, and has prepared a set of frequently asked questions (FAQs) to clarify some of the pertinent issues relating to the name change initiative. The FAQs address the following topics:

- *background*
- *action to be taken by members*
- *proposed new name*
- *post-name change, and*
- *recognition of membership*
- *Institute's support.*

The name change initiative is intended to better promote and build the Institute's identity as the governance expert, and to reflect the significant contributions made by the Institute to the governance profession as a whole.

To view the FAQs, please visit the News section on the Institute's website: www.hkics.org.hk.

Enforcement series – practical review of major enforcement regimes and themes (six online webinars)

An important regulatory tool for regulators is enforcement. It educates the marketplace that regulators not only have the powers, but more importantly, will exercise them. Governance professionals most certainly will not want their organisations, nor the people associated with them, to be at the receiving end of an enforcement action, as being investigated is costly and stressful, and being found in breach carries pecuniary, reputational and/or personal

repercussions. The Institute is accordingly delighted to package and run a series of six enforcement sessions from June to September 2021, with participation by regulators and seasoned professionals, to provide a review of major enforcement regimes and themes.



For details and registration, please refer to the flyer on page 17 or visit the CPD section of the Institute's website: www.hkics.org.hk.

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

Fireside Chat Series with Governance Professionals over Lunch

All sessions of the Fireside Chat Series held in May and June 2021 have been successfully concluded. Institute Chief Executive Ellie Pang served as moderator for each of the three sessions, held on 7 May, 18 May and 4 June, which were led by Institute member Terry Ip FCG FCS; Institute Vice-President, Membership Committee Chairman, Company Secretaries Panel Chairman, Technical Consultation Panel – Competition Law Interest Group Chairman, Investment Strategy Task Force member and HKICS Prize Judging Panel member David Simmonds FCG FCS; and Institute member Agnes Cheuk ACG ACS, respectively.

Participants were encouraged to engage in a meaningful dialogue about a wide range of topics, from work-life synergies, family and community to personal well-being. At the breakout sessions, participants engaged in group discussions to share their experiences of personal challenges at work, as well as to explore career opportunities for governance professionals.



The Institute receives an Equal Opportunity Employer (Gender Equality) award

The Equal Opportunities Commission (EOC), in celebration of the 25th anniversary since its establishment, launched its inaugural Equal Opportunity Employer Recognition Scheme. The scheme acknowledges both private and public organisations in Hong Kong that have demonstrated a proven track record of implementing policies in the areas of gender equality, equality for diverse abilities, family status equality, and racial equality and inclusion.

The Institute is delighted to announce that it has been presented with an Equal Opportunity Employer (Gender Equality) award under this new scheme. On 26 May 2021, Institute Chief Executive Ellie Pang and Deputy Chief Executive Mohan Datwani FCG FCS(PE) – who is also a member of EOC – were proud to receive the award on behalf of the Institute.

The Institute will continue its unwavering commitment to pursuing best practices, promoting equal opportunities and eliminating all forms of discrimination.



Advocacy (continued)

New HKEX corporate governance consultation proposals

In a webinar following the publication of the new corporate governance consultation paper published by Hong Kong Exchanges and Clearing Ltd (HKEX) on 16 April 2021, Institute Chief Executive, Ellie Pang, a former HKEX policy lead on corporate governance, and Institute Deputy Chief Executive, Mohan Datwani FCG FCS(PE), reviewed and discussed some of the proposed changes to the code, as well as

related amendments to the Listing Rules, including:

- the importance of corporate culture in alignment with vision and strategy to deliver long-term sustainable performance
- enhancing board independence, promoting board refreshment and succession planning, and strengthening the role of the nomination committee
- further promoting board gender diversity
- improving communication with shareholders
- improving the timeliness of ESG reports, and
- improving the flow and readability of the code.



Institute employee vaccination incentive

The objectives of the Institute – as an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies – are contingent upon the public health of the city at large.

The Institute supports the Covid-19 vaccination programme as a means of curbing the spread of the coronavirus in the local community. To this effect, the Institute is encouraging its employees to get vaccinated by implementing an incentive policy that entitles employees to take time off to receive the vaccination, as well as taking leave the day after inoculation, meaning two full days' leave for two vaccinations.

Given the greater importance and extended scope of work of a governance professional on a global basis in today's world, the Institute remains committed to the health of its members, employees and society at large, and will continue to encourage vaccination efforts that contribute to the recovery of the city and the global financial community.

Please contact your local health authority for vaccination today.



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Advocacy (continued)

The 55th Affiliated Persons ECPD seminars in Guiyang

The Institute held its 55th Affiliated Persons Enhanced Continuing Professional Development (ECPD) seminars, under the theme of 'Director's continuous liabilities and obligations & relevant practices', in Guiyang from 19 to 21 May 2021.

The seminars attracted over 170 participants from H share, A+H share, red chip, A share and to-be-listed companies.

Senior professionals and board secretaries shared their knowledge and experience on the following topics:

- the influence of the Mainland's new securities law on the practice of directors, supervisors and overseas investors
- overview of listed companies' share transactions in Hong Kong and related frontier issues
- the Securities and Futures Commission (SFC)'s inquiry and investigation into directors and senior executives (part one: analysis of regulatory focuses; part two: meeting simulation between the SFC, directors and senior executives)
- continuous liabilities of the directors of listed companies and the interpretation of disciplinary cases
- case study: interpretation of information disclosure and major inside trading cases
- corporate governance and directors' performance, and
- interpretation of the Institute's Guidelines on Practices of Connected Transactions of A+H Companies.

At the group discussion session, participants offered insights into their practical experience of the management and control of connected transactions, as well as insider trading control.

The Institute would like to thank the associate organiser, ShineWing CPA; and event partners, Clifford Chance LLP, Herbert Smith Freehills LLP and Jingtian & Gongcheng LLP, as well as all speakers and participants, for their generous support and participation.





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HKICS



Video-recorded CPD seminars

What's new:

Mainland CS Practice Series: Voluntary
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Chartered Governance Qualifying Programme (CGQP)

June 2021 examinations

Candidates who were unable to attend the scheduled CGQP June 2021 examinations may apply for examination postponement by submitting a relevant medical certificate and/or supporting document(s). All applications must be submitted to the Institute on or before Friday 2 July 2021.

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

For enquiries, please contact Leaf Tai: 2830 6010, or email: exam@hkics.org.hk.

Studentship activities: May 2021

18 May
Postgraduate Programme in Corporate Governance in Shenzhen – Information Session

27 May
Governance Professionals Information Session



Forthcoming studentship activities

Date	Time	Event
9 June 2021	6.30pm–7.30pm	Purposeful governance – a stakeholder responsive approach
14 July 2021	12.45pm–2.00pm	Student Ambassadors Programme: practical wisdom for professionals

Policy update (effective from 1 July 2021)

New policy on studentship renewal and registration

The following policies on studentship renewal and registration were approved by the Council with the aim of streamlining the process of studentship renewal and registration. These policies will take effect from 2021/2022 onwards (that is, from 1 July 2021).

Studentship renewal:

The studentship expiry date for all students will be unified and will now fall on the last day of the Institute's financial year (that is, on 30 June) each year. During the transition period in year 2021/2022, all students will be given a three-month

period to settle their renewal fee on a pro rata basis, subject to their current studentship expiry month.

Payment of student renewal fee for new graduates:

Before admission to graduateship of the Institute, all students must renew their studentship by settling the student renewal fee for the following year.

Studentship expiry date for new student registration/re-registration:

Studentship for those who register/re-register from year 2021/2022 onwards will expire on 30 June of the following year, irrespective of the confirmation

date of their studentship during the year. Applicants are required to pay the studentship registration/re-registration fee upon application.

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

New policy on exemption application

The Chartered Governance Qualifying Programme exemption policy will be effective from 1 July 2021 onwards.

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

Learning support for CGQP examination preparations

HKU SPACE CGQP Examinations Preparatory Programme – autumn 2021 intake

HKU SPACE has been endorsed by the Institute to organise the CGQP Examinations Preparatory Programme, which helps students to prepare for the CGQP examinations. One assignment and one take-home mock examination will be provided to students. There are 36 contact hours for each module, except for Hong Kong Company Law, which has 45 contact hours. The autumn 2021 intake will commence in September 2021.

For details, please contact HKU SPACE: 2867 8317, or email: hkics@hkuspace.hku.hk.

Student gatherings

Videos of the following student gatherings are available on the Institute's website under the Studentship section:

Student Gathering (1): update on the CGQP and how to use the PrimeLaw online platform
Student Gathering (2): how to study for the CGQP modules – session one (Law, Governance and Compliance modules)
Student Gathering (3): how to study for the CGQP modules – session two (Accounting and Management modules)
Student Gathering (4): experience sharing on preparation for CGQP examinations

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

Examination technique online workshops and student seminars

Videos of the following examination technique online workshops and student seminars are available on the Institute's website under the Studentship section:

Examination technique online workshops
An alternative introduction to company law – session 1: key players in company law and corporate governance
An alternative introduction to company law – session 2: interesting questions about the corporate personality
Corporate secretaryship and compliance – shares and share capital (Part 1)
Corporate secretaryship and compliance – shares and share capital (Part 2)

For details, please visit the *Online Learning Video Subscription* page under the *Studentship* section of the Institute's website: www.hkics.org.hk.

Notice

Reminder – new Fast Track Professional route

With effect from 1 January 2021, a new Fast Track Professional route is available for qualified lawyers or accountants who wish to become a Chartered Secretary and Chartered Governance Professional.

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

Reminder – updated CGQP syllabus and recommended study materials

The updated syllabus and recommended study materials are now available online.

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

Policy – payment reminder Studentship renewal

Students whose studentship expired in April 2021 are reminded to settle the renewal payment by Wednesday 23 June 2021. Failure to settle the renewal payment by the deadline will result in the removal of studentship.

Featured Job Openings

Company name	Position
HKB Corporate Services Ltd	Officer/Assistant – Corporate Services
Vistra (Hong Kong) Ltd	Senior Associate, Technical Services
Computershare	AVP/VP, Client Development, Governance Services
The Hong Kong Institute of Chartered Secretaries	Company Secretarial Assistant (Ref: CSA2021-05)
Conpak CPA Ltd	Company Secretarial Manager
China Gas Holdings Ltd	Company Secretarial Assistant

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





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The Hong Kong Institute of Chartered Secretaries

Corporate Governance Paper Competition and Presentation Awards 2021

The Annual Corporate Governance Paper Competition and Presentation Awards organised by The Hong Kong Institute of Chartered Secretaries aims at promoting the importance of good governance among local undergraduates and providing them with an opportunity to research, write and present their findings and opinions on the selected theme.

Theme

Is it possible to tie governance with a sense of purpose given the myriad of stakeholders' interests?

Awards

- Best Paper HK\$11,000
- Best Presentation HK\$6,000
- Audience's Favourite Team HK\$2,000

... and
more
prizes

Local undergraduates of all disciplines in Hong Kong are eligible to enrol for this competition in a team of two to four members.

Enrolment deadline	Friday 25 June 2021
Paper submission deadline	Saturday 31 July 2021
Presentation Competition (for the six finalist teams)	Saturday 9 October 2021



Enrol now!

For enquiries, please contact Lily Or: 2830 6039 or email: student@hkics.org.hk

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 1204-08, 12/F Man Yee Building, 68 Des Voeux Rd Central, Central, Hong Kong

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