CSj

August 2021

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The journal of The Hong Kong
Chartered Governance Institute
香港公司治理公會會刊

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Shareholder concerns
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特許秘書

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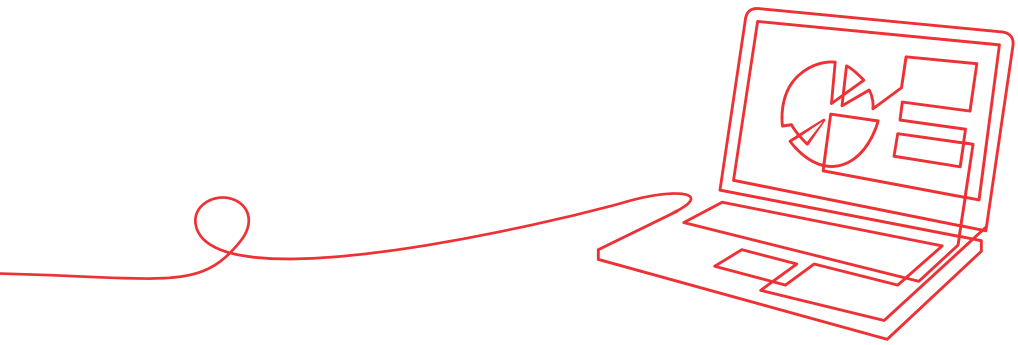

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CHARTERED SECRETARIES 特許秘書

Good governance comes with membership

About The Hong Kong Chartered Governance Institute

The Hong Kong Chartered Governance Institute (HKCGI, the Institute) – until 20 July 2021 known as The Hong Kong Institute of Chartered Secretaries – 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 the Chartered Secretary and Chartered Governance Professional in Hong Kong and the mainland of China (the Mainland). HKCGI was first established in 1949 as an association of Hong Kong members of The Chartered Governance Institute (CGI) and was incorporated in 1994. HKCGI has been CGI's China Division since 2005.

HKCGI is a founder member of Corporate Secretaries International Association Ltd (CSIA), which was established in March 2010 in Geneva, Switzerland. Relocated to Hong Kong in 2017, CSIA aims to give a global voice to corporate secretaries and governance professionals.

HKCGI has over 6,600 members, 300 graduates and 3,000 students.

Membership and studentship statistics update

As of 30 June 2021, the statistics were as follows:

Students: 3,176 **Associates**: 5,938
Graduates: 355 **Fellows**: 754

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New beginnings

I would like to devote my message this month to the significant step forward our Institute has taken with the adoption of its new name – The Hong Kong Chartered Governance Institute 香港公司治理公会 (HKCGI).

On Thursday 15 July 2021, both resolutions tabled at our hybrid General Meeting (GM) were passed. The first, relating to the adoption of our new name, received 88.7% of the votes cast. The second, relating to the adoption of new Articles of Association to reflect the new name, received 89.5% of the votes. Consequently, the new name took effect on 20 July 2021, and the new acronym has now been adopted for our website address (www.hkcgi.org.hk) and Secretariat email addresses (ask@hkcgi.org.hk).

Readers of this journal will be aware that the name change was really a question of putting an official seal on a transition already largely complete. Our Chartered Governance Qualifying Programme (CGQP) was launched in January 2020, and our dual Chartered Secretary and Chartered Governance Professional (CS/CGP) designation already extends to all members of our Institute. Nevertheless, the change of name will have no small significance for members of our Institute and profession.

Firstly, externally, there will be a clearer message for stakeholders about what we do and the values we stand for. In this regard, there is still work to do. We have embarked on a rebranding exercise and website revamp to take advantage of this opportunity to ensure that our communications going forward are aligned with the higher purpose of our Institute and profession. Secondly, internally, we are now fully aligned with our international body and its other divisions around the world, most of which have already become governance institutes. Even more importantly, the mindset of our membership has already embraced our evolution into the wider realm of governance.

We should bear in mind, of course, that 11% of members who attended our GM last month voted against the name change. For any members nervous about our profession turning away from the 130-year heritage we have as Chartered Secretaries, I would emphasise that the name change does nothing to diminish that heritage, rather it builds on it. The regulatory duties and day-to-day responsibilities of company secretaries are written into Hong Kong's regulatory and legislative regimes. That will remain unchanged. What will change going forward is the recognition of the significance of those duties and how they are complementary to the work of other governance professionals.

Before I go, I would like to thank all members who attended and voted at our GM last month, and all members who have worked on our name change project over the last four years, in particular the members of the working group set up in January 2016 whose work culminated in the proposed name now adopted.

With that I leave you to another edition of our journal. This month, *CSj* addresses the very timely theme of the way technology is changing our roles and governance itself. Nothing stands still in the world of business and the role of the company secretary, as with the roles of all governance professionals, will have to adapt to the tech-driven changes now underway. A key takeaway of this edition, however, is that while tech tools are making our work more efficient, the higher purpose of our profession has never been more important and relevant to the organisations that employ us. Suffice it to say, that higher purpose, since 20 July 2021, is now better reflected in our Institute's name.

Gillian Meller FCG FCS

新开端

我想借本期月刊谈一下公会更名为香港公司治理公会 (HKCGI)这一重要举措。

公会“现场+网络”混合式会员大会(会员大会)于2021 年 7 月 15 日（星期四）审议通过了两项特别议案。第一项是关于采用新的公会名称，获得了 88.7% 的表决票数。第二项是关于使用公会新名称的新公会章程，获得了 89.5% 的表决票数。公会新名称已于 2021 年 7 月 20 日生效，公会网址 (www.hkcgi.org.hk) 和秘书处电子邮件地址 (ask@hkcgi.org.hk) 均已使用了新缩写。

本刊读者会发现，这次更名实际上是对已经基本完成的更名事项之官宣与落实。2020 年 1 月，公会启动了公司治理专业资格课程 (CGQP)，所有公会会员都拥有了“特许秘书及公司治理师 (CS/CGP)”双重头衔。无论如何，此次更名对公会会员以及公会专业来讲都有重大意义。

首先，从外部来说，利益相关者可以更清楚地了解公会专业及其专业价值。在这方面，我们仍然有很多工作可以做。我们已经着手进行品牌重塑和网站更新，借此确保未来传达至外部的信息与公会及其专业使命保持一致。其次，从内部来看，公会目前与国际公会及其分布于全球的各分会保持了一致，大多数分会都已经更名为治理公会。更重要的是，会员们在思想上十分认同公会的专业已演化扩展为更广泛的治理专业。

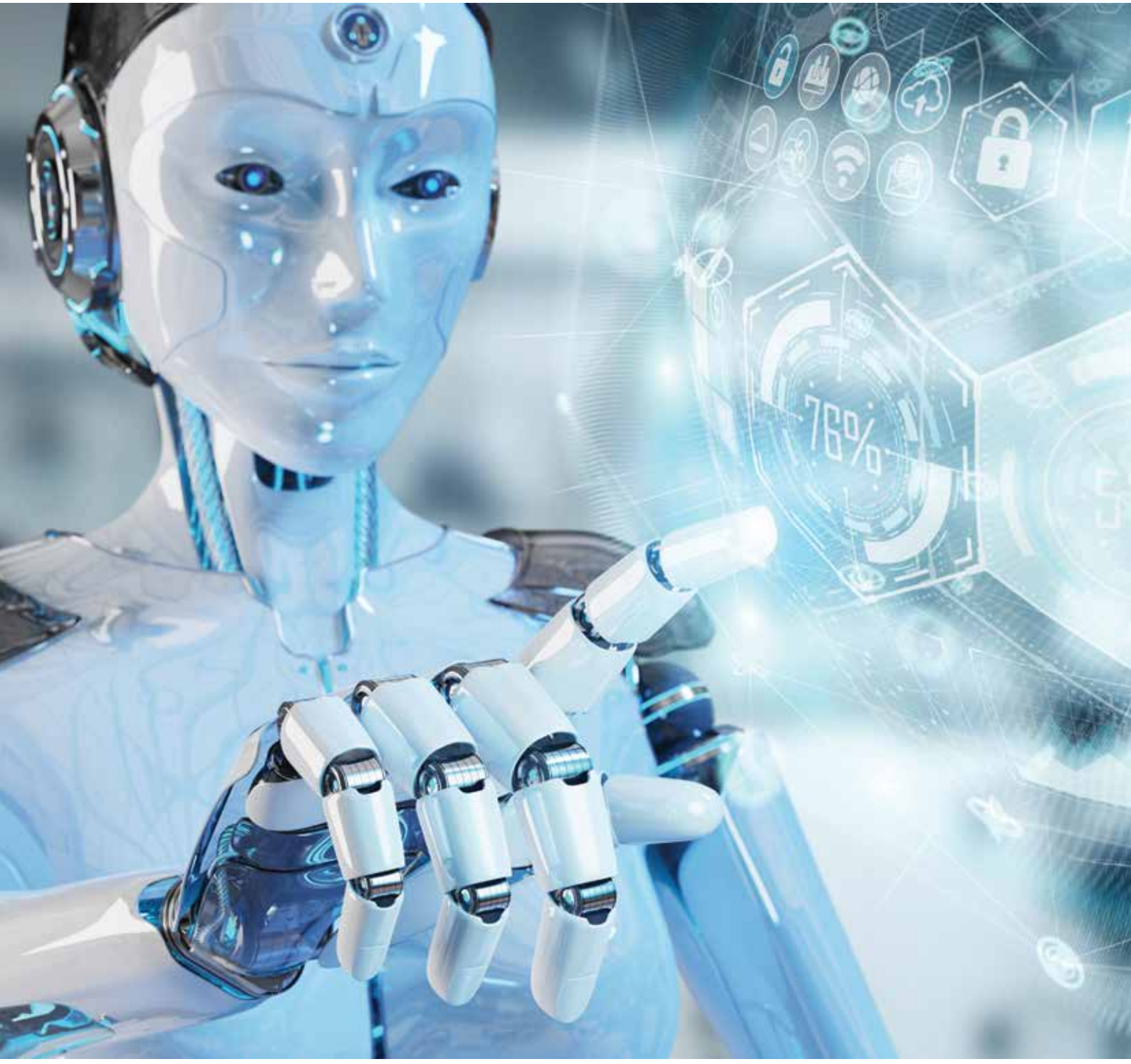
当然，我们也不能忽略的是，在上个月的会员大会上，有 11% 的会员投票反对更名。对于这些担心公会将背离已有 130 年传承的特许秘书专业的会员，我要强调的是，更名并没有削弱这种传承，更名事实上是建立在这种传承基础之上的升华。公司秘书的规管职责和日常责任都已在香港的规管和立法制度中写明。这一点将保持不变。发生改变的是大家对这些职责重要性更加认可，以及认识到如何做到与其他专业治理人员的工作相辅相成。

最后，我要特别感谢所有上个月参加会员大会并投票表决的会员，以及所有在过去四年中为更名项目付出努力的会员，特别是 2016 年 1 月成立的更名工作组的成员们，正是你们的努力最终促成了更名的最终落实。

我们将在另一期月刊中特别阐述你们所做的工作。本期月刊将关注一个当下流行的主题：技术如何改变我们的角色以及治理本身。在商界及公司秘书的心目中，变化是永恒的，像所有治理专业人士一样，公司秘书的角色亦将必须适应当下的技术驱动型变革。本期月刊想要特别强调，虽然科技工具使我们的工作更高效，但我们专业的使命对于雇佣我们的组织来说前所未有的重要和相关。可以说，自 2021 年 7 月 20 日起，我们的公会新名称更好地彰显了这一崇高使命。

马琳 FCG FCS

Automated governance?



Technology is now more central to the strategy and operation of organisations than ever before. *CSj* looks at what impact this is having on governance practices and on the roles of Chartered Secretaries and Chartered Governance Professionals (CS/CGPs).

If there were any doubts about whether companies needed to speed up their adoption of new technology, then Covid-19 has given a clear answer. Many of the big tech companies were already, of course, taking full advantage of the opportunities presented by new technologies, such as artificial intelligence (AI), blockchain, data analytics and the internet of things, but Covid-19 has resulted in a dramatic levelling up of the use of technology across all companies and industries.

'A new tech-heavy and tech-savvy organisation, consumer and governance model is emerging', says Dr Jag Kundi, an Adjunct Professor at City University of Hong Kong, who specialises in governance, fintech and big data. 'Moreover, a shift back to the analogue way of doing things prior to the pandemic is not happening.' He cites the widespread retention of some form of remote working even as lockdowns are being lifted or reduced as a good example of this.

A study by tech giant Microsoft – the 2021 Work Trend Index – found that 65% of Hong Kong business leaders plan to redesign offices in such a way as to accommodate both in-office and remote-working arrangements. Furthermore, close to two out of three full-time employees interviewed from more than 1,000 companies said they want remote work options to remain after the pandemic ends.

'The reason why companies are not rolling back the tech innovations introduced during the pandemic is not hard to see', says Lennard Yong, Group CEO, Tricor Group. Companies pushed further along the digitalisation path by Covid-19 have discovered the benefits this has had for their strategy and operating efficiency.

'There is a very high risk today to not being digitalised,' Mr Yong says. 'Companies that focus on the risks involved should also consider the risks of not being digitalised. Have they thought about their ability to run their next annual general meeting (AGM), for example, if their local health

Highlights

- a new tech-heavy and tech-savvy organisation, consumer and governance model is emerging and companies cannot afford to be blindsided by this trend
- setting up technology-focused subcommittees of the board will help speed up and focus the boards' adaptation to tech challenges
- compliance is moving into the digital space via RegTech, and, as it does so, real-time, on-demand reporting will increasingly become the norm

> “It is both an exciting, but equally a challenging time, to be a governance professional ... The role will move away from the heavy compliance basis it has today, to a more strategic, value-adding role.”

authority announces a total ban on gatherings and puts travel bans in place?' He predicts that the next few years will continue to see a greater uptake of new technology platforms for AGMs and business communication.

Technology and the boardroom

Navigating the current technology landscape requires having your board in the driving seat adapting to the challenges that this brings. When the board is up to speed with technological changes, better direction from the top cascades down to the different business units, points out Christine Chung FCG FCS, Company Secretary, AIA Company Ltd.

'If board members think the company needs to invest in technology, they can set technology as a strategic priority and steer management in the right direction to drive technology implementation across the business,' Ms Chung says. This has obvious implications for the board's composition and skills matrix. She points out that, while directors do not necessarily need to be technology experts, they do need to have a much deeper understanding of technological trends and their implications for the business – not only to mitigate the potential risks but also to direct the business to capture the opportunities that these trends will bring.

Philip Miller FCG FCS, Institute Education Committee member, Technical Consultation Panel (TCP) member, TCP-Technology Interest Group member, Deputy Corporation Secretary and Deputy Regional Company Secretary, Asia-Pacific, The Hongkong and Shanghai Banking Corporation Ltd, emphasises the role governance professionals can play in ensuring that directors individually, or the board collectively, receives briefings and information to develop their understanding of leading areas of technology. 'A board should have a clear line of sight of developments in the area of technology, and who are the key members of management leading these technological initiatives and responsibilities,' he says.

As with any major change to the status quo, however, governance professionals should not assume that all directors will be willing passengers in this journey. 'Technology is about change, it's not about maintaining the status quo, but rather about being adaptable and flexible,' Dr Kundi points out, and in this context the age and background of board members are important factors.

The 2018 Hong Kong Spencer Stuart Board Index found that the average age for board members in the Hang Seng Index was 61 years old, and the average age of independent non-executive directors (INEDs) was 65. 'Coming from an older generation would likely impact directors' awareness of the commercial impacts of technology,' Dr Kundi says.

When you add to this other factors such as infrequent board meetings (boards in Hong Kong typically meet on average three to four times a year) and the fact that not all board members will be present at every meeting, it quickly becomes apparent that boards are often not optimally positioned to respond to fast-moving tech developments. Dr Kundi believes that setting up a technology-focused subcommittee of the board will help speed up and focus boards' adaptation to tech challenges.

'Some of the smarter boards are looking at setting up a fintech committee,' he says. 'We already have environmental, social and governance (ESG) committees and I see no reason why there can't be a subcommittee for some of these new technological areas that can meet as and when needed. A smaller group

of directors will be able to deal with challenges more immediately.'

Embracing tech-driven change

In addition to helping directors remain open to technological change, governance professionals themselves need to adopt this mindset, both in terms of how technology will change the organisations they work for and the impact it will have on their own roles.

Some practitioners may argue that technology is not within their jurisdiction – particularly when their organisation has officers dedicated to overseeing the tech agenda such as chief technology officers (CTOs). Mr Yong emphasises, however, that directors and managers will appreciate company secretaries 'stepping up' to help the board or the CEO by pushing for technological change in their line of work, even where the organisation has a CTO. 'A company secretary can, for example, push for the use of a technology platform to improve the efficiency of board meetings so that directors don't have to waste time shuffling paper. The CTO in any organisation will have many hundreds of technology projects to consider and the last thing on their minds will be how to digitalise the board meeting,' he says.

Once again, however, addressing resistance to tech-driven change is an issue that has to be grappled with. Within the profession this may be partly motivated by a fear that technology will end up automating governance entirely. This prospect may seem to be out of science fiction, but there have already been experiments with creating self-governing organisations called decentralised autonomous organisations.

'I think the most important thing is to view technology as a great opportunity, it shouldn't be seen as a threat,' Mr Miller says. 'From a governance professional perspective, it can help increase the efficiencies of the administrative areas of the work. There are areas in which greater automation might be introduced, but organisations will always need experienced professional governance advisers dedicated to supporting the board – that's not going to be replaced by technology, it will only be made more efficient and effective.'

Ms Chung makes a similar point – having the right mindset and proactive attitude to technology will be essential for the governance professionals of the future, she says. Tech tools have already become embedded in many governance processes, she adds. 'Company secretaries need to understand tech trends, like the use of AI, and how they will impact aspects of their work. Regulators are using AI to spot potential red flags in listed company disclosures. Perhaps it will be a new norm for company secretaries and governance

Can governance be automated?

There has been a lot in the media in recent years about the vulnerability of different jobs to automation. The reliability of these predictions have been much in dispute, but the onward march of automation continues apace. Dr Kundi points out that partial automation is already at work in many different professions. In the audit sector, for example, the role of a 'data scientist' is now more common where data science is used to drive audit processes. 'The big message is – don't be afraid of technology, it is an enabler, nothing more,' he says.

Ms Chung agrees. 'We need of course to understand how our roles will evolve over time, but company secretaries are fundamental to good corporate governance,' says Ms Chung. 'We are the trusted advisers of the board and our good judgement is not something that can be replaced by technology. Provided that we continue to enhance our knowledge and skill sets, the value that we bring to the board will continue.'

Dr Kundi adds that, ultimately, there will always be a need for human oversight of AI to ensure that the right decisions are made, not only from the perspective of logic, but also from that of ethics. What is right or wrong from a logical point of view may be very different to what is right or wrong from a moral point of view. A classic example of this is the dilemma of how to programme autonomous vehicles (AVs) to minimise the risks of accidents. How should AVs be programmed in situations where the vehicle needs to swerve either to the left and hit a 90-year-old woman, or swerve to the right and hit a two-year-old child?

This is a moral, not a logical, question. So while AI, machine learning and data analytics are exactly the tools you need to crunch data, spot patterns and better inform good decisions, you still need an additional level of governance on top of this to ensure that the right ethical decisions are made.

> “organisations will always need experienced professional advisers dedicated to supporting the board – that role is not going to be replaced by technology, it will only be made more efficient and effective”

professionals to use AI to analyse regulations and take compliance to the next level,' she says.

How can practitioners prepare?

How should governance professionals prepare themselves for the changes outlined above? Mr Yong points out that technology is already transforming the work of company secretaries in three fundamental areas – document storage, board meeting platforms and hybrid AGMs. He points out that practitioners have clear jurisdiction over these areas as they have always been core functions of the company secretary's role.

Moving to digital board meeting platforms and to virtual documentation, not merely in PDF form but as data that can be used for analytics, has undisputed advantages for governance professionals. This not only helps where directors are geographically dispersed, but it also allows practitioners to instantly reply to queries from management or the board regarding board discussions and resolutions of the past. Given that email is prone to security concerns, Mr Yong also recommends that companies adopt new platforms for business communications.

Another very clear message for governance professionals is the need for practitioners to stay up to date with tech changes. Dr Kundi points out that compliance is moving into the digital space via regulatory technology (RegTech), and, as it does so, real-time, on-demand reporting will increasingly become the norm. A key part of the work of anyone involved in corporate disclosure is therefore likely to involve the use of real-time data analytics based on dashboards.

This will lead to much better transparency for boards but also for companies' stakeholders. Currently, for example, most ESG reporting is based on historical data, but the technology already exists to capture and measure ESG data automatically. Sensors can collect, in real time, data about a company's pollution levels, and this can be uploaded to the cloud and analysed on a dashboard independently of the company. In an environment where regulators can publicise this data, 'naming and shaming' companies that fall short of acceptable standards, companies will need to adapt.

From a risk management perspective, then, companies cannot afford to be blindsided by the tech developments described above. Dr Kundi urges governance professionals to widen their horizons. The old model of 'a job for life' is now outdated and practitioners who can bring a wider, cross-sector experience to a job, particularly if this includes an understanding of the risks and opportunities flowing from tech-driven change, will be much in demand.

'It is both an exciting, but equally a challenging time, to be a governance professional,' Dr Kundi says. 'Overall, the work will become more important and the use of technology will help this shift. The role will move away from the heavy compliance basis it has today, to a more strategic, value-adding role. Governance professionals will be looking more at issues such as how the company manages its relationships with other stakeholders, and at the overall strategy and culture of the organisation. I think they're going to be coming away from the backseat of compliance and internal controls to the front seat of strategy,' Dr Kundi says.

Poo Yee Kai
Journalist

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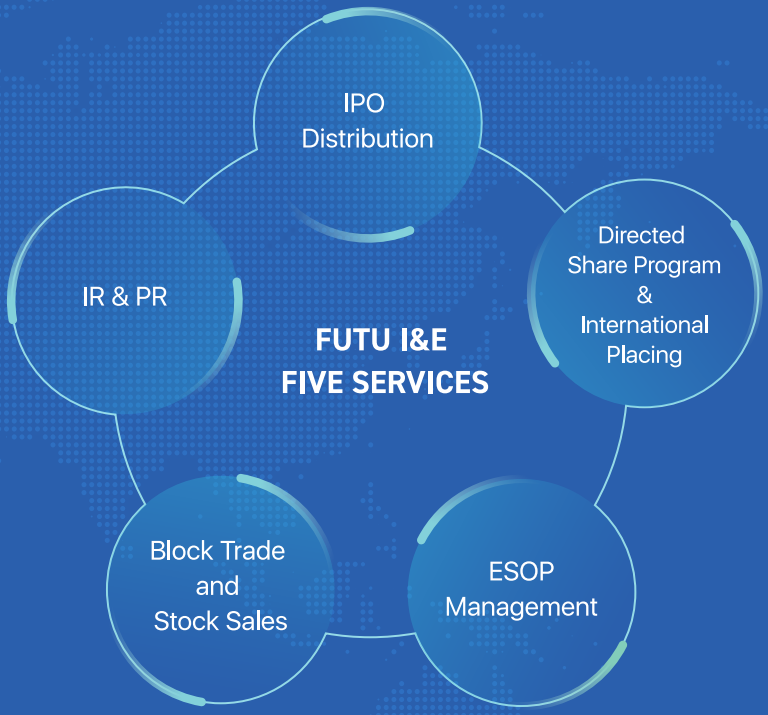

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Implementing a Privacy Management Programme

Ada Chung FCG FCS, Privacy Commissioner for Personal Data, Office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD), advocates for the implementation a Privacy Management Programme as a vital part of a company's commitment to good corporate governance and to gain customers' trust.

With the exponential growth of digitalisation in the past decade, the collection and use of personal data has become of unprecedented importance for most businesses, especially those who provide online services and products. As Jack Ma, co-founder of Alibaba Group, puts it, 'We collect data from selling things. Data is the most valuable asset of Alibaba (我们是通过卖东西收集数据，数据是阿里最值钱的财富)'.

Other than requesting greater transparency, customers nowadays expect companies to clearly inform them of how their personal data, once collected, will be used and for what purpose. It is self-evident that the importance and priority that a company places on the handling of personal data privacy directly affects the confidence and trust that customers have in the company and, in turn, the competitive edge of the company.

Against this background, my office, PCPD, advocates that companies should develop their own Privacy Management Programme (PMP) and appoint a Data Protection Officer in order to institutionalise a proper system for the responsible use of personal data that is in compliance with the Personal Data (Privacy) Ordinance (the Ordinance), Cap 486 of the Laws of Hong Kong. Starting from the boardroom, companies should embrace personal data protection as part of their corporate policies and culture, and apply it as a business imperative throughout the company. A PMP can help companies gain trust from customers and other stakeholders. With trust garnered, companies will be rewarded with loyalty from their customers and business partners, which is all the more important in a fast-changing business environment.

Directors have a unique and pivotal role in implementing a PMP as an essential part of their company's commitment to good corporate governance. Implementing a PMP involves fostering a culture of respecting and protecting personal data privacy, which cannot be made possible without the guidance and leadership of the directors. Indeed, in the Guide for Independent Non-Executive Directors, newly published by the Hong Kong Institute of Directors, companies are encouraged to implement a PMP as one of the drivers for the adoption of environmental, social and governance (ESG) management.

Benefits of implementing a PMP

Characterised by the accountability principle, a PMP is a management framework for the responsible collection, holding, processing and use of personal data. With a PMP in place, companies can:

- minimise the risks of incidents in relation to data security
- handle privacy breaches effectively with established procedures and protocol to minimise the damage arising from those breaches
- manage collected personal data effectively
- ensure compliance with the Ordinance
- demonstrate the company's commitment to good corporate governance and building trust with customers and relevant stakeholders, and
- enhance corporate reputation, competitive advantage and potential business opportunities.

Highlights

- the importance and priority that a company places on the handling of personal data privacy directly affects the confidence and trust that customers have in the company
- starting from the boardroom, companies should embrace personal data protection as part of their corporate policies and culture, and apply it as a business imperative throughout the company
- directors are effectively the stewards of promoting the success and good governance of their companies, and this includes ensuring data accountability

> “with the ever-rising expectation of customers and stakeholders regarding the responsible use of personal data by companies, taking a ‘box ticking’ attitude to compliance is not sufficient”

What are the components of a PMP?

A comprehensive PMP requires companies to adopt a top-down approach, strengthen staff awareness of data privacy protection, and devise policies and procedures in relation to the collection, holding, processing and use of personal data so as to ensure compliance with the Ordinance, including the Data Protection Principles specified in the Ordinance.

A PMP should consist of the following three sets of components at the minimum:

1. Organisational commitment
    - buy-in from the top
    - appointment of a Data Protection Officer/establishment of a Data Protection Office, and
    - establishment of a reporting mechanism.
2. Programme controls
    - personal data inventory with information on the kinds of personal data the company holds and how the personal data is processed
    - internal policies on personal data handling
    - risk assessment tools
    - training, education and promotion
    - handling of data breach incidents
    - data processor management, and
    - communication with employees, customers and stakeholders.
3. Ongoing assessment and revision
    - development of an oversight and review plan, and
    - assessment and revision of programme controls.

Establishing organisational commitment is vital

‘Organisational commitment’, as a key component of a PMP, is of particular relevance and importance to directors. Directors are effectively the stewards of promoting the success and good governance of their companies, and this includes ensuring data accountability. This key component of a PMP is explained in more detail below.

Buy-in from the top

To enhance accountability, a top-down approach is necessary for companies to demonstrate their commitment to fostering a respectful culture for privacy and a determination to protect personal data privacy. Under the stewardship of directors, the PCPD recommends that the top management should:

- convey to all staff their support to cultivate a respectful culture for personal data privacy and a commitment to the implementation of the PMP through staff meetings or internal circulars
- appoint a Data Protection Officer
- endorse the programme controls and the whole PMP
- allocate adequate resources, including, but not limited to, finance and manpower, to implement the PMP
- actively participate in the assessment and review of the PMP, and
- report the progress of the implementation of the programme to the board of directors regularly.

It is recommended that directors work with management to ensure that internal policies and procedures on the protection of personal data are followed.

Appointment of a Data Protection Officer/establishment of a Data Protection Office

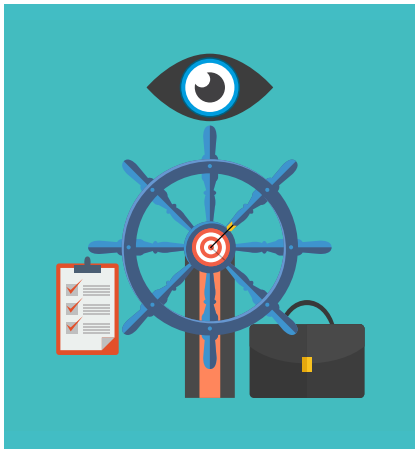
The PCPD recommends that companies appoint a designated officer as the Data Protection Officer to oversee the company’s compliance with the Ordinance and implementation of the PMP. For a large corporation, the Data Protection Officer should be a senior executive, whereas for a small business this can be the owner or manager.

The Data Protection Officer is responsible for structuring, designing and managing the PMP, which involves all relevant procedures, training, monitoring or auditing, documenting, evaluating and other follow-up actions in relation to the collection, holding, processing and use of personal data. In large corporations, understandably more personal data is collected and used by various departments and business units. It is therefore recommended that departmental coordinators be appointed to support the Data Protection Officer. Resources should be channelled to train and develop the Data Protection Officer as a professional in the protection of personal data privacy.

Establishment of a reporting mechanism

Reporting mechanisms are indispensable for oversight by the board. In this regard, companies should establish internal reporting mechanisms, stating clearly the structure and procedures for reporting the overall compliance situation, the problems encountered, the complaints in relation to personal data privacy received and incidents of possible data breaches. Other than regular reports, the management should also provide exceptional reports on major risks and anomalies to the board of directors.

An effective reporting mechanism would be imperative at times when escalation of personal data issues is needed, such as when a major data breach takes place, or a large number of complaints relating to data privacy are received. The mechanism would also help determine who should be involved, their respective responsibilities and where the ultimate decisions should be made. These personnel could be representatives from technical, operational, legal and corporate communications streams. To successfully implement the reporting mechanism as one of the key attributes of the PMP, how and when to escalate should be clearly defined and explained to employees. Companies should also document all of their reporting procedures.



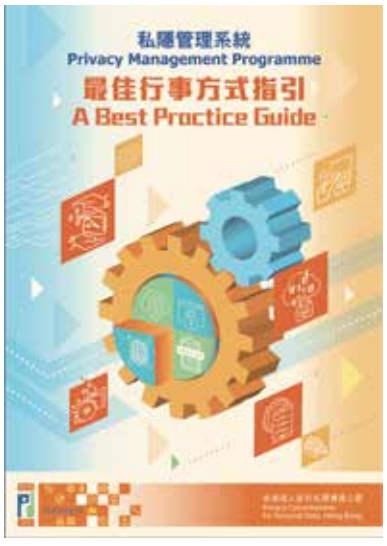
> “directors have a unique and pivotal role in implementing a PMP as an essential part of their company’s commitment to good corporate governance”

Conclusion

With the ever-rising expectation of customers and stakeholders regarding the responsible use of personal data by companies, taking a ‘box ticking’ attitude to compliance is not sufficient. The protection of personal data privacy should no longer be seen and merely managed as a compliance issue. After all, doing the least to comply with the legal requirements is not the cure, nor is it the global trend anymore. Instead, companies should also observe good data ethics and should consider the subject from a broader perspective, bringing the concept of customer centricity into the business equation. The commitment of directors and management is paramount in building and maintaining a PMP so as to ensure that privacy is built in by design in initiatives, programmes or services, and data protection is practised throughout the company. Such a proactive approach would lead to a win-win outcome for companies, their customers as well as other stakeholders.

Ada Chung FCG FCS
Privacy Commissioner for Personal Data, PCPD

> *For examples and practical guidance on how to devise and implement a comprehensive PMP, please refer to the Best Practice Guide on Privacy Management Programme issued by the PCPD.*



Governance concerns

A minority shareholder perspective

Minority shareholders have consistent concerns relating to governance best practice deviations in Hong Kong. Philip Foo CFA CA, Vice-President, APAC Research and Engagement, Glass Lewis, discusses some of the common triggers for concern and how to reduce the likelihood of protest votes at annual general meetings.

Institutional investors are typically reliant on companies adhering to sound governance principles so that boards act in their interests. Voting at annual general meetings (AGMs) and other meetings of shareholders offer a chance for investors to support proposals that are consistent with these governance principles, and to protest and oppose those proposals that are not.

As many institutional investors will not individually hold a large enough shareholding, common agreements about best practice governance principles assist in the disparate minority shareholders having common concerns that can be a loud voice in aggregate. Regulations and best practice guides from stock exchanges and regulators can help form those commonly agreed best practice principles such as provided by Main Board Listing Rules Appendix 14 Corporate Governance Code (the Code). Well-read proxy advice from global proxy advisers read by many can also assist in reaching common agreement.

When considering proposals across global equity markets, we find that the common deviations from best practice governance principles differ by jurisdiction. With respect to Hong Kong, we from time to time observe issues under one of four categories:

1. board independence and director conflicts
2. board, subcommittee and/or director performance
3. unclear purpose of equity grants to non-employees, such as contractors, customers or suppliers, and
4. failure to disclose any limitations of price and discounts when seeking general capital-raising mandates.

We encounter many other bespoke issues worthy of shareholder protest when considering Hong Kong AGMs, however we find the above four categories of issues account for a majority of our concerns. I discuss these categories of issues, which often lead to our recommending against the re-election of directors or against the general mandate, in more depth below.

1. Board independence and director conflicts

The Hong Kong Listing Rules require that issuers must appoint independent non-executive directors (INEDs) representing at least one-third of the board. This threshold is set low enough so that up to two-thirds of the board can be openly subject to competition between their duties to the company and other interests.

Notwithstanding that we find this threshold low, we continue to encounter boards where the number of directors we believe to be independent is below the one-third limit.

We protest directors where the independence of at least a third of the directors is not compelling, irrespective of whether the board has designated the director as an INED. Typical circumstances for this difference in independence classification include:

1. the director is a recent former executive of the company
2. he/she has a family tie with an interested party, and/or
3. there have been business transactions between the company and the director, or associates of the director.

The third circumstance in this list is the most prominent reason for doubting the independence of an INED in Hong Kong.

Highlights

- companies should engage with minority shareholders and proxy advisers
- Glass Lewis will oppose directors up for election where the independence of at least a third of the directors is not compelling
- it will also oppose directors who hold excessive external commitments, particularly on other listed boards

We may find ourselves in disagreement with the board classification of a director's independence where the board believes that the risk to independence has been adequately mitigated due to the passage of time between a former relationship with the company, or that the size of related-party business transactions are not material or were in the normal course of business.

We also oppose INEDs performing material professional services for the company, or a director related to someone providing such services, and we have found that some boards do not appropriately consider these matters as giving rise to conflicts of interest.

Boards should consider the thresholds of their shareholders and their proxy advisers for these matters when designating directors as INEDs, rather than relying on a subjective assessment. The INEDs are the only unconflicted stewards of minority shareholder interests and ultimately it is the shareholders, perception that will determine protest votes come AGM time.

A related concern under the topic of board independence is the presence of a dominant Executive Chair/CEO. Under Code Provision A.2.1 of the Code, the roles of the chairman and chief executive should be separate and should not be performed by the same individual. The board is ultimately charged with holding the executive accountable, a difficult duty when the leader of both the board and the executive is the same individual.

For boards that insist on providing one individual with both these roles, we have concerns that the dominance of this individual will undermine a freethinking board's ability to appropriately hold the CEO and other executives accountable. We require that an INED be designated and empowered to offset some of this concentration of power, with a position such as vice-chair or lead independent director. In cases where a single individual holds the Executive Chair and CEO role, and no independent element among the board has been empowered to unite the board when the Executive Chair/CEO is conflicted, we will recommend against the nomination committee.

We encourage companies to consider this negative view against dominant individuals. In practice, the dominance of such individuals will prevent the board from forming mitigating controls against them. Shareholders can and should be expected to be loud on this when it comes to supporting director elections at the AGM.

2. Board, subcommittee and/or director performance

Boards of Hong Kong listed companies should be expected to comprise a group of people who are dedicated to the companies' interests. However, we can come across two issues that cause us to doubt whether this is the case. These are: director absenteeism and subcommittees that rarely meet.

We will often recommend voting against directors who fail to attend 75% of board and committee meetings. Companies should take care to spell out strong justification for directors who have missed a number of meetings due to reasonable causes outside their control, for example due to hospitalisation or bereavement. Where no such disclosure is made, shareholders are left to assume negligence of their director duties.

On a similar note, we oppose directors who hold excessive external commitments, particularly on other listed boards. We wish directors to retain capacity to increase their attention to a given company in times of crisis and often find that some directors stretch themselves across too many boards to do this effectively. While sitting on multiple boards may be in the directors' individual interest, we do not find it is in the interest of a dedicated board.

Another issue is where key subcommittees, such as the audit or risk committees, meet infrequently. These committees are ineffective if they are inactive, and infrequent subcommittee meetings is a question of performance. If an audit committee meets less than four times per year, we will typically recommend voting against the chair or committee chair.

While we can recommend protesting against directors on more complicated issues of performance such as legal disputes, scandals, or misconduct, the particular issues of performance we have chosen to discuss above are both simple and glaring. Companies should be self-regulating these issues or take the time to justify why these issues are not a matter of performance.

3. Equity grants to non-employees

Moving away from issues of the board, we often find ourselves taking issue with equity grant proposals at AGMs. Shareholders typically expect the purpose of equity grants to be one of two things:

1. a means to incentivise employees with 'skin in the game', and/or

2. a means to raise capital.

> “when issuing equity, companies need to consider the dilutive costs to shareholders as a material issue”

However, we find Hong Kong companies often grant equity to customers or suppliers and do not provide a compelling rationale as to why. Without justification, we are left concerned that the company is treating shareholder dilution as cheap financing, and is in effect 'printing shares' when the company otherwise has the means to use cash.

Ultimately, the concern is one of shareholder abuse. When issuing equity, companies need to consider the dilutive costs to shareholders as a material issue. By and large, we recommend against equity grants to customers or suppliers unless comprehensive justification is provided.

4. General capital-raising mandates

The final common issue discussed in this article is with respect to general capital-raising mandates. Shareholder approval is needed for certain equity capital raisings under the Hong Kong Listing Rules. This required approval is an important protection for shareholders who are at risk of having their holdings diluted via new share issues.

General capital-raising mandates, if approved by shareholders, allow boards scope to raise equity capital within certain limits. However, we often find that these general mandates do not specify the boundaries around prices or discounts at which shares could be issued. Price and discount are obviously a key detail in whether the capital raising is worth shareholder dilution. Highly discounted placements can disfavour shareholders that are not invited to participate, resulting in inequitable treatment.

Unless companies disclose reasonable maximum discounts within general capital-raising mandates, we will recommend shareholders oppose approval of such mandates. Companies must consider providing shareholders with this disclosure when asking for approval and must consider treating their shareholders equitably when it comes to matters of shareholder dilution.

Summary

The above issues are the common triggers for shareholder concern resulting in protest votes at AGMs. At a very high level, many of these concerns simply represent where minority shareholders rely on the installation and facilitation of boards that protect their interests with dedication, while the concerns around equity issuances represent a plea from shareholders to boards to consider the cost of shareholder dilution.

I encourage Hong Kong boards to engage with their individual shareholders, and any proxy advisers who cover their shareholder meetings on these common issues. By only engaging with significant or controlling shareholders, boards are neglecting to hear the interests of the often quiet majority of shareholders and may find themselves surprised by a protest vote at their AGM.

Philip Foo CFA CA, Vice-President, APAC Research and Engagement
Glass Lewis

Glass Lewis is a provider of global governance services and proxy advice.

Cross-border insolvency

What you should know as a creditor

Wynne Mok, Partner, Ruby Chik, Associate, Jason Cheng, Associate, and Kathleen Poon, Associate, Slaughter and May, consider some of the main issues and implications involved in cross-border insolvency from the point of view of a creditor.

With the global economic downturn, businesses may begin to show signs of insolvency. Indeed, we have seen an increasing number of applications for compulsory winding-up processed by the Hong Kong courts.

If you are a creditor, you will naturally be concerned with making the right move when your debtor defaults in repaying the loan. Situations can be tricky if the debtor is an offshore company. As demonstrated in several recent cases regarding companies listed on the Stock Exchange of Hong Kong, but incorporated in other jurisdictions and with assets and key businesses in the Mainland, creditors will have to ponder a number of important issues when dealing with companies with similar tiered structures. This article discusses these issues and considerations.

Winding up a company

If your debtor has defaulted in making payment, you will start to contemplate your options, one of which might be to wind up the company. However, there are issues you should weigh up before embarking on such a course of action.

Winding up in Hong Kong

Is the debt disputed on substantial grounds?

In this case, you would rely on the debtor's inability to pay debts to wind up the debtor company, in accordance with Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32). This is usually established by the fact that the debtor has failed to settle the debt within three weeks after it had been served with a statutory demand.

Before issuing a winding-up petition, you should, first and foremost, seek legal advice as to whether the debtor will be able to raise a substantive defence. Creditors normally enter into correspondence with debtors before issuing a winding-up petition, through which creditors can draw out any arguments that the debtors may have in respect of the debt. If the debtor advances any credible arguments, you should think twice before commencing or even threatening to commence winding-up proceedings. A winding-up petition should not be used as a tool to exert pressure on the debtor to pay, especially if there is no genuine concern as to the company's solvency. Otherwise, the debtor may apply for an injunction to bar you from issuing a winding-up petition on the grounds of abuse of process. As demonstrated in *Hung Yip (HK) Engineering Co Ltd v Kinli Civil Engineering Ltd* [2021] HKCFI 153, you may be ordered to pay the debtor's costs on an indemnity basis.

The three core requirements associated with the winding-up of foreign companies

You should also assess whether there are good reasons for the Hong Kong court to exercise its jurisdiction to wind up the debtor company, while bearing in mind that the place of incorporation is generally deemed to be the most appropriate forum to wind up a company by the courts. In this regard, there are three 'core requirements' to satisfy:

1. the foreign company must have a sufficient connection with Hong Kong

2. there must be a reasonable possibility that the winding-up order would benefit those applying for it, and

Highlights

- with the increasing number of applications for compulsory winding-up in the Hong Kong courts, creditors need to think carefully about their options, particularly when the debtor is an offshore company
- before embarking on a winding-up process, specific issues, such as the winding-up venue, need to be weighed up, while other options, such as corporate restructuring or rescue, should also be considered
- The HKSAR Government and the Mainland's Supreme People's Court have recently entered into a cooperative arrangement on insolvency proceedings, while a bill is due to be presented to the Hong Kong Legislative Council in relation to a corporate rescue procedure with a statutory moratorium

3. the court must be able to exercise jurisdiction over one or more persons in the distribution of the company's assets.

It should be relatively straightforward to satisfy the first and third core requirements if the company is listed, or has substantial assets and businesses in Hong Kong, and there is more than one creditor who is subject to the jurisdiction of the Hong Kong court.

As for the second core requirement, the petitioner has to establish that there is a real benefit in granting the winding-up order.

The case *Re China Huiyuan Juice Group Ltd* [2020] HKCFI 2940 *(China Huiyuan)* demonstrates the complication with meeting the second core requirement in the case of an offshore company. China Huiyuan, which was incorporated in the Cayman Islands and listed in Hong Kong, had its core businesses and assets in the Mainland through intermediate holding companies incorporated in the British Virgin Islands (BVI) and operating subsidiaries in the Mainland. A creditor attempted to wind up this listed company in Hong Kong. As it appeared that the laws of the Mainland (the legal position of which has recently changed – see section entitled 'Mainland–Hong Kong arrangement on mutual recognition of and assistance to insolvency proceedings' below), the Cayman Islands and the BVI did not recognise the appointment of liquidators by the Hong Kong court where Hong Kong was not the place of incorporation, even if the Hong Kong court were to make a winding-up order, the Hong Kong–appointed liquidators would not be able to take control of the subsidiaries and ultimately reach the assets in the Mainland. The second core requirement was therefore not met.

The creditor in *China Huiyuan* also sought to argue that the listed status of China Huiyuan constituted a real benefit. In rejecting this argument, Justice Harris observed that the listed status was unlikely to have any residual value once the company was wound up. Justice Harris reminded future petitioners that if they wish to rely on a listed status to meet the second core requirement, they would have to adduce evidence to establish a real prospect that the realised listing of the debtor would produce a meaningful financial return to creditors.

As shown above, if your debtor does not have strong connections with Hong Kong, you should seek advice early on before choosing the venue to issue a winding-up petition, bearing in mind that the satisfaction of the three core requirements is not a matter of course.

What to do if the company seeks adjournment of the winding-up

Unlike Hong Kong, many common law jurisdictions allow 'soft-touch' provisional liquidation. Soft-touch provisional liquidators (PLs) are appointed to facilitate corporate restructuring while the board maintains the day-to-day management of the company. The debtor, if incorporated in one of these jurisdictions, may appoint soft-touch PLs in its place of incorporation and seek to adjourn the insolvency proceedings in Hong Kong.

The court, as illustrated in *Li Yiqing v Lamtex Holdings Ltd* [2021] HKCFI 622 *(Lamtex)*, would approach the question of whether to adjourn winding-up proceedings in Hong Kong in favour of restructuring as follows:

- Generally, the place of incorporation should be the primary insolvency jurisdiction.
- However, if the company's centre of main interest (COMI) is elsewhere, the court would look at:
    - the extent to which giving primacy to the place of incorporation is artificial by taking into account the strength of connection of the company with its COMI versus the place of incorporation
    - whether the group structure requires the place of incorporation to be the primary jurisdiction to effectively liquidate or restructure the group – the appointment of liquidators in the company's COMI may not bring about an effective liquidation of the company if the company has assets in jurisdictions which do not recognise liquidators appointed by the court of a place other than the place of incorporation
    - the views of creditors, and
    - the feasibility of the restructuring plan.

As in *Lamtex*, the court will not hesitate to wind up the debtor company if Hong Kong is the COMI, the creditors support the winding-up, and the restructuring proposal lacks specifics and is merely an attempt to derail the liquidation in Hong Kong. Further, even if the court initially adjourned the insolvency proceedings upon satisfaction of a viable restructuring

> “a winding-up petition should not be used as a tool to exert pressure on the debtor to pay, especially if there is no genuine concern as to the company’s solvency”

plan, as in *Re Ping An Securities Group (Holdings)* Ltd [2021] HKCFI 1394, a winding-up order against the debtor may still be made in the end if the progress of the restructuring is unsatisfactory.

Winding up in the place of incorporation and seeking recognition and assistance in Hong Kong

If you anticipate difficulties with satisfying one or more of the three core requirements discussed above, a safer course could be to wind up in the debtor company's place of incorporation. Liquidators appointed there may then seek recognition and assistance of foreign insolvency proceedings from the Hong Kong courts to avail themselves of the powers under Hong Kong law, which include the power to take possession and control of the company's assets and to investigate its affairs.

Corporate restructuring and rescue

Even if you have every right to wind up the debtor, you may still wish to explore, with the debtor, the possibility of a corporate restructuring or rescue over simple liquidation. This is especially when the debtor has a profit-making business or a business with great potential.

Scheme of arrangement

There is at present no dedicated statutory corporate rescue mechanism in Hong Kong. Currently, the only way to effect a binding debt restructuring in Hong Kong is by way of a scheme of arrangement under the Companies Ordinance (Cap 622). A binding compromise on a company's debts enables the debtor company to resume operations as a going concern. If successful, a scheme may yield better returns to unsecured creditors than an immediate liquidation of the debtor. A foreign company with sufficient Hong Kong connections may also enter into such a scheme.

The company would first formulate a proposal seeking to compromise on the company's debts. It should then seek the court's sanction to convene meetings of creditors and members for approval of the scheme. The company needs to secure approval of at least 50% in number, representing at least 75% in value or voting rights of each class of the creditors or members present and voting. Even if the proposal is approved by the creditors and members, it should eventually be sanctioned by the court.

As a creditor, you should note the following:

- The scheme process may require substantial time and resources to bring to fruition.
- There are uncertainties in the process. Even if the scheme is approved by the requisite number of creditors and members, the court may refuse to sanction the scheme if the conduct of meetings lacks procedural fairness, or if the scheme offends public policy or is ultra vires. Dissenting creditors will only be bound when the scheme is eventually sanctioned by the court.
- The commencement of the scheme of arrangement process does not trigger a moratorium on civil proceedings. (In contrast, where a PL is appointed or a winding-up order is made, no action can be continued or commenced against the company except with the leave of the court.) Therefore, before the scheme is eventually sanctioned by the court, a dissenting creditor, even if holding an insignificant portion of the company's debt, can bring a claim or wind up the company.

Mainland–Hong Kong arrangement on mutual recognition of and assistance to insolvency proceedings

Many businesses in Hong Kong have close ties with the Mainland. Having a legal framework for reciprocal cooperation in insolvency between Hong Kong and the Mainland has become increasingly important.

On 14 May 2021, The HKSAR Government and the Mainland's Supreme People's Court entered into an arrangement on mutual recognition of and assistance to insolvency proceedings (the Arrangement). The Arrangement provides a mechanism whereby three pilot courts (Intermediate People's Courts in Shanghai, Xiamen and Shenzhen) will consider applications for recognition of and assistance to insolvency proceedings commenced in Hong Kong in respect of companies that have COMI in Hong Kong for at least six months prior to application, and which have principal assets, or business operations or representative offices, in one of these pilot areas. Once the Mainland courts recognise the Hong Kong insolvency proceedings, the

Hong Kong liquidators, upon application, may take over the property of the debtor in the Mainland and investigate the debtor's affairs. The Mainland courts may also designate local administrators to exercise these powers at the request of the liquidator or the creditor.

Likewise, a Mainland administrator may apply to the Hong Kong courts for recognition of liquidation, reorganisation and compromise proceedings commenced in the Mainland.

Outlook – Companies (Corporate Rescue) Bill 2021

Towards the end of last year, The HKSAR Government announced that it would present the Companies (Corporate Rescue) Bill to the Legislative Council in early 2021 to introduce a corporate rescue procedure with a statutory moratorium, with the following terms:

- A company that is insolvent or will likely become insolvent may initiate a corporate rescue procedure and appoint a certified public accountant or solicitor as the provisional supervisor. The provisional supervisor will take over the management of the company and act as the company's agent.

- The provisional supervisor will have 45 business days to propose a rescue plan for consideration at the creditor's meeting and, if approved, to implement the plan.

- The commencement of the provisional supervision will bring about a moratorium (creditors cannot commence any action against the company in Hong Kong, subject to specifically exempted proceedings such as criminal proceedings and employment actions). However, creditors are not prevented from pursuing against the debtor in other jurisdictions.

While it is unlikely that the bill will be passed in time to apply to the wave of insolvencies arising from the current economic downturn, this is still a significant development that major creditors should watch out for.

Conclusion

In summary, where you are owed sums by a defaulting company with an offshore corporate structure, you should:

- consider whether restructuring or immediate liquidation would yield better returns and more advantageous recovery by critically assessing the company's restructuring proposal and its financial status

- where you find immediate liquidation is a better route, ascertain, if possible, that the debtor company is indeed insolvent and the debt is not disputed by the company on substantial grounds before issuing the winding-up petition

- consider which venue would be most appropriate for bringing the insolvency proceedings, in light of factors such as the corporate structure of the debtor and the laws on recognition of foreign insolvency proceedings of the jurisdictions where the company's main assets are located

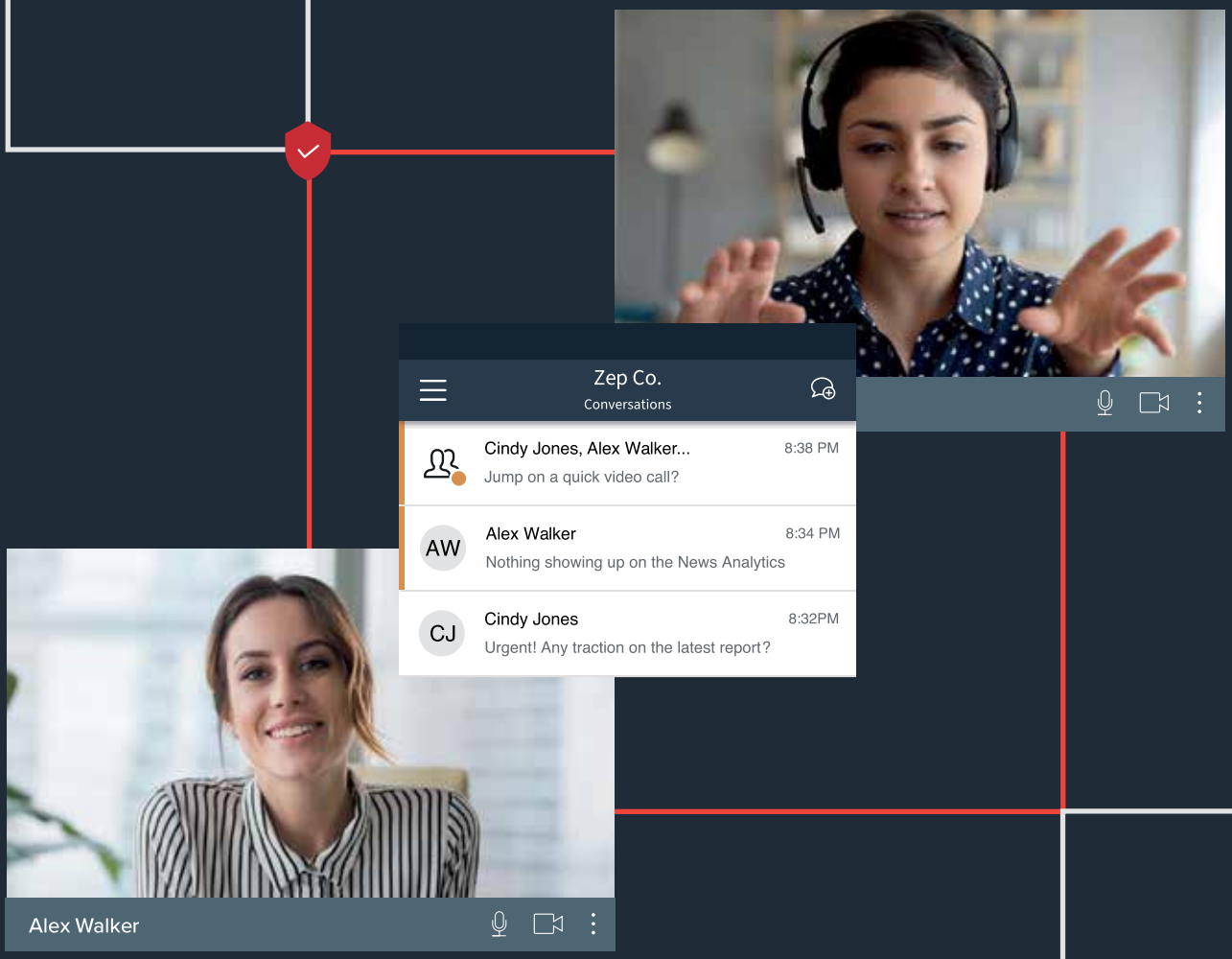
- bring insolvency proceedings in the place of incorporation if Hong Kong–appointed liquidators will not be able to gain control of the main operating subsidiaries overseas or otherwise yield real benefit to creditors

- check if there is any extant winding-up petition issued by other creditors and, if there is, consider appearing on the first petition as supporting creditor, rather than issuing a separate petition, which would be viewed unfavourably by the court, and

- prepare for an application of adjournment by the company in favour of a restructuring attempt. In such a case, it is important to coordinate with other creditors to assess the credibility of the restructuring proposal and continue to pursue the winding up of the company where the proposed restructuring is not credible.

> "having a legal framework for reciprocal cooperation in insolvency between Hong Kong and the Mainland has become increasingly important"

Wynne Mok, Partner, Ruby Chik, Associate, Jason Cheng, Associate, and Kathleen Poon, Associate
Slaughter and May



MODERN GOVERNANCE IN TIMES OF CRISIS

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Are cryptocurrencies really a safe haven?

Understanding how blockchain's immutability actually makes it more AML compliant than cash

Dominic Wai, Partner, ONC Lawyers, explains the underlying technology behind blockchain and, with the tighter restrictions on cryptocurrencies being introduced in the Mainland, asks whether crypto trading is really as anonymous and untraceable as is sometimes believed.

Introduction

The banning of cryptocurrency trading in the Mainland can be traced back to as early as June 2019, during which time the authorities cited potential money laundering concerns as the rationale for their decision. Despite the ban however, the possession of cryptocurrency was still very much legal in the Mainland, leading to a continuation of trade via various online services despite the earlier ban. Recently, with the largely anticipated launch of e-RMB being within sight, a further crackdown against cryptocurrency (many believing it to be in competition with the new e-RMB) can be seen with the May 2021 statement issued by CITIC Bank prohibiting its clients from using their accounts for Bitcoin transactions.

The rationale behind such a ban was again claimed to be to maintain the legal status of the national currency, as well as to prevent money laundering risks. Shortly after CITIC Bank made its announcement, a joint statement was issued by three state-backed organisations – namely the National Internet Finance Association of China, the China Banking Association and the Payment and Clearing Association of China – banning financial institutions and payment companies from providing any services involving cryptocurrency, and warning investors against speculative crypto trading.

But is the alleged money laundering risk a legitimate concern behind the ban of cryptocurrency in the Mainland? To answer this question, we must first understand the underlying technology behind major cryptocurrencies (such as Bitcoin), specifically that of blockchain.

Highlights

- concerns about maintaining the legal status of the national currency and potential money laundering risks have recently led to a further crackdown against cryptocurrency in the Mainland
- with blockchain technology, every Bitcoin transaction is publicly broadcast and is accessible by anyone at any time, and ledger records of cryptocurrency transactions are immutable
- there are a number of ways to tie Bitcoin addresses to real-world identities, including through Know Your Client/Anti-Money Laundering policies and blockchain analysis

> “Bitcoin is not anonymous; it is simply pseudonymous, with each and every transaction recorded on the blockchain”

Bitcoin is pseudonymous, not anonymous

There seems to be a widespread perception that cryptocurrencies like Bitcoin are a safe haven for criminals since it is claimed that crypto trading is anonymous and untraceable. However, in reality, Bitcoin is not anonymous; it is simply pseudonymous, with each and every transaction recorded on the blockchain (thus in fact enhancing traceability – a feature that cash is unable to accomplish).

Using blockchain technology, every Bitcoin transaction is publicly broadcast on the Bitcoin blockchain, accessible by anyone at any time. The fact that the ledger of the cryptocurrency transaction and other records are decentralised means that such records are immutable. For each Bitcoin transaction, each user is assigned two digital keys, namely a public key, which everyone can see and is published on the Bitcoin blockchain, and a private key, which is only known to the user and is the user's 'signature'.

The Bitcoin blockchain will only show that a transaction has taken place between two public keys, which are theoretically not directly linked to anyone's personal identity, indicating the time and amount of the transaction. It is in this sense that Bitcoin is pseudonymous – the Bitcoin addresses do not, in themselves, reveal the identity of their owner. In other words, sending and receiving cryptocurrency is like writing under a pseudonym. However, since every transaction involving that pseudonym (that is, the Bitcoin address) is stored in a blockchain, if the Bitcoin address is ever linked to the real identity of its owner, Bitcoin offers no privacy whatsoever.

So naturally the next question is: can an encrypted transaction on the Bitcoin blockchain be tied to an actual individual?

Tracing Bitcoins back to individuals

While encryption might create the false impression that those transactions on the Bitcoin blockchain are viewable but unmatchable to specific individuals, there are a number of ways to tie Bitcoin addresses to real-world identities, typically done through Know Your Client/Anti-Money Laundering (KYC/AML) policies at exchanges (for cryptoassets trading) and blockchain analysis.

KYC/AML policies at exchanges

The Financial Action Task Force (FATF), an intergovernmental body tasked with setting international standards aimed at preventing money laundering and terrorist financing (the FATF Standards), released a guidance in 2019 for the purpose of clarifying the AML and Counter–Foreign Terrorism (CFT) financial obligations of countries and virtual asset service providers (VASPs) under the FATF Standards. The FATF recently released draft revisions to its Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers (the Guidance), with proposed updates to the 2019 guidance. If the updates to the Guidance are ultimately adopted by FATF, then more than 200 FATF member countries and jurisdictions may adopt and implement the recommendations in the Guidance on how to supervise and regulate virtual assets and VASPs.

In fact, many countries and exchanges have already implemented KYC/AML/CFT policies for cryptocurrency transactions. For example, the US Securities and Exchange Commission (SEC) released a statement in March 2018 warning that online platforms trading digital assets that meet the definition of 'securities' would be considered exchanges under the securities laws, and thus need to register

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Doing Business in China Series

China's economy is vast. A myriad of national laws, local regulations and implementing measures makes doing business complex. In the post-pandemic world, more than ever, businesses need to innovate and focus on emerging opportunities and regulatory compliance. HKCGI is delighted to present a Doing Business in China series from August to November 2021 in which senior professionals will discuss China's economic transformation, foreign investment policies, business location incentives, as well as regulatory compliance covering issues from commencing to exiting investments. Interested parties are encouraged to join any or all of the following six sessions:

Session	Date/Time	Topic	Speaker(s)
1	31 August 2021 6.45 pm - 8.15 pm	Onboarding Requirements, Considerations and Case Studies	Ms Sharon ZM Chen, Director of Commercial, Corporate Services, Vistra Group
2	24 September 2021 4.30 pm - 6.00 pm	Strategies on Corporate Changes and Restructuring	Ms Shirley Sung, Director, Corporate Services, Tricor China Ms Mavy Zhao, Tax Manager, Tricor China
3	12 October 2021 6.45 pm - 8.15 pm	Civil Code - Issues for Commercial Contracts	Mr Tom Fu, Partner, Mayer Brown Ms Rosalyn Han, Counsel, Mayer Brown
4	26 October 2021 6.45 pm - 8.15 pm	Finance Operations & Compliance - Best Practice	Mr Donald Tsang, Executive Director, Head of Corporate Services of Greater China, Intertrust Group Hong Kong
5	16 November 2021 6.45 pm - 8.15 pm	M&A – Execution and Control	Mr Kenneth Lee, Director & Head of Global Entity Management, TMF Hong Kong Limited
6	30 November 2021 6.45 pm - 8.45 pm	Voluntary Liquidation of WFOE – Professionals' Roles In Action	Accounting & Treasury - Vistra Group Company Secretarial - Intertrust Group HR & Payroll Services - Tricor China Tax Clearance - TMF Group

Language: Chinese (Cantonese/Putonghua)

Venue: Webinar session. No physical attendance is required.

HKCGI Accreditations: 1.5 ECPD points each for Sessions 1 to 5; 2 ECPD points for Session 6

		Sessions 1 to 5	Session 6
Fee:	HKCGI member	HK$320 per session	HK$400
	HKCGI student	HK$230 per session	HK$280
	Non-member	HK$420 per session	HK$500

Register Now!

For enquiries, please contact Professional Development Section: 2881 6177 or cpd@hkcgi.org.hk.

For details and registration, please visit CPD section of Institute's website: www.hkcgi.org.hk.

The Hong Kong Chartered Governance Institute 香港公司治理公會
(Incorporated in Hong Kong with limited liability by guarantee)
3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong
Tel: (852) 2881 6177 Fax: (852) 2881 5050 Email: cpd@hkcgi.org.hk Website: www.hkcgi.org.hk

> virtual assets give culprits a false sense of security that their identities cannot be ascertained

with the SEC or show exemption from registration. Similarly, under the new South Korean regulations, KYC is now mandatory for virtual assets. Meanwhile, many crypto trading exchanges nowadays have adopted KYC procedures and AML/CFT checks such that users are required to divulge their personal information to those exchanges to create an account.

Blockchain analysis

It is also possible to identify users simply by analysing transactions on the blockchain. There are already companies that provide services to customers – mostly exchanges and government entities – which link Bitcoin addresses to web entities and help assess the risk of illegal activities by using analytics on the Bitcoin blockchain.

Studies have also shown that network analysis and other methods can be used to observe and potentially tie any blockchain transaction back to the real-world identities (a feature not available for cash transactions). This is true even if individuals intentionally employ techniques to mask their identities, for example, by using multiple addresses. Techniques such as transaction pattern analysis can still be deployed to connect multiple addresses used by the same individual. It is then possible to ascertain the individual ultimately behind the transaction with an analysis of the IP address involved (again, features not available for cash transactions).

Criminals will eventually have to cash in the virtual assets

One of the biggest obstacles faced by law enforcement officers when investigating a money laundering incident involving cash-only transactions is that the 'contaminated' money can be turned into clean money simply by spending it, thereby making it effectively impossible to know the trade history behind each individual bank note. This is why casinos have often been targeted by crime syndicates desiring to launder funds.

On the contrary, with cryptocurrencies such as Bitcoin, since each and every transaction is recorded on the blockchain, if a culprit attempts to cash in their virtual assets by, for example, withdrawing Bitcoin from an exchange that has implemented KYC requirements, or by purchasing a real world commodity from a vendor using virtual assets, such interaction with the real world will easily expose his or her identity.

Takeaway

While a cryptocurrency transaction offers more privacy to users compared with traditional payment methods involving a third-party intermediary such as a credit card provider, it is still far from being as anonymous and untraceable as a cash transaction.

As is apparent from this article, virtual assets give culprits a false sense of security that their identities cannot be ascertained. Virtual assets are also falsely portrayed as an untraceable payment method that can facilitate illegal activities by enabling criminals to carry out transactions without being tracked. However, once the public gains a better understanding of blockchain technology, it will become clear that Bitcoin's public transaction ledger is in fact a gold mine of information for authorities.

Dominic Wai, Partner
ONC Lawyers

CHARTERED SECRETARIES
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Rewarding the Extraordinary

Prize Awardees from 2010 to 2020:

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

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

2012
John Brewer
Past Chairman, The Association of The Chartered Secretaries and Administrators in Hong Kong

2013
Edwin Ing
FCG FCS
Past President, HKCGI

2014
Neil McNamara
FCG FCS
Past President, HKCGI

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

2016
Gordon Jones
BBS FCG FCS
Former Registrar of Companies

2017
Natalia Seng
FCG FCS(PE)
Past President, HKCGI

2018
Peter Greenwood
FCG FCS
HKCGI Representative to CGI Council and Chairman of CGI Thought Leadership Committee

2019
Edith Shih
FCG(CS, CGP)
FCS(CS, CGP)(PE)
Immediate Past International President, CGI; Past President, HKCGI; Executive Director and Company Secretary, CK Hutchison Holdings Ltd

2020
Ada Chung
FCG FCS
Privacy Commissioner for Personal Data

The Hong Kong Chartered Governance Institute Prize 2021

The Hong Kong Chartered Governance Institute Prize will be awarded to a member or members who have made significant contributions to the Institute, and the Chartered Secretary and Chartered Governance Profession over a substantial period. Awardees are bestowed with the highest honour – recognition by their professional peers.

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

Recent Hong Kong Court decision on a bank's liability on its employee's fraudulent conduct

Glenn Haley, Partner, and Carrie Yiu, Associate, Bryan Cave Leighton Paisner, review a recent court case where a plaintiff sought to hold a bank liable for losses sustained as a result of fraud perpetrated by one of its employees.

What happens when a bank's customer loses money due to a fraud perpetrated by an employee of the bank? What, if any, remedies does the defrauded customer have against the bank?

The Hong Kong Court of First Instance, in *Luk Wing Yan v CMB Wing Lung Bank Ltd* (previously known as Wing Lung Bank Ltd) [2021] HKCFI 279, considered these issues.

Background

The plaintiff (the Plaintiff) was the victim of a fraud perpetrated by the security manager (the Employee) of the defendant bank (the Bank).

The Employee led the Plaintiff to believe that her money was being invested in 'internal' investment opportunities that the Bank made available only to the Bank's employees, the opportunities of which allegedly would result in extremely attractive returns (around 100 times the amount banks pay on deposits).

These internal investments did not exist. Between 2010 and 2013, the Plaintiff transferred a net of HK$23.8 million from the Plaintiff's bank account into the Employee's bank account. Both the Plaintiff's and the Employee's accounts were held at the Bank.

The Plaintiff was not the only victim of the Employee's fraud scheme. After the fraud came to light, the Employee pleaded guilty to and was convicted of three counts of fraud. She was sentenced to imprisonment for nine years and four months.

The Plaintiff sought to hold the Bank liable for the losses sustained by the Plaintiff as a result of the fraud perpetrated by the Employee. The Plaintiff's key causes of action against the Bank were (1) vicarious liability for the Employee's fraud and (2) the Bank's negligence in handling transfers of funds from the Plaintiff's account to the Employee's account.

Highlights

- the Court of First Instance recently dismissed a claim against a bank for fraud perpetrated by one of its employees
- the Court rejected the Plaintiff's claim both on the basis of vicarious liability and negligence
- it was determined that the *Quincecare* duty had not been triggered, however the Court also considered the possible future development of a bank's duty in regards to protecting its customers from fraud committed by its employees

> "this judgment will be welcomed by banking and financial institutions for the confirmation of the limited scope of the *Quincecare* duty"

On 5 March 2021, the Hong Kong Court of First Instance dismissed the Plaintiff's claims.

Vicarious liability

The doctrine of vicarious liability, by which employers in certain circumstances are held liable for torts committed by their employees, was developed for the purpose of providing the victims of tort with a remedy against persons who have the means to satisfy awards and on whom it would be just to fix liability to do so.

The well-established test for vicarious liability is the 'close connection' test (whether the employee's tort was so closely connected with their employment that it would be fair and just to hold their employer vicariously liable). However, given the infinite range of circumstances where the issue arises, there is an inevitable lack of precision in the close connection test. The Court needs to make an evaluative judgment in each case, having regard to all the circumstances and the assistance provided by previous court decisions.

The Court in *Luk Wing Yan* was of the view that, for cases involving fraudulent misrepresentation (such as this case), the test of 'apparent authority' should be adopted. The employer will be liable if the employee's fraudulent misconduct falls within the scope of the employee's authority, actual or apparent.

In general terms, apparent authority will exist where: (1) a principal has represented, by words or conduct, to a third party that the agent has authority to enter into the kind of transactions in question, (2) the third party enters into a transaction in reliance on that representation, and (3) the reliance is reasonable. It is trite law that an agent cannot clothe himself or herself with apparent authority.

In this case, the Court held that the Employee, as a staff member of the Bank, was authorised to sell securities products to customers. However, the Court said it was illogical to extend such authority to the sale of internal products, which were limited to dealings between the Bank and its employees. The Court found that there was no representation or holding out by the Bank that the Employee had authority to offer the alleged internal investments to the Plaintiff.

Further, as the Plaintiff admitted, she was overjoyed to be offered the investments with extremely high returns, and she did not care why, how or what was the logic of the investments. The Court was of the view, therefore, that despite harbouring obvious suspicions, the Plaintiff was blinded by her greed to commit to take part in the fraudulent investments. The Court found no actual reliance by the Plaintiff on any such apparent authority of the Employee, and held that any such reliance by the Plaintiff on any apparent authority would not have been reasonable.

In the absence of apparent authority, the Court rejected the Plaintiff's claim against the Bank on the basis of vicarious liability.

Negligence – *Quincecare* duty

The Plaintiff's claim in negligence was based upon the '*Quincecare* duty', which

is the duty imposed on a bank to refrain from executing a customer's order when the bank is put on inquiry that the order is an attempt to defraud the customer.

The *Quincecare* duty comes into play where the bank has received an order or instruction *on behalf of* its customer (ie, from an authorised agent), rather than directly *from* its customer. The *Quincecare* duty arises only in circumstances of attempted misappropriation of the customer's funds by an agent of the customer, that is, the order or instruction given on behalf of the customer is not one genuinely made for the benefit of, or properly authorised by, the customer.

The Court pointed out that the *Quincecare* duty has no resonance where the cause of the customer's loss is their own desire to make the payments to their intended recipient. In this case, the payment instructions were made directly by the Plaintiff and, therefore, the *Quincecare* duty was not triggered. The Court held that the Plaintiff was 'a victim of her own greed and gullibility' and her losses were not caused by any negligence or breach of duty on the part of the Bank.

The Court refused to expand the scope of a bank's *Quincecare* duty to detection or enquiry of transfers which were authorised by its customer and may have been made in furtherance of a fraud.

First, the *Quincecare* duty is ancillary and subordinate to a bank's ordinary primary duty to comply with and act on the customer's instructions in relation to the funds in the account. Elevating the *Quincecare* duty to a duty to detect whether any instructed payment is part of a fraud scheme would cast a shadow over the effectiveness of the customer's instructions and emasculate the primary duty of the bank. The Court reasoned that there was no clear framework of rules by reference to which the extended *Quincecare* duty might operate in a sensible way.

Secondly, the Court made reference to the point that the *Quincecare* duty is a common law duty which rests upon the general concept of a bank adhering to standards of honest and reasonable conduct in being alive to suspected fraud. Accordingly, the benchmark is expressed in quite general terms by reference to a not-too-high standard of the ordinary prudent banker.

Comments

This judgment will be welcomed by banking and financial institutions for the confirmation of the limited scope of the *Quincecare* duty. However, in the closing obiter remark, the Court considered the potential future development of a bank's duty in an era of increasing sophistication in and the use of artificial intelligence. The Court said banks may be placed in a position to monitor the operation of bank accounts held by their employees at their banks, in order to protect its customers from fraud committed by its employees. For this to come to fruition, however, industry-wide consultation and implementation, as well as careful consideration, will be required.

Even if that were to happen, employees still may circumvent the banks' supervision by carrying out the fraud at accounts held at banks which are not their employers. The Court emphasised that, at the end of the day, customers must remain vigilant and be careful of suspicious banking activities, and raise their concerns as necessary. The Court reminded bank customers: 'If something seems too good to be true, it probably is.'

Glenn Haley, Partner, and Carrie Yiu, Associate

Bryan Cave Leighton Paisner LLP

Professional Development

Seminars: June 2021

17 June

Creating long-term value through a robust whistleblower framework

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

Speakers: *Kareena Teh, Partner, and Philip Kwok, Counsel; LC Lawyers LLP*

24 June

AML/KYC requirements for trust & company service providers: practical review, pain points & RegTech solutions

Chair: *Edmond Chiu FCG FCS(PE), Institute Council member, Membership Committee Vice-Chairman, Professional Services Panel Chairman and AML/CFT Work Group member, and Executive Director, Corporate Services, Vistra Corporate Services (HK) Ltd*

Speakers: *Helina Lo, Head of Risk & Regulatory Compliance, and Brian Lin, Manager, Risk & Regulatory Compliance, Sia Partners; Tommy Fung, Regional Partner Director – Greater China, UiPath; and Benjamin Petit, Co-Founder & Head of Business Development, Chekk*

25 June

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

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

Speaker: *Ricky Lai FCG FCS, Company Secretary, China Renewable Energy Investment Ltd*

30 June

Enforcement series: competition law enforcement

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

Speakers: *Steven Parker, Executive Director (Legal Services), and Stephen Ryan, Head (Legal Advisory), Competition Commission*

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.

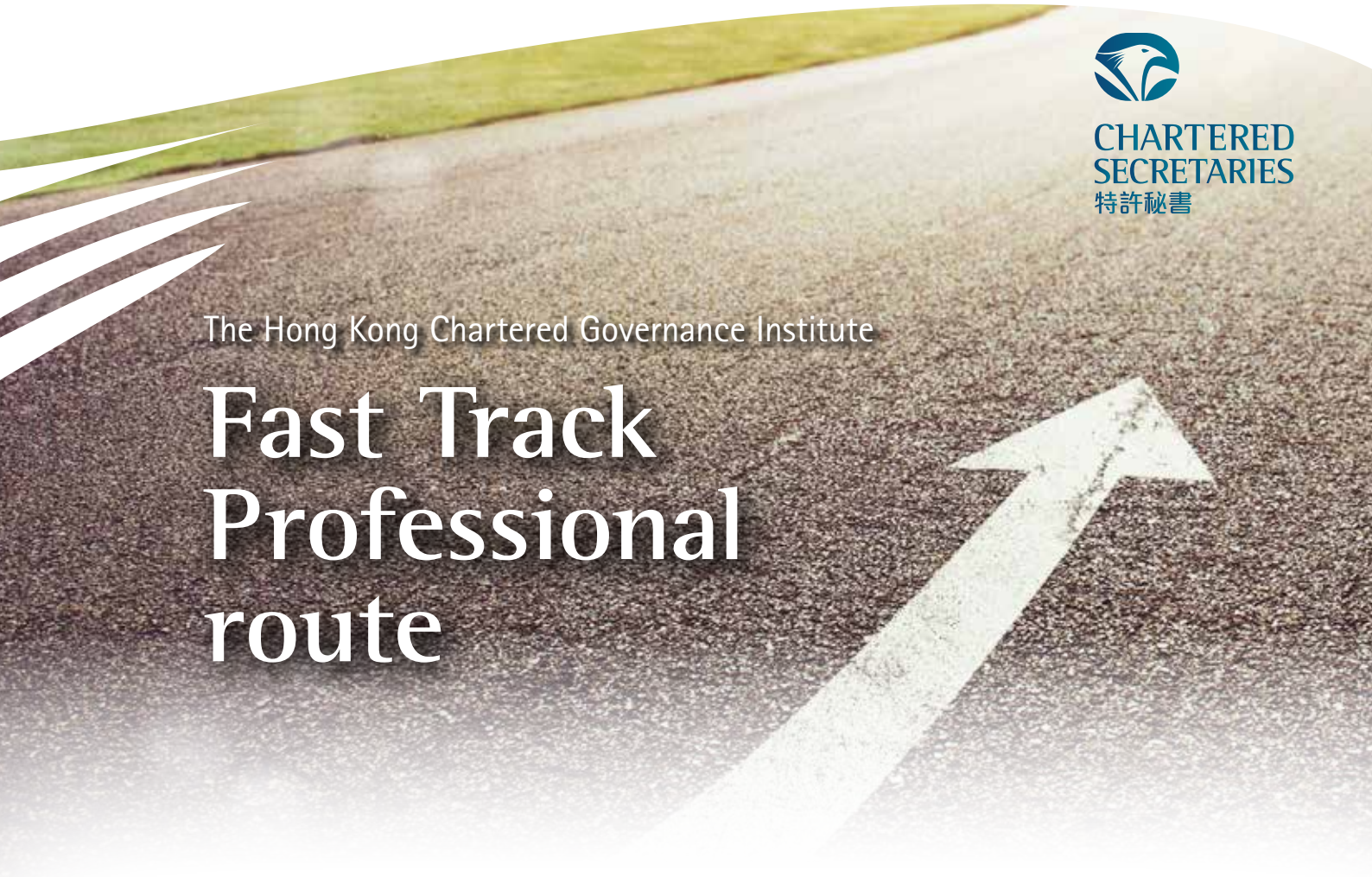
For details of the Institute's video-recorded CPD seminars, please visit the CPD section of the Institute's website: www.hkcgi.org.hk.

For enquiries, please contact the Institute's Professional Development Section: 2830 6011, or email: cpd@hkcgi.org.hk.

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
17 August 2021	6.45pm–8.15pm	Company secretarial practical training series: share transfer in Hong Kong private companies & e-stamping mechanism	1.5
26 August 2021	6.45pm–8.45pm	Restructuring and insolvency regime in Hong Kong: overview, case studies and roles of governance professionals	2
1 September 2021	6.45pm–8.45pm	Emerging key ESG concern: climate-change – enhancing competency for effective board advice	2
13 September 2021	6.45pm–8.15pm	Post-IPO consideration in Hong Kong	1.5

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



CHARTERED SECRETARIES
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The Hong Kong Chartered Governance Institute

Fast Track Professional route

An accelerated route to become a Chartered Secretary and Chartered Governance Professional

Qualified lawyers or accountants with 5+ years of relevant post-qualifying experience

→ **Completion of two CGQP modules: Corporate Governance and Risk Management**

→ **Become a CGI & HKCGI member**

Qualified lawyers or accountants with more than five years of relevant post-qualifying experience may now be eligible for membership of CGI and HKCGI by completing only two of the seven modules, namely Corporate Governance and Risk Management, of the qualifying programme (CGQP) of CGI and HKCGI. 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.hkcgi.org.hk.

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

Membership

Membership/graduateship renewal for the financial year 2021/2022

The renewal notice, together with the debit note for the financial year 2021/2022, was sent to all members and graduates by email at the beginning of July 2021 to their registered email address. All members and graduates are encouraged to settle their annual subscription online via their user account on or before Thursday 30 September 2021.

Failure to pay by the deadline will constitute grounds for membership or graduateship removal. Reinstatement by the Institute is discretionary and subject to payment of the outstanding fees, and with levies determined by the Council.

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

Membership activities: July 2021

9 July

Easy recycling tips to save the environment and money (free webinar)

Forthcoming membership activities

Date	Time	Event
28 August 2021	1.15pm-3.30pm	Community service – soap recycling
17 September 2021	1.00pm-2.00pm	Protect your vision: keep your eyes healthy (free webinar)

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

New Fellows

The Institute would like to congratulate the following Fellows elected in May and June 2021.

Dr Lau Wing Hong FCG FCS(PE)

Dr Lau is a practising auditor in the field of accounting, auditing and taxation. He holds a PhD in business administration from Honolulu University, an MBA from Shanghai Jiao Tong University and a master's degree in Accounting & Finance from Birmingham City University. Dr Lau also holds professional qualifications as a Chartered Accountant and Chartered Tax Adviser.

Li Qian FCG FCS

Mr Li is the Board Secretary, Company Secretary and Investment Director at BYD Company Ltd (Stock Code: 1211). He is responsible for the BYD Group's corporate governance, investor relations and information disclosure. Mr Li holds a bachelor's degree in economics from Jiangxi University of Finance and Economics and an MBA from Guanghua School of Management of Peking University.

Tang Siu Fung, Calvin FCG FCS

Mr Tang is the Managing Partner of Hexacubic Consulting Ltd. He is responsible for private equity investment, corporate finance and corporate governance. Mr Tang holds an MBA from China Europe International Business School and a master's degree in Corporate Governance and Compliance from Hong Kong Baptist University. Mr Tang also holds professional qualifications as a Chartered Financial Analyst and Chartered Valuation Surveyor.

Kong Hok Kan FCG FCS

Company Secretary, Great Wall Pan Asia Holdings Ltd (Stock Code: 583)

Mak Yin Ping, Jannie FCG FCS

Manager – M&A, Corporate Services, Baker & McKenzie

Young Ho Kee, Bernard FCG FCS

Company Secretary, Madison Holdings Group Ltd (Stock Code: 8057)

Yuen Sau Ming FCG FCS

Executive Secretary to the Chairman and Company Secretary, Lei Garden Restaurant Group

A bird's eye view

Professional practitioners need to be proficient in a wide range of practice areas. *CSj*, the journal of The Hong Kong Chartered Governance Institute, is the only journal in Hong Kong dedicated to covering governance and company secretarial areas of practice, keeping readers informed of the latest developments, 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

Subscribe to *CSj* today to stay informed and engaged with the issues that matter to you most.

Please contact:

Paul Davis on +852 3796 3060 or **paul@ninehillsmedia.com**

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CSj, the journal of The Hong Kong Chartered Governance Institute (www.hkcgi.org.hk), is published 12 times a year by Ninehills Media (www.ninehillsmedia.com).

CHARTERED SECRETARIES 特許秘書

Advocacy

HKCGI – a new identity

We are pleased to announce that at the Institute's hybrid General Meeting (GM), held on Thursday 15 July 2021, the special resolutions for our proposed name change to 'The Hong Kong Chartered Governance Institute 香港公司治理公会' (HKCGI), as well as the adoption of a new set of Articles of Association with our new name, have been passed.

With effect from 20 July 2021, the Institute has adopted the name 'The Hong Kong Chartered Governance Institute 香港公司治理公会'. The new identity of HKCGI is in line with the recognition of the governance roles and responsibilities performed by its members, and the global convergence towards the importance of governance.

The poll results in respect of the special resolutions proposed at the GM are as follows:

Special Resolutions	Number of Votes (%)	
	For	Against
1. That the name of the Institute be changed to The Hong Kong Chartered Governance Institute 香港公司治理公会 subject to the approval of the Companies Registry.	526 (88.70%)	67 (11.30%)
2. That conditional upon the change of name of the Institute as set out in special resolution (1) becoming effective, the provisions contained in the attached printed document be approved and adopted as the new Articles of Association of the Institute, in substitution for, and to the exclusion of, the existing Articles of Association of the Institute.	531 (89.54%)	62 (10.46%)

Notes:

1. Both special resolution (1) and special resolution (2) were passed by a majority of 75% (or above) of votes of members who attended and voted, either in person or by proxy, at the GM.

2. The percentages of votes on the resolutions were rounded to two decimal places.

3. The scrutineer for the poll at the GM was Tricor Investor Services Ltd.

In the meantime, the Institute would like to express its gratitude to all members for their support with achieving this important milestone. We will continue our efforts to move ahead with our rebranding and to revamp the website over the next few months.

Collaborative Course Agreement

The Institute and The Hong Kong Polytechnic University (PolyU) signed a new Collaborative Course Agreement for the Master of Corporate Governance programme offered by PolyU, in May 2021. The curriculum has been developed in line with the Institute's updated Chartered Governance Qualifying Programme (CGQP). Students admitted to this programme in the 2021 cohort and thereafter will be studying the CGQP syllabus.

Nominations for the HKCGI Prize 2021

The Institute takes great pride in calling for nominations for The Hong Kong Chartered Governance Institute Prize 2021. This award celebrates the outstanding achievements of governance professionals who have made significant contributions to the Institute, and to the Chartered Secretary and Chartered Governance profession as a whole, over a considerable period.

We have a vibrant community of over 6,000 members in Hong Kong and the Mainland. Celebrating the achievements of leaders in the Chartered Secretary and Chartered Governance profession not only champions those at the forefront of our profession, it also inspires others to play their part in moving the profession forward. In view of this, you are cordially invited to nominate one or more candidates who have made ongoing and important contributions to the Institute and our profession. These may include:

- contributions to the Institute's technical and research, education and examinations, or professional development work
- contributions to the development of the profession and/or the Institute in Hong Kong and the Mainland
- work that significantly enhances the status of the Chartered Secretary and Chartered Governance Professional within the local community, the Mainland and/or internationally, and
- a track record of outstanding contributions to the Institute that have brought identifiable credit to the governance profession.

The nomination deadline is Thursday 30 September 2021. Submit your nominations now!

For enquiries, please contact Melani Au: 2830 6007, or email: member@hkcgi.org.hk.

Advocacy (continued)

The 57th Affiliated Persons ECPD seminars

The Institute held its 57th Affiliated Persons Enhanced Continuing Professional Development (ECPD) seminars, under the theme of 'Director's duty performance and governance practices' from 7 to 9 July. The webinars attracted over 60 participants, mainly comprising board secretaries and equivalent personnel, directors, supervisors and other senior executives from listed or to-be-listed companies from the Mainland and overseas.

At the ECPD seminars, board secretaries and other senior professionals shared their knowledge and experience on the following topics:

- a director's fiduciary duties
- consultation conclusions on the Review of Listing Rules Relating to Disciplinary Powers and Sanctions, by The Stock Exchange of Hong Kong Ltd (the Exchange)
- Mainland practitioners' views on the amendments of the Exchange's Listing Rules Relating to Disciplinary Powers and Sanctions, and the Institute's follow-up actions
- handling the Securities and Futures Commission's inquiries and investigations on directors and senior management
- listing differences and practices in relation to the delisting of Mainland concept stocks from the US market and for those seeking listing in Hong Kong
- identifying common governance flaws from the perspective of institutional investors through the Institutional Shareholder Service (ISS) group's governance quality rating system and voting results
- other focuses and practical issues relating to the amendments to the Exchange's Listing Rules Relating to Disciplinary Powers and Sanctions
- experience sharing: CLP Group's environmental, social and governance (ESG) practice
- experience sharing: New World Development Company Ltd's ESG practice, and
- case analysis: Livzon Pharmaceutical Group Inc's stock incentive plan and its implementation.

The Institute would like to express its appreciation to all the speakers and participants for their support and participation.

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. HKCGI 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 Karen Lee, Deputy Head - Enforcement Team, Hong Kong Exchanges and Clearing Limited Ms Ellie Pang, Chief Executive, HKCGI
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.

HKCGI Accreditations: 1.5 ECPD points per session

Fee: HK$320 per session per HKCGI member
HK$230 per session per HKCGI student
HK$420 per session per non-member

Register Now!

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

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

The Hong Kong Chartered Governance Institute 香港公司治理公會
(Incorporated in Hong Kong with limited liability by guarantee)
3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong
Tel: (852) 2881 6177 Fax: (852) 2881 5050 Email: cpd@hkcgi.org.hk Website: www.hkcgi.org.hk

Chartered Governance Qualifying Programme (CGQP)

June 2021 examination diet

The examination results of the June 2021 diet were released on 13 August 2021. Candidates can access their examination results from their accounts on the Institute's website. The examination papers, mark schemes and examiners' reports are also downloadable from the Login area of the Institute's website.

Candidates may apply for a review of their examination results by application to the Secretariat within 10 working days from the release date of the examination results.

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

November 2021 examination diet timetable

The November 2021 examination diet of the CGQP is open for enrolment from 3 August 2021 to 13 September 2021. All examination enrolments must be made online via the Login area of the Institute's website.

Week one

Time	16 November Tuesday	17 November Wednesday	18 November Thursday	19 November Friday
9.15am–12.30pm*	Hong Kong Taxation	Hong Kong Company Law	Interpreting Financial and Accounting Information	Corporate Secretaryship and Compliance

Week two

Time	23 November Tuesday	24 November Wednesday	25 November Thursday	26 November Friday
9.15am–12.30pm*	Corporate Governance	Risk Management	Strategic Management	Boardroom Dynamics

* Including 15 minutes reading time (9.15am–9.30am).

The Institute reserves the right to change the dates and details without prior notice.

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

Studentship activities: July2021

14 July

Student Ambassador Programme: practical wisdom for professionals

20 July

Postgraduate Programme in Corporate Governance in Shenzhen – Information Session

21 July

Briefing session for Collaborative Course Agreement (CCA) new graduates 2021

22 July

特许秘书及公司治理师双重会员资格网络说明会

Forthcoming studentship activities

Date	Time	Event
9 September 2021	1.00pm–2.00pm	Student Gathering (5): experience sharing on preparation for CGQP examinations
29 September 2021	1.00pm–2.00pm	Governance Professionals Information Session
9 October 2021	10.00am–1.00pm	Corporate Governance Paper Competition and Presentation Awards 2021

Chartered Governance Qualifying Programme (CGQP) (continued)

Corporate Governance Paper Competition and Presentation Awards 2021

The annual Corporate Governance Paper Competition and Presentation Awards, organised by the Institute, is designed to foster appreciation of corporate governance among local undergraduates. The theme this year asks applicants to evaluate the question: 'Is it possible to tie governance with a sense of purpose given the myriad of stakeholders' interests?'

Undergraduates of all disciplines in Hong Kong from the following nine universities (in alphabetical order) registered for the competition.

City University of Hong Kong
Hong Kong Baptist University
Hong Kong Shue Yan University
The Chinese University of Hong Kong
The Hang Seng University of Hong Kong
The Hong Kong Polytechnic University
The Hong Kong University of Science and Technology
The Open University of Hong Kong
The University of Hong Kong

The submitted papers will be reviewed by a team of 10 to 15 reviewers. Six finalist teams will present their papers on Saturday 9 October 2021 to compete for the Best Presentation Award and the Audience's Favourite Team. Members, graduates and students who are interested in observing the presentation competition are welcome to attend.

Theme	Is it possible to tie governance with a sense of purpose given the myriad of stakeholders' interests?
Date	Saturday 9 October 2021
Time	10.00am–1.00pm
Fee	Free of charge
Venue	Webinar session; no physical attendance is required.
CPD points	2

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

Learning support for CGQP examination preparations

The Institute provides a variety of learning support services for students to assist them with their CGQP examination preparations. The list of learning support options is available on the Learning Support page under the Studentship section of the Institute's website: www.hkcgi.org.hk.

Fast Track Professional route

From 1 January 2021, a new Fast Track Professional route became available for qualified lawyers or accountants (including those recognised by The Chartered Governance Institute and its Divisions in other jurisdictions) who wish to become Chartered Secretaries and Chartered Governance Professionals.

By the end of June 2021, over 100 applications had been received for this programme from Hong Kong and the Mainland. The new Fast Track Professional route has attracted more than 50 new students, with 27 applications successfully approved under this new route.

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

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Chartered Governance Qualifying Programme (CGQP) (continued)

Policy – payment reminder

Studentship renewal

Students whose studentship expired in June 2021 are reminded to settle the renewal payment by Monday 23 August 2021.

New policy effective from 1 July 2021

Students whose studentship will expire in July, August or September 2021 should have received a renewal notice by email on 1 July 2021. Please be reminded to settle the renewal fee by Thursday 30 September 2021.

Failure to pay the renewal fee by the deadline will result in removal from the student register.

Featured Job Openings

Company name	Position
Hong Kong Exchanges and Clearing Ltd	Assistant Vice-President, Secretarial Services Department (PRC team)
Sime Darby Motor Services Ltd	Company Secretary – Greater China (Head of Department)
Computershare	Officer, Governance Services
Hongkong Land Group Ltd	Company Secretarial Manager (Ref: CS-CSM-ICS)
Celestial Asia Securities Holdings Ltd	Company Secretary/Company Secretarial Manager
CITIC Capital Holdings Ltd	Company Secretarial Assistant (Long-term Contractor under CITIC Capital)
Toullec Solicitors (in association with LPA-CGR)	Company Secretary Officer
Shimao HK Management Co Ltd	Company Secretarial Assistant

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

CHARTERED SECRETARIES 特許秘書

The Hong Kong Chartered Governance Institute

Corporate Governance Paper Competition and Presentation Awards 2021

The Annual Corporate Governance Paper Competition and Presentation Awards organised by The Hong Kong Chartered Governance Institute 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

Scan for details

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

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

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