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# ACRU 2021 review

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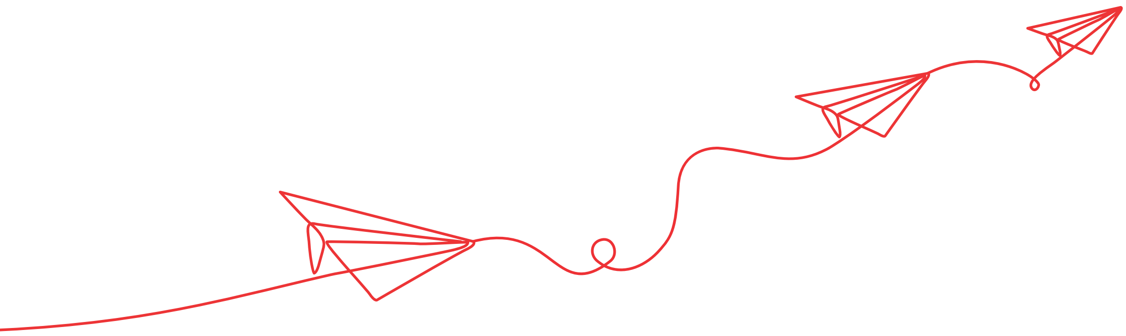

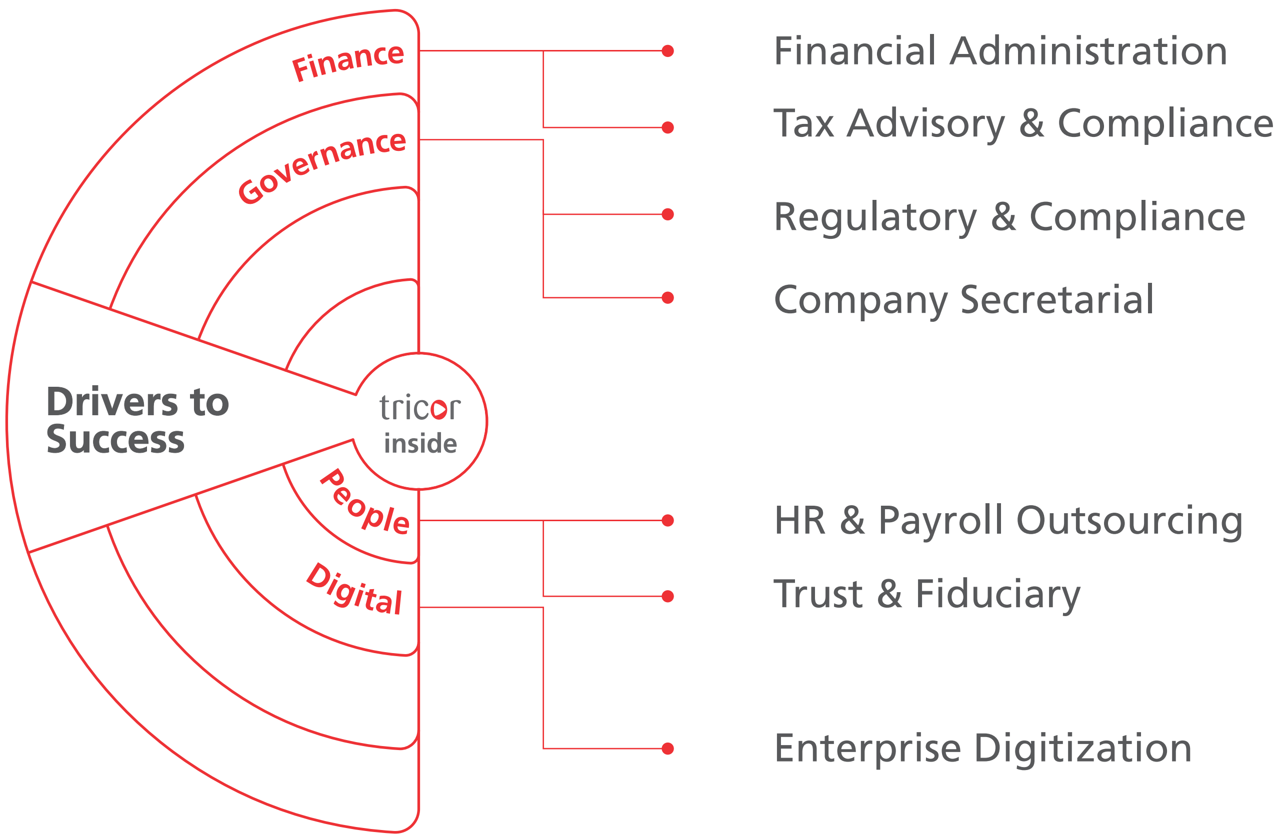


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## Good governance comes with membership

### About The Hong Kong Institute of Chartered Secretaries

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



### Membership and studentship statistics update

As of 31 May 2021, the statistics were as follows:

**Students**: 3,145 **Associates**: 5,887
**Graduates**: 416 **Fellows**: 752



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## July 2021

*CSj*, the journal of The Hong Kong Institute of Chartered Secretaries, is published 12 times a year by Ninehills Media and is sent to members and students of The Hong Kong Institute of Chartered Secretaries and to certain senior executives in the public and private sectors.



Circulation: 8,200
Annual subscription: HK$2,600 (US$340)
To subscribe call: (852) 3796 3060 or
email: enquiries@ninehillsmedia.com



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ISSN 1023-4128

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# ACRU 2021

This edition of *CSj* reviews our 22nd Annual Corporate and Regulatory Update (ACRU), held on 11 June 2021. Each year, ACRU provides a good indicator of the current and emerging regulatory issues that governance professionals need to keep under close watch, and this year's event was no exception.

ACRU 2021 coincided with the coming into force of new Listing Rules relating to the disciplinary powers and sanctions available to Hong Kong Exchanges and Clearing Ltd (HKEX). HKEX took the opportunity provided by ACRU to highlight the implications of this for governance professionals in Hong Kong and clarified, in response to the Institute's submission, that there must be more than administrative involvement to find liability. A key takeaway of the forum was the fact that both HKEX and the Securities and Futures Commission (SFC) are now better placed to ensure personal accountability for misconduct – not only with regard to directors but also senior managers, including company secretaries.

Other key areas of practice addressed by this year's ACRU included directors' duties, personal data privacy, financial disclosure (particularly in the context of reporting on the impacts of the Covid-19 pandemic), and environmental, social and governance (ESG) reporting and performance (in particular the importance of reporting on climate-related issues). It also tackled the complex compliance challenges relating to Hong Kong's anti-money laundering and counter-terrorist financing regulatory regime.

ACRU 2021 also looked ahead to several developing areas of practice. One such area is the adoption of a hybrid format for shareholder meetings. This issue has attracted increasing interest in Hong Kong since the ongoing Covid-19 pandemic has presented challenges to the holding of large-scale gatherings. The SFC took the opportunity provided by this year's ACRU to encourage the adoption of a format that enables shareholders to attend in person at the physical venue or virtually via an online connection. The key issue, however, is that in both cases shareholders should be able to vote and ask questions during the meeting. This functionality is key to ensuring that shareholder meetings fulfil their role as a primary opportunity for shareholders to participate in the governance of the companies they have invested in.

These issues are also relevant to the new format we have adopted for the ACRU forum itself. While Covid-19 has brought unprecedented challenges, it has also brought some unexpected advantages – among them the accelerated uptake of new technology. The adoption of an online format for ACRU was a necessity due to Covid-19, but it has widened the accessibility of the forum without losing two key functions – the ability of participants to hear from regulators on the issues at the top of the compliance and governance agenda in Hong Kong, and, crucially, the ability to raise questions directly with them in the Q&A sessions.

Before I conclude, I would like to give special thanks to everyone who made this year's ACRU possible. That includes our Guest of Honour, The Honourable Christopher Hui Ching-yu, JP, Secretary for Financial Services and the Treasury, the HKSAR Government, and the speakers from our regulatory bodies who shared their valuable expertise at the webinar. Thanks are also due to our senior members who chaired the five sessions of the webinar, our Secretariat team members who worked so hard behind the scenes to ensure ACRU's success and Mohan Datwani FCG FCS(PE), Institute Deputy Chief Executive, as the event's Master of Ceremony.

Finally, thanks are also due of course to the event sponsors and, last but not least, our ACRU audience. The success of ACRU is based on the unity of purpose that links regulators and governance professionals in their dedication to good governance. This year's event attracted over 2,000 participants and generated a lively debate in the Q&A sessions – clear testimony I think to the enduring interest in, and usefulness of, our most popular continuing professional development event.

Gillian Meller FCG FCS

# 2021 年度企业规管最新发展研讨会 (ACRU)

本期会刊回顾了公会于 6 月 11 日举办的第 22 届“企业规管最新发展研讨会”(ACRU)。ACRU 每年都会针对公司治理专业人士需要密切关注的当前和新兴规管问题进行详细解读，今年的 ACRU 也不例外。

2021 年 ACRU 举办之时，正值香港交易及结算所有限公司（港交所）有关纪律处分权力及制裁的《上市规则》新版条款生效之际。港交所借本届 ACRU 之机，解析了新规对香港的公司治理专业人士的主要影响，同时，也回应了公会对咨询文件的反馈意见，即，公司秘书如仅是普通行政参与则不会被追究责任。本届 ACRU 所传达的一个关键信息是，港交所 (HKEX) 与证监会 (SFC) 都进一步加强了个人失当行为问责，不仅仅是公司董事，包括公司秘书在内的公司高级管理人员，皆需为个人失当行为负责。

此外，本届 ACRU 还关注了以下几个实务议题：董事责任；个人数据安全；财务披露（特别是新冠疫情所造成的影响的报告）；环境、社会和治理 (ESG) 报告以及表现（特别是气候相关问题报告的重要性）。此外，还探讨了香港反洗钱及反恐融资监管体系相关的复杂合规问题。

与此同时，2021 年 ACRU 还对会议实务操作方面的多项进展进行了探讨。其中之一便是采用线上线下结合的模式的“混合”股东大会。受新冠疫情影响，召开线下大型会议面临挑战，这一问题在香港地区受到了广泛关注。因此，香港证监会借本届 ACRU 之机，倡导采用线上线下结合模式的会议，这样股东既可通过线下方式现场参会，也可通过线上方式远程出席。不过，无论以何种方式参会，皆须确保大会期间股东可正常投票与提问。股东大会的投票与提问功能是股东参与所投资公司的治理的重要途径。

本届ACRU也基于以上原因采用了这种新的会议模式。新冠疫情不仅带来了前所未有的挑战，也带来了意想不到的机遇，尤其是新技术的加速应用。虽然受新冠疫情影响，ACRU 不得不采用线上方式进行，但这也拓宽了 ACRU 的参与渠道，并使 ACRU 的两大关键功能得以保留，即：与会者不但可以听取监管人员对于香港关键合规与治理问题的意见，也可以在问答环节直接向监管人员提问。

最后，我要特别对所有为今年 ACRU 成功举办做出贡献的人员表达感谢。其中包括我们的主礼嘉宾：尊敬的香港特区政府财经事务及库务局局长、太平绅士许正宇先生，以及在会上分享宝贵见解的监管机构官员。同时，我也要对以下人士致以诚挚的谢意：主持五个会议环节的资深会士们，为确保ACRU成功举办而在幕后辛勤付出的秘书处团队，以及主持此次ACRU的公会副总裁高朗 FCG FCS(PE) 先生。

此外，也特别感谢各位赞助商，以及我们最应致以诚挚谢意的 - 积极参与 ACRU 的各位观众们！ACRU 的成功源于其连接具有良好公司治理共同诉求的监管人员与治理专业人士之宗旨。作为我们最受欢迎的一项持续专业发展活动，今年的 ACRU 吸引了超过 2000 人参与，并在问答环节引发了热烈讨论，充分体现了这项活动的非凡魅力和现实意义。

Gill Meller.

马琳 FCG FCS

# Regulatory innovation

## ACRU 2021 review: part one



Speakers at the 22nd Annual Corporate and Regulatory Update (ACRU) webinar, held by The Hong Kong Institute of Chartered Secretaries on 11 June, emphasised the need for regulators in Hong Kong to find the right balance between high regulatory standards and market development.


ACRU is the most popular CPD event held by The Hong Kong Institute of Chartered Secretaries (the Institute). This year's event, which continued with the webinar format adopted last year in response to the Covid-19 pandemic, attracted over 2,000 participants and comprised sessions with the following regulatory bodies (in order of appearance):

- Financial Services and the Treasury Bureau
- Companies Registry
- Office of the Privacy Commissioner for Personal Data, Hong Kong
- Hong Kong Exchanges and Clearing Ltd, and
- Securities and Futures Commission.

This edition of *CSj* reviews the key themes to emerge from the day's discussions.

### Regulation and market development

The importance of striking the right balance between high regulatory standards to safeguard the quality of the Hong Kong market while minimising the compliance burden for companies and encouraging innovation was the central theme to emerge from the Guest of Honour speech by The Honourable Christopher Hui Ching-yu, JP, Secretary for Financial Services and the Treasury, the HKSAR Government.

'Speaking of regulation, I'm sure many of you will associate that with compliance restrictions or limitations,' Mr Hui said. 'Those are indeed necessary as we have to guard against potential fraud and market misconduct. However, there's another way of looking at regulation, as it brings trust and reinforces stability in our market, thereby paving the way and sowing the seeds for innovation,' he said.

## Highlights

- regulators have to find where the optimum balance lies between high regulatory standards and the need to minimise the compliance burden for businesses
- the effectiveness of any regulatory regime is closely related to the ability of regulators to enforce the rules
- regulators in Hong Kong are determined to enforce personal accountability for misconduct and will be targeting a broader range of individuals – including company secretaries

> speaking of regulation, I'm sure many of you will associate that with compliance restrictions or limitations... however, there's another way of looking at regulation, as it brings trust and reinforces stability in our market, thereby paving the way and sowing the seeds for innovation

The Honourable Christopher Hui Ching-yu, JP, Secretary for Financial Services and the Treasury, the HKSAR Government

Mr Hui cited a number of ways in which Hong Kong has sought to find the right balance between high regulatory standards and market development. The decision back in 2018 to allow pre-revenue biotech companies and companies with weighted voting rights structures to list in Hong Kong, with investor protection measures in place, he pointed out, enabled Hong Kong to benefit from the opportunities to finance the growing number of new economy companies.

Similarly, he cited the latest proposals by the Financial Services and the Treasury Bureau (FSTB) to enhance anti–money laundering and counter–financing of terrorism (AML/CFT) regulation in Hong Kong through the introduction of, among other things, a licensing regime for virtual asset service providers (VASPs) in Hong Kong. The proposed regime will allow foreign-incorporated companies to obtain a licence as VASPs in Hong Kong. 'This will cast our net wider and attract more foreign players to the Hong Kong market,' Mr Hui said. He added that, while there are inevitably some compliance costs in meeting the licensing requirements, the FSTB has had feedback from market players that a proper licensing regime will enhance investor confidence and, in turn, help them attract new business.

Mr Hui also cited the Stock Connect and Bond Connect programmes connecting the stock and bond markets of Hong Kong with those of the Mainland as examples of successful regulatory innovation. 'We have pioneered a model to connect to vastly different markets in a risk controlled manner,' Mr Hui said. He added that both programmes have opened new investment channels to facilitate increasingly large fund flows. In the first quarter of 2021, turnover of northbound and southbound Stock Connect increased by over 60% and 180%, respectively.

Moreover, the proposed Wealth Management Connect in the Greater Bay Area is a further capital market innovation designed to connect market players and investors in the Mainland and Hong Kong. Government regulators are now working towards the implementation of this programme in the second half of this year. The programme would adopt many regulatory designs used in the various connectivity programmes already launched, including a quota system applicable in an aggregate and individual manner, and a closed loop system to monitor and control fund flows.

### Abiding by international standards

The first ACRU session following the Guest of Honour speech featured a presentation by Joseph Chan JP, Under Secretary for Financial Services and the Treasury. Mr Chan further developed the theme of finding the optimum balance between high regulatory standards and cutting the compliance burden for businesses where possible.

He started by highlighting Hong Kong's advantages as a capital market and international financial centre (IFC). Its core strengths, he said, are its free flow of capital, common law system, independent


"There are plenty of people, no matter where they are within an issuer, who we think have a responsibility to help ensure that the market remains orderly, informed and fair. We all have our part to play."

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

judiciary, transparent and low tax regime, robust infrastructure support, and, last but not least, a rich pool of professionals. He welcomed the contribution of professional practitioners, including participants of ACRU, to building Hong Kong's success as an IFC.

He added that Hong Kong has to preserve its reputation as a well-regulated market. 'We need to make sure that internationally, investors and other jurisdictions are comfortable and confident in our regime and in our regulations. Hong Kong's sound regulatory system gives confidence to market players that they are on a level playing field. It gives confidence that there will be clarity, that there will be certainty and free and fair competition for everybody,' he said.

For this reason, while Hong Kong has traditionally maintained a low tax regime, he said, it needs to adapt to the recent initiative by the Organisation for Economic Co-operation and Development (OECD) and G20 to combat tax avoidance. The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting has brought together 139 jurisdictions to improve the coherence of international tax rules and ensure a more transparent tax environment. If a jurisdiction doesn't comply with the new requirements, Mr Chan pointed out, it is likely to be put on the list of uncooperative tax havens and that is something Hong Kong has to avoid.

He also pointed out that Hong Kong's regulatory regime needs to keep up with technological advances and changes in the business environment. He cited the new Open-ended Fund Companies (OFC) regime (launched in 2018) and Limited Partnership Fund regime (launched in 2020), as examples of this. These two regimes involve subsidies and tax concessions to attract more funds to set up in Hong Kong. This, Mr Chan said, will extend opportunities for local professional service providers, including company secretaries.

## Strengthening enforcement

The effectiveness of any regulatory regime, however, is closely related to the ability of regulators to enforce the rules. This year's ACRU coincided with the coming into force of new Listing Rules relating to the disciplinary powers and sanctions available to Hong Kong Exchanges and Clearing Ltd (HKEX). The conclusions to the HKEX's consultation on this issue have been published and the updated Listing Rules came into effect at the beginning of this month.

In his ACRU presentation, Jon Witts, Head of Enforcement, Listing Division, HKEX, said the new Listing Rules will add to the HKEX enforcement toolkit. 'We are very much looking forward to starting a new chapter in our enforcement work,' he said.

He added that the changes will enable HKEX to better focus its enforcement of the Listing Rules and will widen the range of disciplinary sanctions available to it. 'The new range is going to help us to distinguish more clearly between different levels of misconduct,' he said. 'This is going to help with transparency and also allow us to more clearly set out and to address the more serious levels of misconduct.'

Of particular relevance to the company secretaries in the ACRU audience, Mr Witts emphasised that the changes will also better enable HKEX to ensure personal accountability for misconduct for a broader range of individuals – including company secretaries. 'This is

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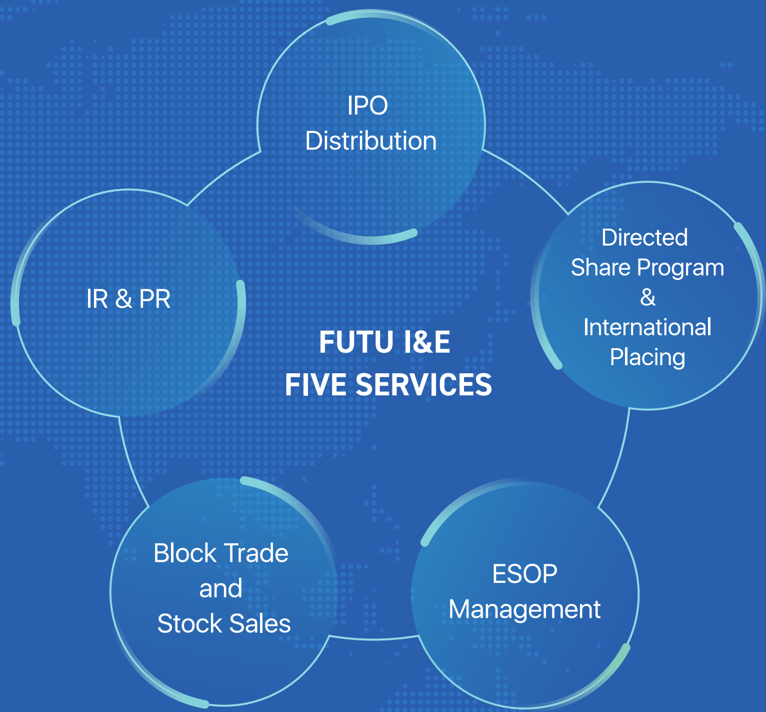


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**A:** C1-C2, 13 / F, United Centre, 95 Queensway, Hong Kong about ensuring that we can now take action against anyone who is responsible for misconduct,' he said. 'Although our focus has rightly been on the directors of the company, there are others surrounding the directors who have a responsibility for compliance. There are plenty of people, no matter where they are within an issuer, who we think have a responsibility to help ensure that the market remains orderly, informed and fair. We all have our part to play.'

This is also the approach of the Securities and Futures Commission (SFC). 'The senior management of listed companies plays a critical role in defining the corporate culture and implementing systems to foster good corporate governance,' said Kenneth Luk, Senior Director, Enforcement Division, SFC. He appealed directly to the company secretaries, and other governance professionals, in the ACRU audience to recognise the importance of their professional work in helping companies and directors maintain good governance. 'Good corporate governance is the key to maintaining the quality of our securities market and preventing corporate fraud. Corporate managers doing the right thing at the right time is obviously the starting point for achieving good corporate governance,' he said.

He added that, while the SFC is determined to use everything in its arsenal to tackle corporate fraud, and to deter bad players from causing harm to the Hong Kong market, enforcement actions can only be taken after wrongdoings have taken place. Often, the harm has already been done and sometimes cannot be remedied. 'Companies secretaries are often closer to the crime scene than we are and may come across red flags,' Mr Luk said. Intervention by practitioners can therefore be crucial in preventing misconduct before it has a chance to cause irreparable damage to both the listed company and its stakeholders.

### Key takeaways for company secretaries

Following the remit of the ACRU forum – to provide practical guidance on governance practice – Mr Witts also highlighted the principal ways in which company secretaries can help to fight corporate fraud. This, he said, is primarily by ensuring that all parties are aware of their responsibilities under the rules. 'It would be a mistake for anyone to think that the only people who find themselves facing our disciplinary actions are evil doers,' he said. While there are people who are responsible for serious acts of malfeasance, many people subject to HKEX disciplinary sanctions are guilty of having, sometimes unwittingly, facilitated misconduct.

He urged company secretaries, as the company officers dedicated to enhancing

## Directors' duties

While both HKEX and the SFC have broadened the reach of their enforcement work, directors will continue to be a priority target. Kenneth Luk, Senior Director, Enforcement Division, SFC, pointed out that directors should not assume that claims of ignorance of misconduct will reduce their liability. 'The phrases – "I did not know", or "I did not ask" are common responses we get from directors when we question them about affairs of the listed company. These answers do not diminish one's duties as a director of a listed company. We expect a director to ask and raise questions that a reasonable person would have asked in the circumstances,' he said.

In many cases investigated by the SFC, very basic questions about transactions being entered into would have flagged up cause for concern. In an acquisition, for example, directors need to know whether anyone in their company has a relationship with the target. 'The job of a director of a listed company is complex and getting more so, it is therefore important for directors and senior executives to be inquisitive and professional, and to perform their duties with the highest integrity,' he said.

He urged ACRU attendees to read the guidance note issued by the SFC on directors' duties. The guidance note emphasises that, in the context of getting a valuation in corporate transactions, directors must act in good faith in the interest of the company, and exercise reasonable care, skill and diligence. In particular, this means not accepting blindly any valuations and financial forecasts provided to them typically by a vendor, or the management of the target.

'Listed companies and directors should take all reasonable steps to verify the accuracy and reasonableness of material information that is likely to affect a valuation. Directors must also consider whether the proposed transaction or arrangement is in the interest of the company and its shareholders as a whole,' he said.

compliance and corporate governance, to ensure that the directors they advise and the managers they work with understand their responsibilities. All parties cannot be too passive – they need to apply a questioning mind and speak up when they see things going wrong.

Mr Luk highlighted the fact that company secretaries are also closely involved in assisting listed companies to comply with SFC investigations. He pointed out that where listed companies adopt a cooperative attitude, this enables both parties to agree on the facts more efficiently – saving time and the SFC's investigative resources. 'Our enforcement division values cooperation, and gives meaningful credit to companies and individuals who act in good faith and demonstrate a genuine cooperative attitude when dealing us,' he said.

He added that any attempt to be evasive will not have the desired effect. For example, where companies submit documents that are highly disorganised, or in a format that is difficult to process, this will increase suspicion that bad actors are attempting to slow down or complicate the investigation. This will motivate investigators to dig deeper to unravel more evidence and, with the benefit of data analytical tools in the evidence review process, the obstructive strategy will only have limited effect.

'If you're compiling a submission on behalf of a listed company and have been placed under pressure to compromise your professional conduct, I would strongly urge you to resist any such pressure,' Mr Luk said. Mr Witts backed up this point. He warned that HKEX keeps a list of individuals who are uncooperative and will continue to seek sanctions and publicise cases of non-cooperation.

*The Institute's 22nd Annual Corporate and Regulatory Update was held on 11 June 2021.*

# Good governance – a moving target?

## ACRU 2021 review: part two



The 22nd ACRU webinar urged governance professionals, in the current environment of rapid change, to be agile in their approach to compliance and governance.

The agenda of this year's ACRU demonstrates that the business environment in Hong Kong continues to grow in complexity. This second part of our review of ACRU 2021 focuses on the insights shared at the forum on a number of evolving issues high on the agenda of governance professionals in Hong Kong.

### ESG and climate change

Kelly Lee, Vice-President, Policy and Secretariat Services, Listing Division, Hong Kong Exchanges and Clearing Ltd (HKEX), shared the latest developments relating to environmental, social and governance (ESG) and climate change.

She started by highlighting the growing seriousness of the climate risks the world faces. The response of governments globally has been to implement more ambitious targets to reach carbon neutrality. The Mainland has set a target for carbon neutrality by 2060 and Hong Kong aims to achieve carbon neutrality by 2050.

In addition, there has also been growing pressure from investors for companies to align with best practice on ESG issues, including climate-related issues. Since companies that identify, address and disclose their ESG risks and policies deliver greater shareholder value at a lower risk in the long term, investors are increasingly interested in ESG and climate-related disclosures. They are therefore asking for consistent, comparable and decision-useful ESG disclosures from companies.

Global standard setters in sustainability reporting (such as the newly created Value Reporting Foundation and Sustainability Accounting Standards Board) have proposed the creation of a new set of comprehensive and harmonised sustainability standards aligned with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).

The TCFD recommendations have been widely adopted by regulators globally, including in Hong Kong. A number of regulatory bodies in Hong Kong, including HKEX, have joined forces in the Green and Sustainable Finance Cross-Agency Steering Group (the Steering Group). In December last year, the Steering Group announced its strategic plan to strengthen the financial ecosystem to support a more sustainable future. One of the action points is to require climate-related disclosures to be aligned with the TCFD recommendations across relevant sectors no later than 2025.

Ms Lee pointed out that the above developments will mean that companies can no longer dodge their responsibilities with regard to their governance of ESG and climate-related risks. 'A key takeaway for companies is that you really have no option other than to participate in the ESG journey. If companies do not follow through, they risk being left behind as investors are already shifting to favour those companies that can properly describe how they can manage strategic risks resulting from climate change,' she said.

Moreover, HKEX has gradually upgraded the ESG disclosure obligations of listed companies in Hong Kong. For example, in 2019 it launched a consultation proposing enhancements to its ESG reporting framework. The new rules resulting from this initiative, which came into effect in July 2020, require additional disclosure on climate change risks and how issuers manage these risks. Another consultation was launched in April this year proposing, among other things, to align the publication timeframe of ESG reports with the publication of annual reports to improve the timeliness of ESG information.

HKEX also reviews issuers' ESG reports on a regular basis. Ms Lee highlighted

## Highlights

- there has been growing pressure from investors for companies to align with best practice on ESG issues, including climate-related issues
- Hong Kong continues to lag behind many overseas jurisdictions in enabling electronic meeting formats and the Covid-19 pandemic has been a powerful argument in favour of catching up
- the risk of data breaches is on the rise, reinforcing the need for better personal data privacy standards among organisations in Hong Kong

the fact that HKEX has observed a lack of detail in respect of the board's involvement in the ESG reporting process. 'A key theme of our new ESG requirements is taking ESG issues to the board level,' Ms Lee said. 'ESG reporting is far beyond a compliance exercise and the board, as the ultimate decision-maker of a company, must seriously consider ESG risks that the company is facing and monitor the progress of mitigating such risks. Only with the involvement of the board can these issues be properly embedded into the company's business strategy.'

Finally, Ms Lee urged ACRU participants to make use of the education and guidance materials, in particular the Step-by-Step Guide to ESG Reporting, available on the HKEX website: www.hkex.com.hk.

### Electronic meetings – the lessons of Covid-19

The issue of electronic shareholder meetings rose to the top of the agenda in Hong Kong when measures taken to prevent the spread of Covid-19 were adopted before the annual general meeting (AGM) season got underway in early 2020. In her ACRU presentation, Jennifer Lee, Director, Corporate Finance Division, Securities and Futures Commission (SFC), promoted the adoption of hybrid (electronic and physical) shareholder meetings.

Ms Lee started by pointing out that Hong Kong continues to lag behind many overseas jurisdictions in enabling electronic meetings and the Covid pandemic has been a powerful argument in favour of catching up. She added, however, that not all electronic meeting formats provide the same level of shareholder participation. For example, enabling a simultaneous webcast of a physical AGM usually means that only the shareholders at the physical venue can ask questions and vote at the meeting. Moreover, purely virtual meetings deprive shareholders of the ability to attend in person in a face-to-face setting. They can only vote and ask questions online.

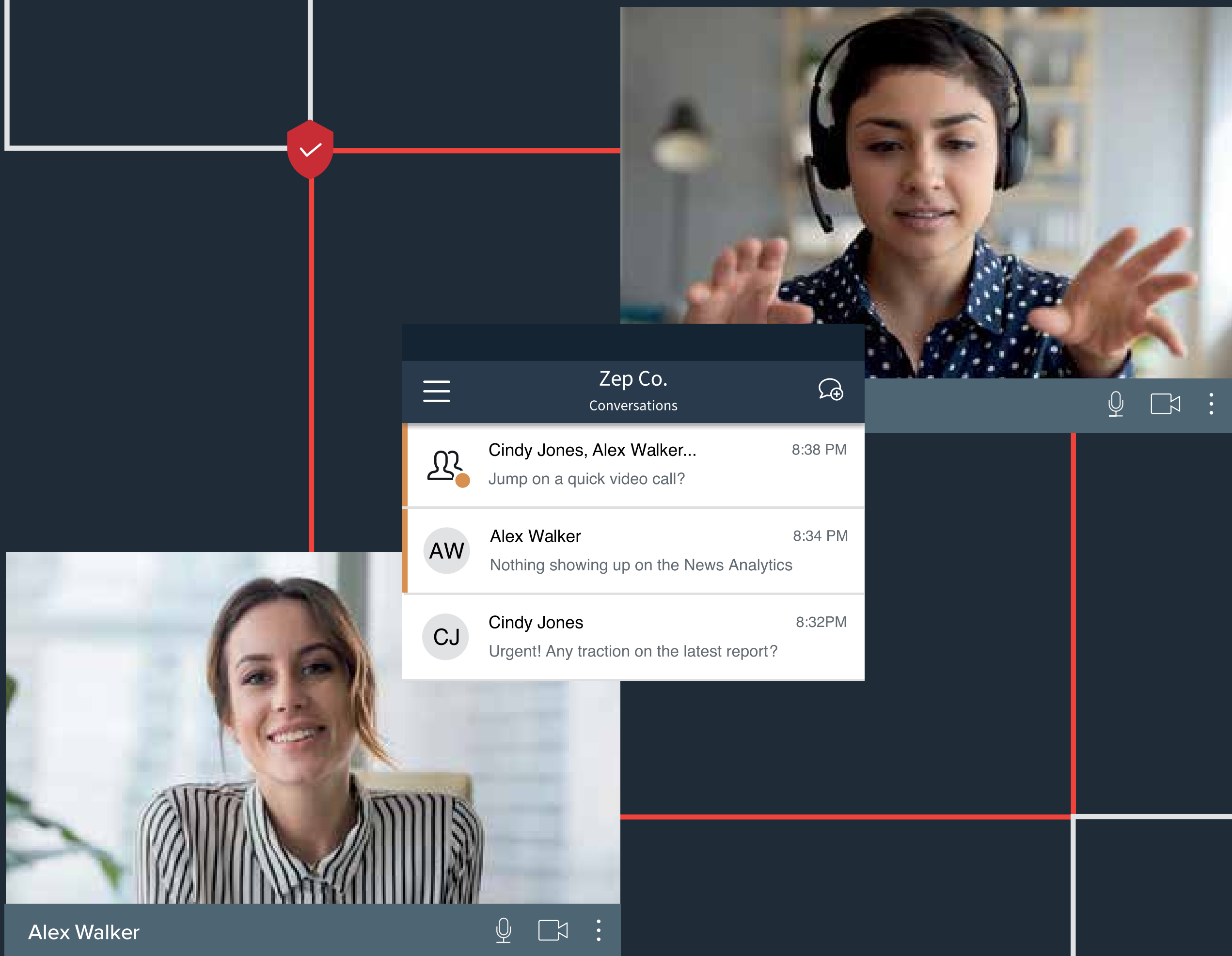
> "a key takeaway for companies is that you really have no option other than to participate in the ESG journey"
>
> Kelly Lee, Vice-President, Policy and Secretariat Services, Listing Division, Hong Kong Exchanges and Clearing Ltd


Encouraging shareholder participation in the governance of the company is a fundamental objective of AGMs, Ms Lee pointed out, and shareholder engagement is also a general principle under the Corporate Governance Code. 'Issuer boards should be responsible for maintaining ongoing dialogue with shareholders and, in particular, use annual general meetings or other general meetings to communicate with them and encourage their participation,' she said.

The SFC therefore recommends the adoption of 'hybrid' meetings – that is, a format where shareholders can attend in person at the physical venue or electronically by logging on to a designated website, and in both cases can vote and ask questions during the meeting.

Ms Lee then discussed some of the legal and practical issues listed companies need to consider regarding the adoption of electronic meetings. Hong Kong company law permits a company to hold a general meeting at two or more 'places' using any technology that enables members who are not together at the same 'place' to listen, speak and vote at the meeting. There is as yet no case law as to the interpretation of 'place' under the Companies Ordinance and whether a general meeting can be held purely electronically without a physical venue. So far no issuers have conducted virtual meetings, but a number of hybrid meetings have been held.

Since 90% of companies are incorporated overseas, Ms Lee also reviewed relevant regulations in some of the common jurisdictions of incorporation for Hong Kong companies. She added, however, that listed companies also need to check their constitutional documents to ascertain whether they permit hybrid meetings. Where companies need to amend their constitutional documents, Ms Lee recommended they prepare for




# MODERN GOVERNANCE IN TIMES OF CRISIS

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> given the vast amount of data handled by companies these days, I cannot overemphasise the need for proper data privacy management as a part of good corporate governance

Ada Chung Lai-ling, Privacy Commissioner for Personal Data, Office of the Privacy Commissioner for Personal Data, Hong Kong


this well in advance of their AGM since it will involve working closely with their share registrar and shareholders – in particular letting shareholders know how to exercise their voting rights.

She emphasised that public announcements and notices to investors should set out the logistics for online attendance at general meetings and online voting. Listed companies should also ensure a reasonable period of time is provided for investors to submit proxy instructions. They should also request the share registrar to work closely with intermediaries to ensure the efficient processing of proxy instructions. In particular, investors should be able to deliver their proxy instructions via electronic means. It is unacceptable for an investor to have to attend in person to lodge a proxy instruction, or to receive log in details by physical mail.

## Personal data privacy

Personal data privacy has been climbing the agenda for governance professionals for some time. This year's ACRU was fortunate to have two speakers from the Office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD) to update participants on the latest developments in this area.

Ada Chung Lai-ling, Privacy Commissioner for Personal Data, PCPD, started by pointing out that the risk of data breaches is on the rise. The rapid pace of digitalisation means that organisations routinely collect and store increasing amounts of data. This in turn means that data breaches typically affect many more people. 'This reinforces the need for better personal data privacy standards,' Ms Chung said.

She then walked the audience through the six Data Protection Principles (DPP) of the Personal Data (Privacy) Ordinance (PDPO), and the advantages of setting up a Privacy Management Programme. 'Given the vast amount of data handled by companies these days, I cannot overemphasise the need for proper data privacy management as a part of good corporate governance,' she said.

She also recommended ACRU participants refer to the guidelines issued by the PCPD, including the Privacy Management Programme: A Best Practice Guide, available from the PCPD website: www.pcpd.org.hk.

The second PCPD speaker, Joyce Lai Chi-man, Acting Assistant Privacy Commissioner for Personal Data (Enforcement), PCPD, focused her ACRU presentation on the PCPD's recommendations for handling data breaches with case examples. She pointed out that DPP 4 requires data users to take all practicable steps to protect the personal data they hold against unauthorised or accidental access, processing, erasure, loss or use. Moreover, if a data processor is engaged, the data user must adopt contractual or other means to ensure that the data processor complies with the data security requirements.

Where a suspected data breach has occurred, the PCPD recommends that organisations:

- collect all essential information immediately
- assess the impact on data subjects

- adopt containment measures (for example changing passwords and securing all evidence of the breach), and
- contact stakeholders (for example services providers, management and affected data subjects).

Under the General Data Protection Regulation (the law protecting EU citizen's personal data), it is mandatory to give data breach notifications to the data protection authority. This is not the case in Hong Kong, but Ms Lai stressed that it is in the interests of organisations to notify the PCPD of any suspected breach. This can be made by downloading the Data Breach Notification Form from the PCPD website.

The PCPD follows up on cases of suspected data breaches, whether reported by a data user or not, and may initiate a compliance investigation to assess whether there has been a contravention of the PDPO. She added that the PCPD investigations to date have revealed a number of common causes of data breaches. These include:

- loss of documents or portable storage devices (34%)
- hacking or system misconfigurations (32%)
- inadvertent disclosures through mail or email (21%)
- employee misconduct (10%), and
- improper or accidental disposal (3%).

To conclude, Ms Lai recommended Data Protection Officers join the PCPD's Data Protection Officers Club to advance their knowledge of data privacy compliance through experience sharing and training.

# Compliance challenges

## ACRU 2021 review: part three

This third and final part of our review of the Institute's 22nd ACRU webinar highlights the insights shared at the forum on compliance with Hong Kong's corporate disclosure requirements, and its upgraded and expanded anti-money laundering and counter-financing of terrorism (AML/CFT) regime.

Compliance with Hong Kong's corporate disclosure regime is always high on the agenda of governance professionals. At the Institute's latest ACRU webinar, speakers from the Securities and Futures Commission (SFC) revealed that nearly half of SFC listed company investigations involve false or misleading financial statements. Similarly, AML/CFT compliance is an area of practice governance professionals need to keep up to date with, particularly those working in the trust or company service provider (TCSP) sector. There has been a significant strengthening of AML/CFT regulations in Hong Kong and tighter supervision of the TCSP sector to meet international standards.

This final part of our review of the Institute's 22nd ACRU webinar highlights some takeaways from the discussions of these two areas of practice.

## Corporate disclosure

**Disclosure of corporate loans**

This year a high number of companies failed to meet the deadline for reporting their annual results – for companies with a December 2020 year-end, this deadline was by the end of March 2021. Often, this failure related to the inability of the auditors to complete their audit due to a lack of evidence to justify the commercial rationale for loans, guarantees, prepayments and receivables.

Benjamin Cheuk, Director, Corporate Finance Division, SFC, pointed out that these developments are indicative of a number of governance failures relating to loans. These include:

- the loans in question involved no security and no collateral – sometimes they didn't even involve interest payments
- the loans were approved without any evidence to show that the listed issuer had done any reasonable credit assessment
- there were poor internal controls relating to the loan approval process
- there were multiple extensions of the loan repayment without good reason, and
- in some cases, the money loan amount did not go to the named borrower's account, raising doubts as to the identity of the real borrower.

Mr Cheuk highlighted similar concerns relating to prepayments. In a number of cases the SFC looked at, the prepayments were not subject to interest payments and sometimes no goods were actually delivered as a result. In essence, these prepayments were actually loans to parties purporting to be suppliers. In other cases, large amounts of money were paid upfront to counterparties who signed a memorandum of understanding (MOU) with the company. An MOU, Mr Cheuk pointed out, is not legally binding, so there does not seem to be any commercial rationale for companies to pay large amounts of money as a 'prepayment' without any safeguards regarding the recoverability of these payments.

In terms of receivables, the SFC has encountered more than one case where companies sold valuable assets, sometimes to a connected party, without actually collecting the money. The due payment then became a 'receivable' in the accounts for a long period of time. The auditors would then raise questions as to the recoverability of the payment. Mr Cheuk's team noted an alarming lack of enthusiasm to recover the money, probably on the basis that the person who received the asset was a connected party.

## Highlights

- the SFC needs to see due diligence and a commercial rationale when companies expose themselves to credit risks by issuing corporate loans
- both the SFC and HKEX have been encouraging more quantitative disclosure of the impacts of Covid-19 on company operations, financial performance and financial position, together with an assessment of the risks and impact on future performance
- Covid-19 has demonstrated the usefulness of the 'anywhere and anytime' ethos of the e-services provided by the Companies Registry

> in view of the Covid-19 pandemic and its economic effects, investors need high-quality financial disclosure more than ever

William Wong, Head of Accounting Affairs, Listing Division, Hong Kong Exchanges and Clearing Ltd


Regarding guarantees, Mr Cheuk acknowledged that issuing guarantees for loans can serve a commercial purpose – for example, where companies issue guarantees for loans to meet the funding needs of suppliers. However, such guarantees expose the listed company to a credit risk. In a number of cases, the SFC investigated guarantees that were given to controlling shareholders or directors without the knowledge of the board or the board's approval. Mr Cheuk emphasised that the SFC needs to see due diligence and a commercial rationale when companies expose themselves to these credit risks.

Hong Kong Exchanges and Clearing Ltd (HKEX) has also been active in this area of enforcement. Jeffrey Ho, Assistant Vice-President, Listed Issuer Regulation, Listing Division, HKEX, pointed out that the governance failures highlighted above have been a major theme of the latest HKEX Annual Report Review Programme (ARRP). He said these failures are symptomatic of internal control failures and a failure of directors to properly discharge their fiduciary duties in lending transactions.

**Disclosure of the identities of counterparties**

The disclosure of the identities of counterparties involved in notifiable transactions is another area of concern for regulators in Hong Kong. The SFC has observed a number of unfair or overvalued acquisitions of businesses by listed companies where there was inadequate disclosure of the identities of the counterparties involved. Often the corporate announcement of the acquisition would name a legal vehicle without disclosing the identities of the ultimate beneficial owners of the vehicle.

Patrick Yu, Senior Vice-President, Listed Issuer Regulation, Listing Division, HKEX, highlighted HKEX concerns relating to this issue. He warned that HKEX has seen a number of instances where compliance with Main Board Listing Rule 14.58 (GEM Rule 19.58), which requires issuers to disclose the identity of the counterparties to a notifiable transaction, had been followed in the letter rather than the spirit. He pointed out that, where the counterparty is a legal vehicle or an investment fund, investors may be completely in the dark about the significance of the transaction. They will legitimately want to know who negotiates on behalf of the company, or who exerts influence on it.

Guidance issued by HKEX in October 2019 points out that, in such cases, issuers need to disclose the identity of ultimate beneficial owners of the legal vehicle or investment fund. Mr Yu added that notifiable transaction announcements need to also give sufficient information relating to any relationship between the counterparties and connected persons. 'If the relationship gives rise to concerns that the connected person was in a position to exercise significant influence over the issuer on the transaction, we may deem the counterparty as a connected person,' Mr Yu said.

**Disclosure of Covid impacts**

Covid has had a major impact on listed

companies in Hong Kong and both the SFC and HKEX have been encouraging more quantitative disclosure of these impacts. William Wong, Head of Accounting Affairs, Listing Division, HKEX, highlighted the findings of the HKEX's latest ARRP in this regard.

The ARRP report, published in January this year, recommends issuers to make quantitative measures of the impact of Covid on operations, financial performance and financial position, and an assessment of the risks and impact on their future performance. This should include assessments of the liquidity positions and working capital sufficiency with reference to issuers' operations and capital commitments, and measures such as cost control, funding and adjustments to business plans taken or to be taken to manage the impact of the Covid-19 pandemic.

Mr Wong added that issuers should continuously evaluate the situation and, where appropriate, announce material business developments to keep shareholders and investors informed on a timely basis. 'In view of the Covid-19 pandemic and its economic effects, investors need high-quality financial disclosure more than ever. Issuers should have in-depth conversations with their auditors, either at an early stage or throughout the audit, and stay alert to the changes to the financial reporting and auditing standards, as well as the recent standard developments and guidance materials provided by the local and international standard setters on their designated websites,' Mr Wong said.

**Profit warnings**

Mr Cheuk of the SFC, also highlighted the SFC's concerns regarding the poor quality

"TCSP licensees are required to assess the money laundering and terrorist financing risks of their businesses and customers"

Ida Lee, Deputy Registry Manager, Registry for Trust and Company Service Providers, Companies Registry


of corporate profit warnings. He pointed out that the practice of warning the market that 'profit' is expected to record a decrease of over 100% simply doesn't make sense. If profits have fallen over 100%, the company is actually reporting a loss and the language here is really an attempt to give a false impression that the company is still making a profit.

### AML/CFT compliance

As mentioned above, AML/CFT compliance is a key part of the work of governance professionals in Hong Kong, particularly for those working in the TCSP sector. Two speakers from the Companies Registry presented at this year's ACRU to update practitioners on the latest developments in this area.

Ida Lee, Deputy Registry Manager, Registry for Trust and Company Service Providers, Companies Registry, focused on the compliance obligations of TCSPs under the licensing regime regulated by the Companies Registry. She highlighted some major points regarding the application for renewal of a TCSP licence and some common misconceptions of the statutory requirements governing Hong Kong's TCSP licensing regime – the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO).

Applicants applying for a TCSP licence must not start carrying on a trust or company service business before the licence is granted. Moreover, licensees are required to put in place adequate and proper AML/CFT policies, procedures and controls. 'TCSP licensees are required to assess the money laundering and terrorist financing risks of their businesses and customers. They also have to develop and implement policies, procedures and controls on the relevant aspects of risk assessment and customer due diligence (CDD) measures,' she said.

The CDD measures should be carried out by a TCSP licensee:

- before establishing a business relationship with a customer
- before conducting any occasional transaction that involves an amount equal to or exceeding HK$120,000
- when the licensee suspects that the customer or the customer's account is involved in money laundering or terrorist financing, and/or
- when the licensee doubts the veracity or adequacy of any information obtained.

Basic CDD measures include identifying the customer and verifying the customer's identity and that of the customer's beneficial owner, and obtaining information on the purpose and intended nature of the business relationship to be established with the TCSP licensee.

Ms Lee also drew the attention of ACRU participants to the first condition of a TCSP licence requiring the licensee to appoint a compliance officer (CO) and a money laundering reporting officer (MLRO) during the term of the licence and to ensure that a new CO or MLRO be appointed within seven days if a vacancy occurs in either of the posts. Licensees are required to notify the Registrar of Companies of the resignation and appointment of these officers within one month of the change taking place.

Ms Lee reminded TCSP licensees to comply with statutory requirements under the AMLO for reporting changes of particulars of a licensee which is a corporation. They should observe their obligations under the AMLO as well as the filing requirements under the Companies Ordinance.

The second speaker from the Companies Registry, Roger Wong, Deputy Registry Manager, Company Formation and Deregistration Division, Companies Registry, focused his presentation on e-incorporation.

Mr Wong pointed out that only about 7% of incorporation applications were received via e-submission when the Companies Registry's e-incorporation service was first introduced in March 2011. Currently almost 60% of incorporation applications are received via the electronic route. He reminded ACRU participants how Covid had changed the way people work and how they can benefit from the 'anywhere and anytime' ethos of the Companies Registry's e-services. Moreover, e-incorporation is quicker and cheaper – it takes four working days to complete the processing of a paper application and costs HK$1,720, whereas e-incorporation takes less than one hour and costs HK$1,545.

Mr Wong walked through the e-incorporation process with ACRU participants, demonstrating the efficiencies to be gained by taking this route, including the automatic generation and filling in of the relevant forms and facilitations for frequent users. He encouraged participants to use the e-incorporation service if they are still using paper forms for company incorporation.

# Climate change and the company secretary

Sharan Gill, writer, lawyer and *CSj* contributor, reviews a new report published by the Corporate Secretaries International Association and PwC looking at the role of the company secretary in integrating climate initiatives into organisations' governance structures.

When it comes to climate change and its impact on organisations, is the company secretary an influencer or implementer? This question was the focus of a report recently released in a joint collaboration between the Corporate Secretaries International Association (CSIA) and PwC.

At a time when climate change has been dominating the news, with sobering predictions about the potential costs for the global economy, and as stakeholders increasingly expect effective climate action from companies, this report could not have come at a more opportune time. There has been a lot of discussion about the disruptive and destructive relationship between climate change and business; it is refreshing and timely to explore the role of the company secretary in driving effective change that integrates climate initiatives into organisations' governance structures.

### Addressing climate change from a governance perspective

The CSIA/PwC report – Climate Change and the Corporate Secretary, Influencer or Implementer? (the Report) – is based on a survey which involved some 584 participants from 21 countries (the Survey). Though at least half of the respondents were company secretaries, participants with various other professional roles within whose purview climate change would be relevant, were also represented. The primary objective of the survey was to investigate how organisations were addressing climate change from a governance perspective, and particularly the impact of this on the role of a company secretary.

Key areas such as overall awareness of climate change, allocation of responsibilities within an organisation on climate change issues, the training received by the company secretary and the board on climate change, the extent of reporting and risk management processes were just some of the issues explored. The views of the survey participants throw into sharp focus the role played by the company secretary, not just with regards to climate change, but within the organisation's general governance structure. Though some of the findings were not unexpected, there were a few surprises, the reasons for which the paper explores.

At the outset it is encouraging to note that more than half of the respondents report that their respective organisations have positive future plans to address climate change. When probed as to the details of implementation, however, there was far less clarity. The foreword to the Report makes the blunt observation that organisations with specific target areas for implementing climate change were represented by less than half of the respondents. The question then naturally arises whether company secretaries are able to influence governance practices, and not just with climate change issues, by moving from a purely advisory role to a more strategic one.

### Governance structures and the board

As global pressure for action on climate change increases, it has become imperative for boards to integrate this key issue into their oversight responsibilities. Nevertheless, one of the striking findings of the survey was that, while nearly three-quarters of respondents indicated that climate change impacts have had a negative impact on their business revenue, and 93% of respondents felt that these negative events impacted the industry as a whole, this does not appear to have translated into raising the priority of addressing this issue at the board level.

The survey seems to indicate that while boards do prioritise mitigating negative ESG impacts, somewhat curiously business resilience and sustainability, including adapting to climate change, are not accorded the same priority. The majority of respondents indicated that climate change issues are not prioritised as a separate agenda item on the board or management committee agendas, while a significant minority (17%) also confirmed that there were no formal processes in place to communicate climate change risk.

It is somewhat reassuring that, of the boards that have included climate change as a separate agenda item, nearly half have

## Highlights

- only 15% of company secretary respondents to the CSIA/PwC survey regard their role as being strategic
- the CSIA/PwC Report nevertheless suggests that company secretaries have the opportunity to take a more leading role in climate change governance
- in particular, the company secretary can facilitate the establishment of mechanisms to ensure awareness of climate change impacts, both at board and managerial levels

> "as global pressure for action on climate change increases, it has become imperative for boards to integrate this key issue into their oversight responsibilities"

a committee dedicated to climate change issues. The rest have integrated climate change and sustainability issues into other existing governance structures. Boards appear to be grappling with a 'complex, new phenomenon, and practical guidance may be required to help board directors understand their role in addressing these risks and opportunities', the Report says.

Could the direction be steered by the company secretary? In respect of climate change, the Survey would seem to indicate that it is the company secretary who appears to be most often tasked with this role, closely followed by the chairman, the chief executive officer, and the chief risk officer. This would suggest that the company secretary's role may indeed be evolving from an advisory to a more leading role on certain key issues.

### Regulatory requirements

The Report recognises that, while initiatives such as the Paris Agreement to the United Nations Framework Convention on Climate Change (implemented in 2015) have provided momentum for action to be taken on climate change, organisations face the dilemma of ensuring financial sustainability and achieving profit targets while satisfying community demands for social responsibility and environmental protection. However, 75% of respondents to the Survey cited a decrease in revenue as a result of disruption caused by climate change. The Report points out that this demonstrates that addressing climate change through governance processes is not only about social responsibility or protecting the environment – it is also critical to business sustainability.

The Survey presents an overview of the action taken by regulatory authorities regarding climate change within different jurisdictions, with the establishment of regulatory authorities at the forefront, followed closely by initiatives to promote climate risk awareness and enforcing compliance with regulations. It is interesting to note that more than half the Survey respondents were not aware of this. The Report highlights the inherent irony in this, pointing out that organisations are less likely to adhere to regulations if they are not even aware of them.

Of the respondents who were aware of the regulations, the Report points out that a 'proactive and visible role being played by the regulatory authorities has been key to organisations' awareness of the applicable regulations'. The question arises whether organisations should do more to stay abreast of regulatory requirements. This would seem an excellent opportunity for the company secretary to step up and show the way.

### Transparency in reporting

The Sustainable Development Goals (SDGs) put forward by the United Nations are broad in scope and, as the Report puts it, they leave many wondering where to start. Nevertheless, organisations' responses to achieving the SDGs can shape their long-term strategy, support dialogue with stakeholders and help to maintain or secure their licence to operate.

Reporting, both internal and external, will receive heightened scrutiny as stakeholders expect relevant information regarding climate change. Respondents were asked to indicate whether risks, opportunities and specific events linked to climate change are formally reported on, and the frequency of these reports. It is encouraging to note that more than half (55%) confirmed that climate-driven events are formally reported on, at least once or more times in a year. However, less than a third indicated that they followed recognised voluntary climate change reporting frameworks, such as the Carbon Disclosure Project (CDP), or the Task Force on Climate-related Financial Disclosure (TCFD). At a time when large asset managers and stakeholders are demanding greater transparency with regards climate change issues, this appears to be an area where the company secretary could be a catalyst for change.

### Enhancing the role of the company secretary

Addressing climate change is a governance issue and the Survey found that, although more than half the respondents confirmed that the board was reliant on the company secretary, at least 20% indicated that they played no role in climate change initiatives within their respective organisations. Moreover, the Survey found that 'only 15% of corporate secretary respondents regard their role as being strategic, driving initiatives or policy direction or ensuring that climate change is on the board's agenda, despite their role in guiding the board in considering risks and opportunities'.

The Report attempts to explore the reasons for this. Several reasons, such as the company secretary being underutilised or having a limited platform with little access to the board, reflect wider governance issues. However, when the participants themselves were asked whether they believed they had sufficient knowledge about climate change to effectively guide the board, the responses were evenly divided. Participants were, however, universal in their desire to educate themselves and were taking steps in that direction. Those who did believe they had sufficient knowledge identified various specific actions, including attending workshops and keeping updated to raise awareness of climate change issues.

The Report makes it clear however that there is a gap in knowledge regarding how to effectively integrate the risks and opportunities into organisations' strategic plans. It emphasises that there is a need to expand training and professional development programmes for company secretaries. As a participant to the Survey succinctly puts it, 'The role of corporate secretaries needs to be strengthened further to give them the power to be heard, otherwise they merely remain compliance professionals', the Report says.

### The way forward

In the midst of the discussions surrounding climate change, the Report points out that what is often missing from the conversation is that in order to ensure sustainability and accountability, these processes need to be formalised, both in terms of organisational strategy and reporting. The reality is that climate change awareness needs to be well integrated within governance structures. It is not enough to just make boards aware of the need to prioritise climate change issues, they also need to be equipped with the right tools to make the best possible decisions. The Report suggests that the company secretary is ideally placed to create an enabling environment for climate change governance. However, the Report also makes it clear that company secretaries need to correspondingly shoulder the responsibility to equip themselves with the knowledge required to steer organisations in the right direction. It is encouraging that the Survey has demonstrated that learning by experience can be shared across brands and member associations. To that end, the Report has started the ball rolling in the right direction.

**Sharan Gill**

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

## Key takeaways for the company secretary

- As boards appear to be reliant on the company secretary to drive better climate change governance, the role of the company secretary should move beyond being purely advisory to offer strategic direction on certain issues.
- Ensure that the board understands its role with regard to climate change and prioritises it as a separate board agenda item.
- Establish mechanisms to ensure awareness of climate change impacts, both at board and managerial levels.
- Define and implement a suitable reporting framework to measure sustainability impacts from and on business operations.
- Ensure the board agenda includes relevant discussion of material sustainability issues and that board responsibility statements include climate change responsibilities.
- Advise the board to ensure that sufficient resources are available to implement climate change initiatives.
- Promote transparency by considering disclosures covering risk governance and management, and the company's external impacts and resources.
- Act as a conduit between the board and stakeholders on issues relating to the UN Sustainable Development Goals to facilitate identifying risks and opportunities for long-term strategy.
- Implement a formalised approach to comply with climate change regulation; updating the board on regulatory requirements as well as facilitating its access to available resources.

# Governance reform: new HKEX proposals

*CSj* completes its review of the latest consultation published by Hong Kong Exchanges and Clearing Ltd in April this year and the views expressed by The Hong Kong Institute of Chartered Secretaries in its submission to the consultation.

Last month's *CSj* looked at the proposals of the latest HKEX consultation regarding organisational culture and board independence. This month, we turn our attention to the remaining proposals of the consultation and the views of The Hong Kong Institute of Chartered Secretaries (the Institute) in its submission to the consultation published last month.

## Board diversity

Since January 2019, all listed companies are required to have and disclose a board diversity policy. IPO applicants are required to disclose their board diversity policy in their prospectus and those with a single gender board are further required to explain the measures in place to achieve gender diversity of the board after listing. The Institute's submission responds to four proposals put forward by the latest HKEX consultation to further promote gender diversity.

### 1. Single gender boards

The consultation proposes to create new Mandatory Disclosure Requirements (MDRs) to make it clear that a single gender board is not considered a diverse board. The Institute's submission warns that the wording of the new MDRs would need to be carefully considered to avoid giving the impression that achieving diversity is possible by appointing a single 'director of the absent gender' (that is, a female director since there are no all-female boards). 'It could serve to promote the "one and done" phenomenon that has been observed in other jurisdictions,' the submission states. Needless to say, having one female director falls short of promoting the level of diversity required to give rise to an effective board. Moreover, potential female appointees are generally reluctant to join boards without a meaningful representation of women, or a clear commitment to achieve that within a near timeframe, the submission says. Boards with only one female director therefore may well find it difficult to achieve gender diversity due to the understandable perception among potential female appointees that 'any invitation to serve on the board amounts only to "tokenism" and that the culture of the board will not be welcoming or conducive to the expression of a diverse voice,' the submission adds.

A report published by the Institute in February this year – Missing Opportunities? A Review of Gender Diversity on Hong Kong Boards (the Review) – calls for a 30% voluntary target for women on boards, with a six-year transition period subject to a 'comply or explain' regime, both during and after the transition period. Issuers that do not comply could be obliged to disclose the specific reasons for this and the steps they intend to take to achieve compliance. The Institute's submission recommends the adoption of such a target in the Corporate Governance Code (the Code), and that the Review should therefore be taken to be incorporated into and form part of the Institute's current submission.

### 2. Numerical targets and timelines

The consultation proposes to require all listed companies to set and disclose numerical targets and timelines for achieving gender diversity at both board level and across the workforce, including senior management. The Institute welcomes this proposal, but its submission points out that, beyond the aspirational statements under the Consultation Paper, there are no clear requirements, or even guidance, as to either the targeted level of diversity or the time in which that is to be achieved.

## Highlights

- the Institute calls for clearer requirements and guidance as to the target level of board diversity and the timeframe within which that level is to be achieved
- the proposal to require annual reviews of board diversity policies will be of limited value unless there is also disclosure of the outcome of those reviews, including the reasons for any failures and measures to correct them
- the Institute's submission welcomes the proposal to give greater clarity regarding the relationship between governance and environmental and social performance and reporting

> potential female appointees are generally reluctant to join boards without a meaningful representation of women, or a clear commitment to achieve that within a near timeframe

'As framed, a target of a single female appointment over an extended period of time would meet the MDR. Nor would there be any consequence for non-compliance,' the submission says.

The submission also questions whether disclosure of gender diversity across the workforce as a whole will be meaningful or insightful unless accompanied by a detailed breakdown of gender across pay grades, occupations, workplaces and staff grades. 'We tend, therefore, to think that meaningful gender diversity targets and achievements at a leadership level are more important and will lead to a better gender balance across companies as a whole,' the submission states.

**3. Annual review of diversity policies**
The consultation proposes to create a new Code Provision requiring boards to review the progress of their diversity policies annually. The Institute's submission warns that this proposal will be of limited value unless there is also disclosure of the outcome of the board reviews, including the reasons for any failures and measures to correct them. Moreover, the requirement is only likely to be effective where the diversity policy in question is specific, substantive and promotes meaningful diversity and where the review is undertaken by a board which itself is diverse or on a clear pathway to diversity.

**4. Gender diversity information disclosure**
The consultation proposes to amend relevant forms to require directors to provide gender diversity information upon appointment. HKEX plans to display board diversity-related information (including directors' age, gender and directorships) on its website. The Institute agrees with this proposal. Its consultation submission points out that disclosure of directors' gender information will be good for statistical purposes. Nevertheless, the submission warns that there could be sensitivities involved. For example, would transgender persons be allowed to claim the gender they prefer? The Institute suggests HKEX consults with the Equal Opportunities Commission prior to finalising any proposal.

## Nomination committees

The HKEX consultation proposes to upgrade an existing Code Provision to a Listing Rule requiring issuers to have a nomination committee chaired by an independent non-executive director (INED) and comprising a majority of INEDs. Given the importance of the work of nomination committees, the new Listing Rule will be in the interests of good governance, the Institute submits. The Institute also welcomes the HKEX commitment to provide guidance in this area.

## Shareholder/stakeholder engagement

To emphasise the importance of establishing a two-way communication between companies and their stakeholders, the HKEX consultation proposes to upgrade current Code Provision E.1.4. to a new Paragraph L of the Code's MDRs requiring disclosure of the company's shareholder communication policy. The policy should include disclosure of the channels available to shareholders to communicate their views on various matters affecting the company, as well as disclosure of the steps taken to solicit and understand the views of shareholders and stakeholders. Companies would also be required to review the effectiveness of this policy on an annual basis. The Institute agrees with these proposals but flags up the need to consider the terminology used. For example, since shareholders are a subset of stakeholders – should the reference be to a 'shareholder and stakeholder communication policy'?

## ESG

The HKEX consultation seeks to give greater prominence to the linkage between the management of material environmental, social and governance (ESG) risks (including climate-related risks) and good governance. It proposes to:

- set out the relationship between corporate governance and ESG in the introductory section of the Code, and
- include ESG risks in the context of risk management under the Code.

Furthermore, the consultation proposes to revise the Listing Rules and the ESG


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

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

| DATE | TIME | TOPIC | SPEAKER(S) |
|---|---|---|---|
| 30 June 2021 | 4.00pm–5.30pm | Competition Law Enforcement | Mr Steven Parker, Executive Director (Legal Services), Competition Commission<br>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<br>Ms Ellie Pang, Chief Executive, HKICS |
| 7 September 2021 | 4.00pm–5.30pm | HKMA Enforcement: Update | Ms Jill Wong, Partner, Howse Williams |
| 28 September 2021 | 4.00pm–5.30pm | HKEX Enforcement (Part 2) | Ms Donna Wacker, Partner, Clifford Chance<br>Mr Michael Wang, Consultant, Clifford Chance |

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

Register Now!

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

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

The Hong Kong Institute of Chartered Secretaries 香港特許秘書公會
(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@hkics.org.hk Website: www.hkics.org.hk

Reporting Guide to require publication of ESG reports at the same time as annual reports (see 'Implementation timeline' below for the proposed effective dates of this requirement).

The Institute agrees with these proposals. The Institute has, in earlier submissions, noted that the ESG Reporting Guide is more about the 'ES' than the 'G' part of the formula – governance is covered under the Code. The current submission welcomes the move to give greater clarity regarding the relationship between governance and environmental and social performance and reporting.

### Revising the Code's structure and existing guidance

The consultation also proposes to rearrange the structure of the Code to enhance its flow and readability. It proposes to rename the Code as the 'Corporate Governance Code' (currently its full official name is 'Corporate Governance Code and Corporate Governance Report'), and to move the MDRs (previously set out in the Corporate Governance Report section of the Code) upfront.

HKEX also intends to revise its existing guidance on companies' compliance with the governance requirements of the Code. It will prepare a new guidance letter (CG GL) that will consolidate additional guidance on the various topics addressed by the consultation together with existing guidance. 'The new CG GL is intended to stimulate the board's thinking on how they can carry out their role most effectively, including how the Principles in the Code are applied and reported on. It should be read alongside the rearranged Corporate Governance Code,' the consultation states.

The Institute agrees with these proposals and points out that more is not necessarily better when it comes to corporate governance requirements. 'The trend towards more and more Code Provisions, covering more and more issues, runs counter to a basic principle of good corporate governance practice, which is that one size does not fit all', the submission states.

It adds that in practice most listed companies opt to comply rather than explain any divergence from the Code. This may indicate an element of box-ticking and risks resulting in shareholders and other stakeholders being unable to make informed judgements about the quality of an issuer's corporate governance, still less how it compares to that of its peers.

The Institute suggests that in future Code revisions, HKEX should give thought to removing provisions that are either not working or unnecessary. Moreover, there should be a greater focus on monitoring the quality of disclosure as opposed to mandating its scope, with the focus being on whether such disclosure is true, meaningful or valuable, and whether it corresponds to what the issuer actually does and which is good for the company and its stakeholders.

### Implementation timeline

HKEX intends to implement the revisions to the Code and Listing Rules for financial years commencing on or after 1 January 2022. Extensions to this deadline, however, are proposed in three areas.

***1. ESG reporting deadlines.*** As mentioned above, the consultation proposes to require publication of listed company ESG reports at the same time as annual reports. The implementation date, however, will depend on the commencement date of the issuer's reporting period. Where the reporting period commences on a day prior to 1 January 2022, the proposed amendment does not apply. Where the reporting period commences on or after 1 January 2022 (for example, 1 January 2022 or 1 April 2022), listed companies would need to publish the ESG reports at the same time as their annual reports.

***2. Long-Serving INEDs.*** In respect of the proposals on Long-Serving INEDs (reviewed in last month's *CSj*), the proposed requirements would be effective for financial years commencing on or after 1 January 2023.

***3. Gender diversity.*** In respect of the proposals on board gender diversity, existing issuers with single gender boards will be allowed a three-year transition period to appoint at least one director of the absent gender on their boards. IPO applicants are not expected to have single gender boards.

> “more is not necessarily better when it comes to corporate governance requirements”

*The Consultation Paper – Review of Corporate Governance Code and Related Listing Rules – is available on the HKEX website: www.hkex.com.hk. The Institute's submission to the consultation is available on the Institute's website: www.hkics.org.hk.*

香港大學專業進修學院
HKU School of Professional and Continuing Education

CHARTERED SECRETARIES
特許秘書

# Certificate for Module

## (The Hong Kong Institute of Chartered Secretaries Examinations Preparatory Programme)

This programme is endorsed by The Hong Kong Institute of Chartered Secretaries (HKICS). The aim is to develop students with the knowledge and skills necessary to write the professional examinations of the Chartered Governance Qualifying Programme (CGQP), which is recognized worldwide.

## COURSE INFORMATION

Intake: 3 intakes per year (Spring, Summer & Autumn)
Teaching Venue: Any of the HKU SPACE's Learning Centres on Hong Kong Island

## SUBJECT

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

## TARGET STUDENTS

Be 21 years old or above. (Students should be either a Hong Kong permanent resident or have valid permit to study in Hong Kong)

**Fee per subject:**

**HK$4,250** (36-hour lectures)
**HK$5,600** (45-hour lectures)

All fees paid are NOT refundable, unless the programme is oversubscribed or cancelled. All fees are subject to revision.

**Award:**
Certificate for Module

CONTACT INFORMATION
Programme Enquiries (HKU SPACE)
(852) 2867 8317
hkics@hkuspace.hku.hk

HKU SPACE is a non-profit making University company limited by guarantee.

# Professional Development

## Seminars: May 2021

### 4 May

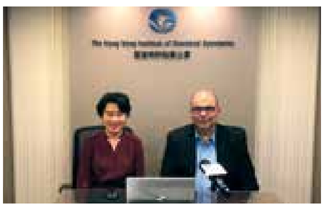
**Governance, risk and compliance for small and medium-sized enterprises**

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

*Speakers:* *David Samy, Partner, Joseph Chan, Manager, and Jason Yau, Manager; EY Greater China Consulting*

### 5 May

**Update on practical governance issues/regulatory responses**



*Speakers:* *Ellie Pang, Institute Chief Executive; and Mohan Datwani FCG FCS(PE), Institute Deputy Chief Executive*

### 6 May

**An investor's lens: sustainable investing as the new norm – implications for ESG reporting**

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

*Speakers:* *Ricky Ho, Director, Risk Management Advisory Services, and Sabrina Lam, Principal, Risk Management Advisory Services, AVISTA Group; and Jonathan Yau, Associate Director, Cundall Hong Kong Ltd*

### 10 May

**Essential updates on intellectual property rights and data protection developments in Hong Kong and the Mainland**

*Chair:* *Elaine Chong FCG FCS, Institute Professional Development Committee member, and General Counsel-Hong Kong, CLP Power Hong Kong Ltd*

*Speakers:* *Dominic Wai, Partner, and Lawrence Yeung, Partner; ONC Lawyers*

### 11 May

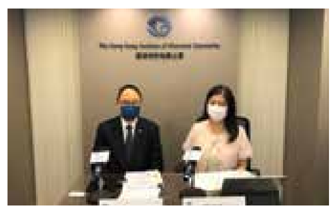
**Company secretarial practical training series: share capital of private companies – basic concept, practice and application (re-run)**

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

*Speaker:* *YT Soon FCG FCS*

### 17 May

**中国委托公证人制度及公证文书简介**



*Chair:* 蔡佩诗女士FCG FCS，公会专业服务小组成员及反洗黑钱与反恐怖融资活动工作组成员；安永香港企业合规及管治部门业务合伙人

*Speaker:* 顾增海律师 – 中国委托公证人协会有限公司理事

21 May

### Limited partnership funds & tax concessions for carried interest – latest updates

*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:* *Jingjing Jiang, Partner and Head of Hong Kong Funds Practice, King & Wood Mallesons; and Vanessa Chan, Partner, Financial Services Tax, Ernst & Young Hong Kong*

24 May

### E-proxy – practical governance issues

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

*Speakers:* *Catharine Wong, Managing Director – Head of Share Registry & Issuer Services, Tricor Services Ltd; and Nelson Seraci, Executive Director, ISS Special Situations Research*

25 May

### Mediation techniques to resolve disputes – with practical case illustrations

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

*Speaker:* *Norris Yang, Senior Consultant, Yang Chan & Jamison LLP, and Executive Director, ADR International Ltd*

## Video-recorded CPD seminars

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

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

## ECPD forthcoming webinars

| Date | Time | Topic | ECPD points |
|---|---|---|---|
| 21 July 2021 | 3.00pm–4.30pm | Board performance evaluation: winning in uncertain times – best governance practice of listed companies under Listing Rules | 1.5 |
| 27 July 2021 | 4.00pm–5.30pm | Role of corporate professionals in the face of corruption, conflicts of interest and ethical issues | 1.5 |
| 10 August 2021 | 6.45pm–8.15pm | Company secretarial practical training series: corporate compliance programme – essential elements & practical tips | 1.5 |
| 12 August 2021 | 3.30pm–5.30pm | IRD's reviews on charitable organisations – are you the next target and what's the practical solution? | 2 |

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

# Membership

## Benefits for senior members

Members aged 70 or above before the beginning of the financial year (1 July) can enjoy the annual subscription rate for seniors.

To show our appreciation, and to encourage senior members' participation in the Institute's functions, the enrolment fees for the following events and seminars will be waived for senior members, with effect from 1 July 2021:

- Membership events (except for Annual Dinner and any other events as may be decided by the Membership Committee), and
- ECPD seminars (except for Annual Corporate Regulatory Update and Corporate Governance Conference).

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

## 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 the email address registered with the Institute. Members and graduates should settle payment as soon as possible, but no later than Thursday 30 September 2021.

All members and graduates are encouraged to settle their annual subscription online directly. Please ensure that you settle your annual subscription on time. Failure to pay by the deadline will constitute grounds for membership or graduateship removal.

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

## Membership activities: June 2021

### 17 June

**Email scams, phone frauds & fund recovery actions (free webinar)**


## Forthcoming membership activities

| Date | Time | Event |
|---|---|---|
| 7 August 2021 and 14 August 2021 | 10.30am–11.30am | Full body workout for office workers (free webinar) |
| 28 August 2021 | 1.15pm-3.30pm | Community service – soap recycling |

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

# Membership (continued)

## New graduates

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

Lin Jingying
Ma Sui Hong
Zhang Hao
Zhang Shuyi

## New Associates

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

Au Ching
Au Kam Ning
Au Pui Yu, Yuchi
Au Yeung Wing Man
Chai Ming Wai
Chan Chau Mei
Chan Cheuk Ki
Chan Cheuk Nei
Chan Chin Shing
Chan Chun Sing
Chan Ka Lee
Chan Man Him
Chan Pak Lin
Chan Pui Shan
Chan Shuk Kin
Chan Yuen Ting
Chan Yuk Kwan
Chan Yuk Yee
Chau Po Yi, Polly
Chen Yuxiao
Cheng Kwan Yuen
Cheng Sharon
Cheng Yuk Mei
Cheung Wing Yan
Cheung Ying
Choi Chun Wai
Choi Ming Yi
Chong Tsz Yan
Chuang Hung Ting
Fan Mei Yan
Fan Ronald Jiu Ning
Fong Ka Ching
Fu Lina
Fung Ka Man
Fung Sharon Way On
Hau Iris Jing Kwan
Ho Lok Hei
Ho Pak Chim
Ho Wan Ngai
Ho Ying Yan
Ho Yuk Yu, Yonnie
Hui Ho Ying
Hui So Ching, Anna
Hui Tin Yi
Jen Shu Ling
Kam Nam Ngan
Kuo Yuen Fan
Kwan Tsun Lok
Lai Ching Wah
Lai Ying Tung
Lam Hay Yin
Lam Kin Hang
Lau Wai Yan
Lau Yin Shan
Lau Yuk Yan
Law Ka Mei
Law Wing Ka
Lee Kenneth Hoi Nap
Lee Nim Chi
Lee Shuk Ling
Lee Yi Pui, Jasmine
Lee Yuen Sze
Leung Man Yi
Leung Po Man
Leung Wing Yan
Li Ho Sum
Li Hung
Li Ka Wing, Karen
Li Meng
Lo Pun Wa
Mak Lok Yi
Manho Hoi Kei, Janice
Ng Ka Yui
Ng Sze Ting
Ng Ying Chui
Okubo Masami
Pang Hoi Man
Poon Sze Yin
Siew Chun Fai
So Sze Man
Tai Yan Na
Tam Man Shan
Tian Yuanhui
To Cho Ying
Tsang Wai Hung
Wan Hiu Tung
Wong Chun Yu
Wong Ivana Nga Yi
Wong King Man, Simon
Wong Lai Ping
Wong Nga Sim
Wong Sin Tung, Elo
Wong Wai Sum
Wong Yee Ha
Wong Yin Ming
Wong Yiu Man
Wu Qi
Xiong Kangying
Yau Sik Fei
Yau Wing Sze
Yim Lai Kiu
Yip Wai Yan
Yiu Shui Sum, Winnie
Yu Ka Wai
Yuen Sze Man
Zhang Feng
Zhu Siying

# HKICS long standing members – 25 Years of Excellence

CHARTERED SECRETARIES 特許秘書

Please join us in celebrating the 25th anniversary of the following members of The Hong Kong Institute of Chartered Secretaries. On this special occasion, the Institute would like to congratulate the following Institute members on their distinguished commitment and dedication as a governance professional.

Au Suk Ying
Suzanne Michelle Callister Holmboe
Paul David Campbell
Chan Chun Yuk, Freda
Chan Ho Choi, Bons
Chan Ki Ying
Chan Oi Man, Amy
Chan Pik Chu
Chan Ping Cheung
Chan Shun Fan, Kevin
Chan Suet Mei, Jane
Chan Suk Ching
Chan Tak Fai, Calvin
Chan Tak Shing
Chan Wai Hung
Chan Wing Ning
Chan Yu Hung
Chan Yuen Mei
Chau Chi Ho
Cheng Kit Man
Cheng Man Yin, Vivian
Cheong Kai Son
Cheung Chung Yee, Fendi
Cheung Lai Siu
Chiu Cheuk Kuen
Chow Fung Kwan
Chu Chung Ling, Charlotte
Chu Chung Yi
Chung Mei Wah
Chung Yuen Bik, Becky
Fok Wai Ling
Fong Man Lee, Lila
Fu Shin Mee, May
Ho Lai Chu
Ho Pak Shing
Ho Siu Ha, Helena
Ho Wai Chu
Ho Wing Tsz, Wendy
Hui Yuen Fan, Yvonne
Hung Yiu Kei
Ip Kit Yee
Ip Miu King, Yvonne
Kam Ka Yee, Jennie
Kam Mei Hing
Ko Ngan Ling, Glenis
Kong Sau Ha
Kuan Chi Yuen
Kung Yuk Lan
Kwan Lai King, Cathy
Kwan Mei Mei, Mavis
Kwan Wai Man, Amy
Kwok Siu Fai
Kwok Siu Kuen
Lai Yick Fung
Lam Ling Sheung, Elina
Lam Wai Ching, Frieda
Lau Ka Hong, Laurence
Lau Mei Yi
Lau Mun Yee
Lau Wah Shun, Edwin
Lau Wing Kan
Lau Yee Man
Lau Yim Mui, Esther
Law Suet Mui, Debby
Law Yuen Kam, Jaime
Lee Cheung Mei
Lee Chun Ho
Lee Siu Yin
Lee Tsz Mei
Leung Chui Kwan, Cecilia
Leung Kwok Keung
Leung Sai Wah, Peter
Leung Siu Wai, Edna
Li Ching Pui, Lisa
Li Tung Wing
Li Yuk Yu, Edwin
Lo Pak Chuen, Patrick
Lo Yee Wa
Lo Yuen Yee
Loo Meei Ling
Luk Wai Hong
Man Kam Ying
Mok Mun Lan, Linda
Mok Tai Wai, David
Ng Chung Kun
Ng Ho Fai
Ng Wai Yee
Ng Yik Wan, Dilys
Ngai Tak Ping
Poon Lan Yim, Ada
So Mei King
Paul Andrew Stafford
Sue Sau Kam
Tam Pui Ling
Tam Siu Wah, Ada
Tam Wing Yiu
Tang Sze Man
Tang Wan Mui
Tham Wei Ling
Tong Lai Mui
Tong Tsz Cheung
Tse Chun Sing
Tse Louisa Shui Ying
Tse Nga Lai, Margaret Rachel
Tse Tin Wa, Mabel
Tsui Siu Suet
Tsui Yeung Ching
Wan Mun Yee, Sabine
Wong Kam Wah
Wong Pui Fan
Wong Sze Wa
Wong Wai Mei
Wong Woon Kun, Kelsch
Wong Yu Kwong
Wong Yuk Fan
Yam Tin Chun
Yang Yan Tung, Doris
Yim Wai Ching
Yu Chun Chi, Serena
Yu Po Chun, Betty
Yuen Wai Ling, Joyce
Yung Wai Ching
Yuo Woon Ling, Winnie

25 YEARS OF EXCELLENCE

# Advocacy

## General meeting for the Institute's name change initiative

The Institute's Hybrid General Meeting (GM) will be held on Thursday 15 July 2021 at 6.30pm. The GM will allow members to vote on the proposed name change for our Institute to 'The Hong Kong Chartered Governance Institute 香港公司治理公会' (HKCGI). This will bring us in line with the global transition of our profession, under our new identity as a body dedicated to the advancement of Chartered Secretaries and Chartered Governance Professionals (CS/CGPs) in Hong Kong and the Mainland.

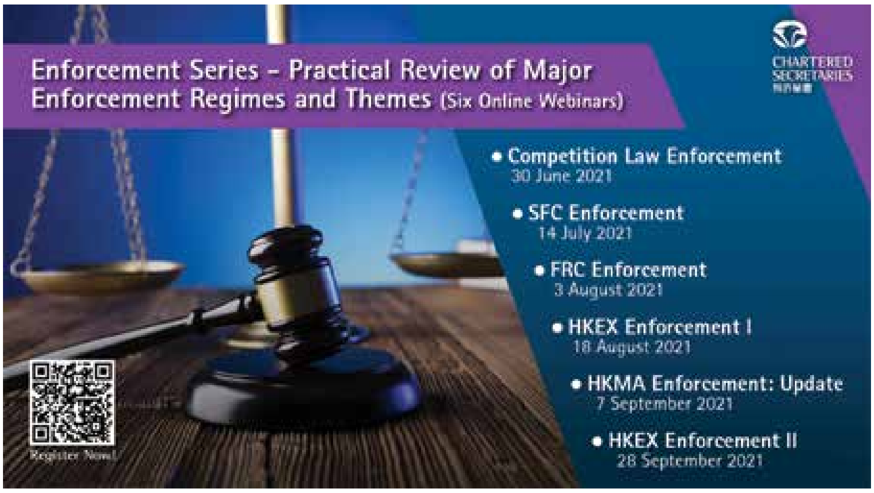
As the China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extends to CGI's nine divisions, which has more than 40,000 members and students worldwide. The Institute is also a founder member of Corporate Secretaries International Association Limited (CSIA), which aims to give a global voice to corporate secretaries and governance professionals.

Our proposed new name reflects the greater governance roles and responsibilities performed by our members, as well as the global convergence towards the importance of corporate governance.

In light of social distancing restrictions, members are encouraged to exercise their right to vote at the GM by (a) appointing the Chairman of the GM as their proxy, or (b) by attending the GM via the online platform, instead of in person. On behalf of our Council, we look forward to your participation at the General Meeting by casting your vote.

*For more information, please visit the Name Change Initiative page on the Institute's website: www.hkics.org.hk.*

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




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

*For details and registration, please refer to the flyer on page 33 or visit the CPD section of the Institute's website: www.hkics.org.hk.*

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

## The 56th Affiliated Persons ECPD seminars

The Institute held its 56th Affiliated Persons Enhanced Continuing Professional Development (ECPD) seminars, under the theme of 'Risk management and ESG', online from 9 to 11 June 2021. The seminars attracted over 70 participants, comprising board secretaries and equivalent personnel, directors, supervisors and other senior executives from H share, A+H share, red chip, A share and to-be-listed companies.

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

- the emphasis and myth of the compliance of listed companies
- an update on the relevant provisions of Hong Kong Exchanges and Clearing Ltd's Corporate Governance Code and Listing Rules
- the joint Institute/KPMG enterprise risk management (ERM) survey report: 'Risk management survey: Empowering success'
- the latest regulatory updates on environmental, social and governance (ESG) report disclosure and enterprise sustainable development
- professional risk prevention for directors, and liability insurance for directors and senior management
- experience sharing: practices of ESG and risk management integration
- risk management responsibilities and best practices of directors, executives and board secretaries, and
- the Guangzhou Automobile Group Co Ltd's stock incentive plan and its implementation.

*The Institute would like to express its gratitude to our seminar partner, namely, the Shanghai Sunwising Insurance Services Ltd, and to all speakers and participants.*




# Advocacy (continued)

## Institute employee vaccination incentive

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

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

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

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

# Chartered Governance Qualifying Programme (CGQP)

## Studentship activities: June 2021

9 June

**Student Ambassadors Programme: purposeful governance – a stakeholder responsive approach**


## Forthcoming studentship activities

| Date | Time | Event |
|---|---|---|
| 14 July 2021 | 12.45pm–2.00pm | Student Ambassadors Programme: practical wisdom for professionals |
| 22 July 2021 | 1.00pm–2.00pm | 香港特许秘书公会双重会员资格 – 特许秘书及 Chartered Governance Professional 网络说明会 |

## Policy update (effective from 1 July 2021)

### New policy on studentship renewal and registration

The following policies on studentship renewal and registration for 2021/2022 were approved by the Council with the aim of streamlining the process of studentship renewal and registration. These policies came into effect on 1 July 2021.

**Studentship renewal:**

The studentship expiry date for all students have now been unified and will fall on the last day of the Institute's financial year (that is, on 30 June) each year. During the transition period in year 2021/2022, all students are being given a three-month period to settle their renewal fee on a pro rata basis, subject to their current studentship expiry month.

**Payment of student renewal fee for new graduates:**

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

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

Studentship for those who register/re-register from year 2021/2022 onwards will expire on 30 June of the following year, irrespective of the confirmation date of their studentship during the year. Applicants are required to pay the studentship registration/re-registration fee upon application.

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

### New policy on CGQP exemption application

The Chartered Governance Qualifying Programme exemption policy became effective on 1 July 2021.

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

## Corporate Governance Paper Competition and Presentation Awards 2021

The Corporate Governance Paper Competition and Presentation Awards, organised by the Institute, is designed to foster an 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 are eligible to enrol for this competition in teams of two to four members each. We are delighted to announce that 42 teams enrolled this year.

The six finalists will present their papers on Saturday 9 October 2021, and will compete for the Audience's Favourite Team and the Best Presentation Award.

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

# Chartered Governance Qualifying Programme (CGQP) (continued)

## Learning support for CGQP examination preparations

### Student gatherings

Videos of the student gatherings are available on the Institute's Student Gatherings page under the Studentship section of the Institute's website: www.hkics.org.hk.

### Examination technique online workshops and student seminars

Videos of the examination technique online workshops and student seminars on company law, and corporate secretaryship and compliance, are available on the Online Learning Video Subscription page under the Studentship section of the Institute's website: www.hkics.org.hk.

## Notice

### Reminder – new Fast Track Professional route

With effect from 1 January 2021, a new Fast Track Professional route 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.

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

### Reminder – updated CGQP syllabus and recommended study materials

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

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

### Policy – payment reminder

**Studentship renewal**

Students whose studentship expired in May 2021 are reminded to settle the renewal payment by Friday 23 July 2021. Failure to settle the renewal payment by the deadline will result in the removal of studentship.

## Featured Job Openings

| Company name | Position |
|---|---|
| CK Asset Holdings Ltd | Manager, Company Secretarial Department (Ref: DYI-CSM) |
| Hang Seng Bank Ltd | Company Secretarial Manager |
| CW Secretarial Services Ltd | Company Secretarial Assistant/Clerk |

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

## IPO-related misconduct

The Securities and Futures Commission (SFC) and The Stock Exchange of Hong Kong (the Exchange) are intensifying their efforts to tackle misconduct and improper behaviour related to new listings. A joint statement released by the two regulators in May this year notes some problematic issues in recent initial public offerings (IPOs). These include:

- the market capitalisation at listing barely meets the minimum threshold of HK$500 million under the Main Board Listing Rules, or HK$150 million under the GEM Listing Rules
- very high price-to-earnings ratios compared to listed peers
- unusually high underwriting commissions – averaging 12% in 2020 (4% in 2017) for IPOs with market capitalisation below HK$600 million – and other listing expenses, raising the possibility of rebates to controlled placees, and
- a high concentration of shareholders.

In some IPOs, the initial listing requirements may only have been satisfied by artificial means, such as allocating shares to controlled placees at an inflated IPO price to satisfy the minimum market capitalisation requirement. Other questionable arrangements were apparently designed to enable market manipulation of the shares at a later date, such as through ramp and dump schemes. This is where fraudsters 'ramp' up the price of a stock and use social media to lure unwary investors to buy at an artificially high price. The fraudsters then sell or 'dump' the stock to take profits causing the price to collapse.

As part of the regulatory response to address improper behaviour, problematic IPO applications with red flags are now subject to heightened scrutiny. If necessary, the regulators will use their regulatory powers to object to, or reject, an application.

*More information is available on the websites of the SFC (www.sfc.hk) and the Exchange (www.hkex.com.hk). The September 2020 issue of the SFC's Enforcement Reporter explains how ramp and dump schemes operate and provides tips for avoiding them.*

## Profit requirement consultation conclusions

The Exchange has published its consultation conclusions regarding its initiative to increase the Main Board profit requirement. The profit requirement is one of the three pivotal financial eligibility tests forming part of the robust qualitative and quantitative assessment the Exchange performs to determine the suitability of applicants seeking to list on the Main Board. The profit requirement has, however, remained at its current level since its introduction in 1994. This has been exploited in some cases of misconduct, which threaten to undermine the quality of the market, and which highlight the need for the profit requirement to be re-evaluated.

After consideration of the feedback received in the consultation, the Exchange will adopt the following approach:

- a 60% increase in the profit requirement and amend the profit spread (the modified profit increase)
- the implementation date of the modified profit increase will be 1 January 2022, and
- providing flexibility by granting relief from the profit spread on case-specific circumstances.

In addition, the Exchange will continue to work with the SFC in combating the regulatory issues identified in the Consultation Conclusions through robust review of listing applications, and placing heightened scrutiny on cases displaying features as described in the Joint Statement (see 'IPO-related misconduct'). There will also be an increased emphasis on holding individuals accountable in relation to Listing Rule breaches, including those who participate in the problematic behaviour described in the Joint Statement.

The Exchange will also launch a review of GEM to consider, amongst other things, comments received regarding GEM's positioning, market perception and viability as an alternative to the Main Board.

*More Information is available on the Exchange's website: www.hkex.com.hk.*

CHARTERED SECRETARIES
特許秘書

The Hong Kong Institute of Chartered Secretaries


# Corporate Governance Paper Competition and Presentation Awards 2021

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

## Theme

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

## Awards

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

... and more prizes

*Scan for details*

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