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October 2021

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



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Are you prepared?
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The Hong Kong Chartered Governance Institute (HKCGI, the Institute) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development of the profession of the Chartered Secretary and Chartered Governance Professional in Hong Kong and the mainland of China (the Mainland).

HKCGI was first established in 1949 as an association of Hong Kong members of The Chartered Governance Institute (CGI). In 1994 HKCGI became CGI's Hong Kong Division and, since 2005, has been CGI's China Division.

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

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

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Climate change and the governance professional

Next month, governments from over 190 countries will be gathering in Glasgow to continue negotiations on the implementation of the multilateral 2015 Paris Agreement on climate change.

The gravity of the threat posed by climate change to economies and societies around the world was made devastatingly clear in a United Nations (UN) report published in August this year. The report, *Climate Change 2021: The Physical Science Basis*, published by the UN's Intergovernmental Panel on Climate Change, warns that, under all current emissions scenarios, both targets agreed at the Paris UN Climate Change Conference (namely, to keep the global temperature rise to well below 2°C and preferably under 1.5°C from pre-industrial levels) will be broken unless huge cuts in carbon emissions take place.

This month's *CSj* looks at what all of this will mean for governance professionals and how we can be part of the solution. One of our contributing authors this month, Christine Loh SBS, OBE, JP, Chief Development Strategist, Institute for the Environment, The Hong Kong University of Science and Technology, makes the point that climate change is a complex issue that will require people from many diverse backgrounds to join together to help avoid the very significant climate change risks ahead of us.

The most obvious way in which our work will be part of that endeavour relates to

our compliance function. One of the key takeaways of our first cover story this month is the urgency of the need to prepare for much tougher regulation relating to organisations' climate-change disclosures. The Hong Kong Listing Rules already require listed companies to disclose the significant climate-related issues that have impacted, or may impact, them and the actions they have taken to manage these issues. It is predicted that by 2025 climate-related disclosures aligned with the recommendations of the Task Force on Climate-related Financial Disclosures are likely to be mandatory for all financial institutions and listed companies in Hong Kong.

However, expectations of organisations' practices and disclosures relating to climate change in particular, and environmental, social and governance (ESG) matters in general, will not solely be a question of how the rulebook changes. Stakeholder expectations relating to these issues will be equally relevant in determining which organisations survive in the emerging business environment and this is another area in which governance professionals can make a huge contribution. Good governance is not solely a matter of ensuring regulatory compliance. An essential part of the value we bring comes from ensuring that the board and management take upcoming issues – such as climate change, ESG performance and reporting, sustainability, corporate purpose and culture, as well as stakeholder concerns and expectations – into account. In our board advisory work, as well as in our role facilitating director training and preparing board meeting agendas and materials, we can help to highlight the direction in which the world is moving and ensure that directors and managers are well placed to make the right decisions.

Whatever the result of the Climate Change Conference that gets underway next month in Glasgow, the direction of travel is clear. Climate change is an existential threat to economies and societies globally, and in the years ahead we will all need to adapt to a changing world. That will not only be a matter of adapting to a world of net-zero carbon emissions, it will also mean adapting to a different social contract under which organisations are permitted to operate. Many core assumptions that underpinned our corporations, and indeed our economies, in the past – the privatisation of gains and the socialisation of losses, for example, and the primacy of shareholder-value maximisation – have been part of the problem. The good news for members of our profession is that we can be a critical part of the solution by helping our organisations transition to more sustainable businesses practices.

Before I go, I would like to draw your attention to our upcoming forum on climate change to be held in January 2022. The Hong Kong Chartered Governance Institute Climate Change Conference, which will be held as part of the Asian Financial Forum week, will discuss all the latest developments in this area. In particular, the forum will address investor expectations and global developments such as the move to align international reporting standards. There will be updates on the current initiatives of regulators and the HKSAR Government relating to climate change and corporate perspectives on key issues such as emission reductions and decarbonisation. Stay tuned for further information about this event on our website and in this journal.

A handwritten signature in blue ink that reads "Gillian Meller".

Gillian Meller FCG FCS(PE)

气候变化和治理专业人士

下个月，来自 190 多个国家/地区的政府代表将齐聚格拉斯哥，继续就落实 2015 年达成的气候变化多边《巴黎协定》进行谈判。

联合国今年 8 月发布的一份报告明确指出，气候变化已对全球经济和社会构成严重威胁。联合国政府间气候变化专门委员会发布的《2021 年气候变化：物理科学基础》报告警告，基于当前全球碳排放状况，除非大幅削减碳排放，否则联合国巴黎气候变化大会制定的两个目标将无法达成（即，将全球平均气温较工业化前的升温幅度控制在 2°C 以下，并最好控制在 1.5°C 以下）。

本期月刊将探讨所有这些议题对治理专业人士的重大意义，以及我们如何参与其中，与所有人携手，共克挑战。我们本月的撰稿人之一，香港科技大学环境研究所首席发展顾问陆恭蕙女士 SBS, OBE, JP 指出，气候变化是一个复杂问题，需要各界人士共同参与，以免未来发生重大气候危机。

在我们治理人士的职能中，合规职能与此具有最显而易见的相关性。本月封面故事阐述了严格加强企业气候变化披露相关监管的迫切需求。香港《上市规则》要求上市公司披露已经影响或可能影响到自身的重大气候问题，及其为处理这些问题而采取的行动。预计到 2025 年，将有可能强制香港所有金融机构和上市公司披露

“气候相关财务信息披露工作组”建议的气候相关信息。

然而，要满足相关各方对于组织处理和披露气候变化信息和环境、社会及治理(ESG)问题的期望，不仅仅是变更规则的问题。关于这些问题的期望，将在很大程度上决定哪些组织能够在新兴的商业环境中生存，这为治理专业人士提供了又一个可以大展拳脚的舞台。良好的治理不仅仅是确保合规。我们工作的关键价值在于：确保企业董事会和管理层充分考虑即将面临的问题，如气候变化、ESG 绩效和报告、可持续性、企业目标和文化，以及相关各方的关切与期望。我们通过提供董事咨询服务、开展董事培训和准备董事会会议议程和材料，可以帮助企业董事和管理层明确世界发展趋势，确保做出明智决策。

无论下个月的格拉斯哥气候变化大会结果如何，未来方向都将十分明确。气候变化使全球经济和社会面临生死存亡，未来数年，我们所有人都将面临一个完全不同的世界。不仅仅是净零排放，还将对于组织的经营形成完全不同的社会契约。过去很多支撑企业乃至我们经济的核心假设——如收益私有化、亏损社会化以及股东价值最大化为主导——都已成为问题的一部分，亟待解决。不过可喜的是，我辈人士可以通过帮助组织过渡到更可持续的业务实践，为解决这个问题发挥重要作用。

最后，希望大家关注我们将于 2022 年 1 月举行的气候变化论坛。香港公司治理公会气候变化大会将作为亚洲金融论坛周的一部分，讨论该领域的各种最新发展。该论坛还将特别探讨投资者期望和全球发展，如统一国际报告标准。此外，还将介绍监管机构 and 香港特区政府在气候变化方面的最新措施，以及各企业对减排和脱碳等重要议题的观点。敬请关注我们的网站和本刊，了解有关该论坛的更多信息。



马琳 FCG FCS(PE)

The coming climate storm: are you prepared?





Climate change mitigation and adaptation are issues as relevant to businesses as they are to governments. *CSj* takes a look at what governance professionals can do to help businesses address the coming climate storm.

The climate 'storm' of this article's title may not necessarily be one of those extreme weather events related to climate change that have been much in the news recently. Another climate storm is brewing for businesses in the shape and form of much higher expectations, both regulatory and stakeholder-driven, regarding their climate-change obligations.

While weather prediction is a famously treacherous undertaking, there are aspects of this storm that are not hard to foresee. The shift, for example, to a zero-carbon world, will necessitate major changes to most existing business models. As the severity of the risks associated with global warming have become clearer, governments have responded by implementing more ambitious targets to reach carbon neutrality – this is achieved when carbon dioxide emissions are equal to the amount of carbon dioxide being removed from the atmosphere.

Hong Kong has set a target for carbon neutrality by 2050, while the Mainland has pledged to achieve peak carbon by 2030 and carbon neutrality by 2060. This puts companies under increasing pressure to align their business models with the shift to a low-carbon economy and net-zero emissions.

Another predictable aspect of the coming storm is the adoption of mandatory reporting on climate-related risks and opportunities. Such reporting has been a relatively neglected area in Hong Kong, but climate-related disclosures aligned with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) are likely to be mandatory for financial institutions and listed companies in Hong Kong by 2025.

Reporting requirements in this area were recently upgraded when Hong Kong Exchanges and Clearing Ltd (HKEX) revised its Environmental, Social and

Highlights

- the immediate risks of climate change have already arrived – as evidenced by the risks to businesses around the world from the rising frequency and intensity of extreme weather events
- expect greater scrutiny and higher expectations of the board's role in identifying and evaluating relevant risks and opportunities from climate change
- governance professionals can play a valuable role in ensuring that boards recognise that successful management of climate change will be critical for long-term sustainability

Governance (ESG) Reporting Guide (Appendix 27 of the Listing Rules) in 2019 to require listed companies to disclose the significant climate-related issues that have impacted or may impact their businesses and the actions they have taken to manage them. This requirement, key performance indicator (KPI) A4.1, was one of many revisions to the ESG Reporting Guide, including new requirements for a statement setting out the board's consideration of ESG matters and the disclosure of targets relevant to all environmental KPIs. The new requirements became effective for financial years beginning 1 July 2020.

David Simmonds FCG FCS, Institute Vice-President, Membership Committee Chairman, Company Secretaries Panel Chairman, Technical Consultation Panel – Competition Law Interest Group Chairman and Investment Strategy Task Force member; Group General Counsel and Chief Administrative Officer at CLP Holdings Ltd, points out that the pressure for better transparency relating to climate-related risks and impacts is ultimately coming from investors. 'Climate change has gone from being an issue raised occasionally by certain socially conscious groups, to a mainstream investment issue. It's now almost every meeting we have with investors where the first question that they ask is what we are doing in this area,' Mr Simmonds says.

The time to prepare is now

Regulators in Hong Kong are keen to ensure that financial institutions and listed companies disclose the financial impact of climate change on their businesses in line with the TCFD framework. The TCFD was created by the Financial Stability Board in 2015 to develop consistent climate-related financial risk disclosures.

'I think this is a very good development, because the financial sector itself can be a really significant driver of change. It is critical for companies and their investors and financiers to understand the risks and opportunities they face from climate change, whether that be the physical risks to their business directly or on their supply chains, or the indirect impacts from changing regulations or customer preferences in response,' Mr Simmonds says.

There are now over 2,000 signatories of TCFD worldwide. As of September 2021, 28 organisations in Hong Kong have officially registered as supporters, including professional services firms, asset managers, utilities and real estate businesses, as well as financial services. CLP is one of the supporters of TCFD and 'my advice to companies on TCFD reporting is to start now,' Mr Simmonds says.

He explains that it was the realisation of the seriousness of the risks that pushed CLP on its sustainability journey. 'The energy sector is responsible for around 40% of global emissions, so we realised that there is no solution to climate change if the energy sector isn't involved. Also, decarbonising electricity supply can enable other industries, such as transport, to reduce their emissions by supplying them with clean power. Taken together this tells us that our industry will change dramatically and we want to be ahead of the curve on that,' Mr Simmonds says.

In recognition of the need to accelerate decarbonisation efforts globally, CLP has recently updated and strengthened its climate targets. CLP has committed to transition its business to net-zero emissions by 2050 and supported that with a commitment to nearer-term

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climate change has gone from being an issue raised occasionally by certain socially conscious groups, to a mainstream investment issue
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David Simmonds FCG FCS, Group General Counsel and Chief Administrative Officer at CLP Holdings Ltd

science-based decarbonisation targets and to phase out coal from its portfolio by 2040 at the latest.

Addressing climate change has become an essential part of risk management and of positioning companies to take up the opportunities that will come in a decarbonised world, but Mr Simmonds adds that the immediate risks of climate change have already arrived. This has become painfully evident to businesses all around the world with the rising frequency and intensity of extreme weather events, including to CLP in last year's fire season in Australia when wildfires posed risks to a power station run by the company. 'I don't think we can describe climate change as a long-term issue anymore,' Mr Simmonds says.

Aligning ESG reporting standards

Corporate reporting has been shifting away from purely financial reporting into non-financial areas like ESG. As it has done so, an increasing number of international



ESG reporting standards – such as those of the Global Reporting Initiative (GRI) and Sustainability Accounting Standards Board – have emerged.

'In the last two decades, various sustainability reporting standards have been developed and, while these have helped companies to have a better understanding of the reporting process, it is hard for investors to compare companies using different standards,' says Brian Ho, Partner, Climate Change and Sustainability Services, EY.

This is because the standards don't use the same metrics for measuring ESG impacts and performance. Moreover, the KPIs in ESG reports may be measured according to local rather than international standards. This, Mr Ho points out, not only makes assurance work difficult but also has implications for the growing trend towards more integration of financial and non-financial data. 'Achieving effective disclosure will be more challenging if

reporting standards are not standardised,' Mr Ho concludes.

The good news here is that there have been initiatives globally to harmonise existing reporting standards. These include the proposal of the International Financial Reporting Standards Foundation to establish an International Sustainability Standards Board to develop a common set of global sustainability standards.

'I do think that we will get to a point, hopefully sooner rather than later, where ESG reporting is as single-stranded as financial and risk reporting,' says Pat Dwyer, Founder and Director of The Purpose Business, a Hong Kong-based consultancy that helps organisations in Asia embed purpose and sustainability into business strategy and operations. 'That will make it easier for all of us reading company reports to understand what good looks like and what we should be holding companies accountable for,' she adds.

An industry-specific approach

While a harmonised global standard for ESG reporting will be hugely beneficial in terms of encouraging the disclosure of consistent and comparable ESG data, Dr Calvin Lee Kwan, Head of Sustainability and Risk Governance at Link REIT, points out that it should nevertheless be adaptable to different industries. 'A global reporting standard would help industries move forward, because then everybody can compare apples to apples – especially on key, common indicators such as carbon intensity. This would improve the understanding of where businesses stand. However, the call for global standardisation should also balance differences in reporting norms across industries and geographies,' he says.

While the global standards have helped many businesses to get started in ESG reporting, some of the reporting aspects may not be applicable to specific sectors. The issue of hazardous waste and chemicals, for example, typically would not be as applicable to a retail focused real estate investment trust like Link REIT as compared to a manufacturing company, Dr Kwan points out. Similarly, he adds, the risks associated with climate change vary depending on where in the world you are based – low lying countries, for example, are most at risk from rising sea levels or fluvial flooding.

'So what we are seeing right now is that industries are gathering and articulating the relevant climate-related risks related to certain sectors,' Dr Kwan says. 'For the real estate sector, one of the easiest physical risks to consider is flooding – whether from sea level rise or torrential rain. Flooding from seasonal rain can create significant damage and, if not mitigated, can lead to lower property valuations. Many industries

are working together to define what climate-related financial disclosures are most relevant to their particular sector.'

This process is also reflected in some of the existing global standards. The GRI Standards, for example, are developing standards for 40 different sectors that will be targeted to the material reporting aspects for organisations in those sectors (more information on the GRI Sector Program is available at: www.globalreporting.org/standards/sector-program).

The role of governance professionals

Another predictable aspect of the coming climate storm will be higher expectations relating to the board's role in identifying and evaluating relevant risks and opportunities. This has already been a noticeable trend in ESG generally. 'Pushing board members for greater board-level commitment is really important. We're at a point where this is not the Chief Sustainability Officer's problem alone, it's not even the CEO's problem alone. If the board is really the cornerstone of purpose, vision and strategy about where the business is going, it must equip itself with a lot more knowledge around ESG,' Ms Dwyer says.

This, she adds, is an integral part of the board's responsibility for risk management, and company secretaries can play a key role in ensuring that ESG issues are on the board's agenda and that directors are adequately informed of the relevant issues. 'Governance professionals hold the key to elevating ESG as part of risk management,' she explains. 'It is on governance professionals to normalise discussions about emissions, water risk, waste and resource management. Until that happens, ESG is just going to sit on the sidelines.'

She adds that governance professionals also have a role to play in ensuring effective communication of ESG strategies to stakeholders. This, she says, should be focused on ensuring that the communications are understandable and relevant to the target audience. 'If you want effective communication, you have to understand who you are talking to. If you want to attract investors, or if you want to unlock a new ESG fund, or if you are primarily concerned with your social licence to operate in a local community that you're opening a factory in, you need to tailor your messages,' she says.

Mr Ho echoes this thought. 'I believe that companies cannot use one ESG or sustainability message for all stakeholders, as their understanding and perception of the topics discussed will likely be very different. For example, investors focus on your risk and opportunities, whereas consumers may expect companies to be more value-driven. Some companies think they are doing ESG communication just by publishing an ESG report, but that is not the case. It is important to make ESG communication more targeted.'

A new concept of value creation

The coming climate storm is not, of course, the only threat organisations are dealing with at the moment. Mr Simmonds points out that the Covid-19 pandemic is changing our previous conceptions of what is and what is not possible for businesses to achieve and that has reinforced the need to respond to longer-term sustainability issues.

'For a long time, ESG was seen as a very big G, a medium-sized E and a very small S, but people will look through Covid-19 and see that it has accelerated a range of existing trends driving changes that will

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governance professionals
hold the key to elevating
ESG as part of risk
management
”

Pat Dwyer, Founder and Director,
The Purpose Business

have very significant impacts on lives and livelihoods. That has raised the importance of addressing both environmental and social issues and if companies don't rise to these challenges, they will lose customers and they will lose supporters in the communities in which they work,' he says.

He adds that the era in which businesses can simply focus on short-term financial gains has passed. 'I think the governance model has changed and there is a wider scope of considerations at play beyond the shareholders and short-term interests to how a company can continue to operate in the long term.'

Ms Dwyer echoes this thought. 'All of the ESG indicators coalesce around a concept of value that is no longer defined for just one stakeholder – the shareholder,' she explains. 'If businesses truly redefine their concept of value, and use their strategy and their operations to create a positive impact for the future, this will benefit shareholders as much as it will employees, suppliers and the local community they work with.'

Hsiuwen Liu
Journalist

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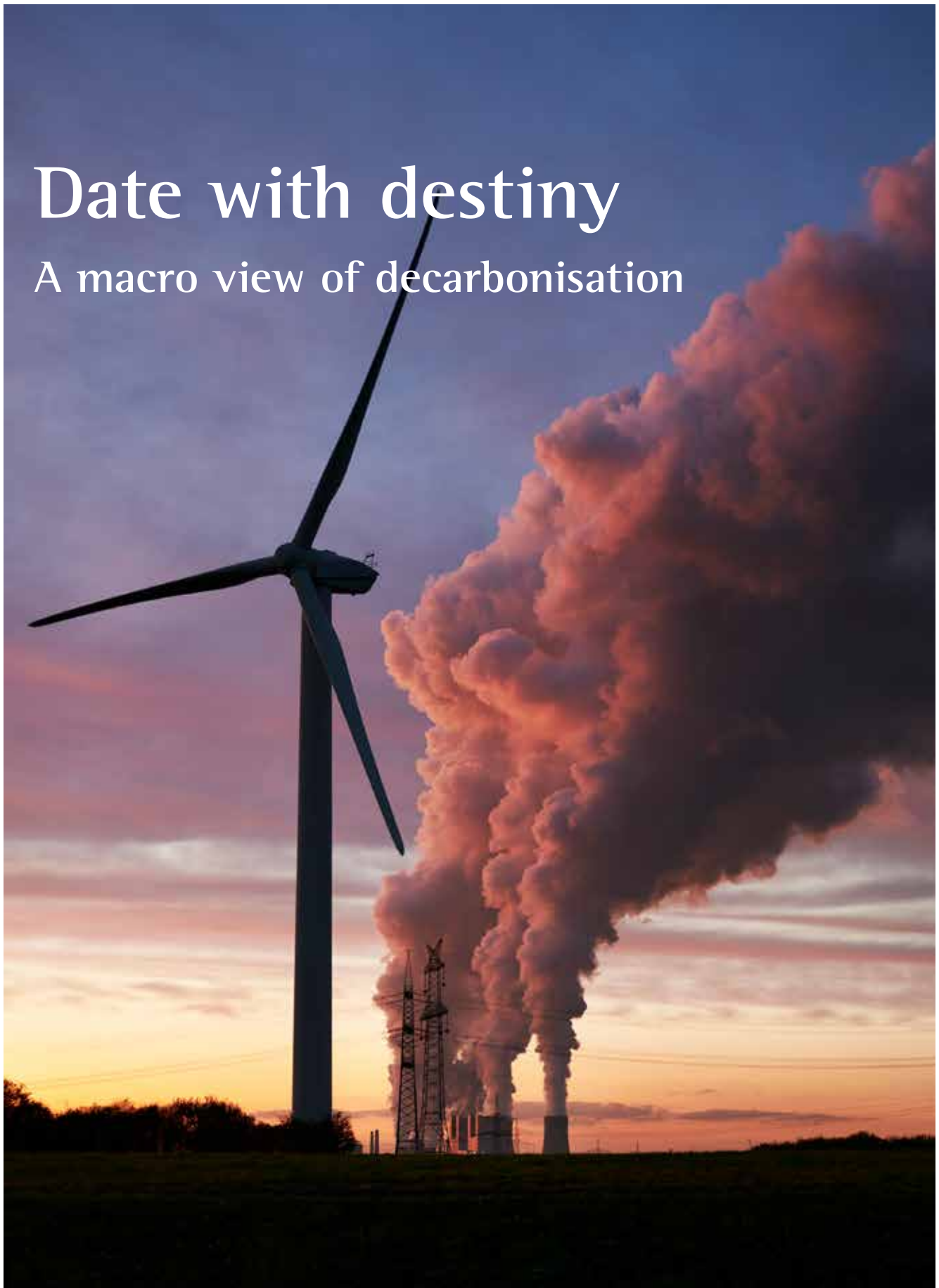
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It is a matter of discretion for individual employers to recognize any qualification to which these courses may lead.

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Date with destiny

A macro view of decarbonisation



Achieving the level of decarbonisation needed to avert significant climate change risks, says Christine Loh SBS, OBE, JP, Chief Development Strategist, Institute for the Environment, The Hong Kong University of Science and Technology, will require an all-hands-on-deck approach where the public and private sectors cooperate to transform industries and businesses through both technological and management innovations.

A major global focus in 2021 is climate change. This is not only because of the weather disasters that have overwhelmed so many parts of the world, but also because governments from over 190 countries are gathering in Glasgow next month (November 2021) to continue negotiation on the implementation of the multilateral 2015 Paris Agreement that deals with the existential threats arising from climate change.

In other words, climate change is taking centre stage in world and national affairs. The extreme rains in the Mainland and Central Europe, the sustained extreme heat in the western parts of Canada and the US, the wildfires in California, Turkey and the Mediterranean, and the fast-melting glaciers in Greenland are focusing the attention of rich and emerging economies on the risks of climate change. The latest report by the United Nations (UN) Intergovernmental Panel on Climate Change, published on 9 August 2021 to provide policymakers with scientific assessments on climate change, noted that global warming is happening faster and affecting every region of the world. It isn't only that poor countries can't cope – even developed countries are having trouble dealing with this issue. The report makes it clear that both targets agreed in Paris in 2015 (to keep the global temperature rise to well below 2°C, and preferably under 1.5°C, from pre-industrial levels this century) will be broken unless huge cuts in carbon emissions take place.

Climate change is caused by humans pumping out gigantic quantities of greenhouse gases that have been warming the atmosphere since the Industrial Revolution, mainly through the burning of fossil fuels and especially coal, since that has the highest carbon emissions. Fossil fuels still provide about 84% of the world's energy. Replacing fossil fuels with clean energy requires not only a technical and industrial revolution, but also a financial revolution to fund decarbonisation, while at the same time increasing clean energy supply to developing economies. Many parts of the world, such as in Asia and Africa, do not have enough energy to even keep the lights on for basic daily activities.

The Mainland accepts the challenge. It is the largest developing economy in the world where 57% of the country's energy still comes from coal. On 22 September

2020, it pledged to achieve peak carbon by 2030 and carbon neutrality by 2060. Carbon neutrality is achieved when carbon dioxide emissions are equal to the amount of carbon dioxide being removed from the atmosphere. This was a major piece of good news because the Mainland is the largest carbon emitter in the world, contributing about 28% of global emissions. Moreover, at the UN Summit on Biodiversity held on 30 September 2020, the Mainland expressed its commitment to biodiversity protection since decarbonisation and restoration of ecosystems need to go hand in hand.

Correcting 'unbalanced, uncoordinated and unsustainable' growth

The Mainland's carbon commitments did not come out of the blue, although they surprised many people at the time. The government had been planning

Highlights

- replacing fossil fuels with clean energy requires not only a technical and industrial revolution, but also a financial revolution to fund decarbonisation, while at the same time increasing clean energy supply to developing economies
- the Mainland is also committed to biodiversity protection since decarbonisation and restoration of ecosystems need to go hand in hand
- the Hong Kong-based workforce needs to understand 'sustainability 101', not only in science, engineering and biodiversity, but also in finance, accounting, planning, design and construction, professional services and public administration

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for change even before former Premier Wen Jiabao's famous criticism in 2007 that the country's economic path was 'unbalanced, uncoordinated and unsustainable'. In 2012, the ruling party amended its constitution to add 'ecological progress' as a new pursuit. This gave the ruling party, and party officials, clear direction that they have to put the environment on an equal footing with economic growth. In 2013, the government issued the 10 Measures to Fight Air Pollution, which was followed in subsequent years by similar mandates on water pollution and soil pollution. Watershed protection has become a serious priority, as has repairing polluted lands and restoring biodiversity.

By 2018, the government was ready to amend the national constitution. By adding 'ecological civilisation' as a constitutional mandate, the country's political and policy frameworks were in place to put ecological health alongside economic and social developments. The government has also launched various pilot schemes, one of which became a fully fledged national carbon emissions trading scheme in July this year (2021), as well as other trials that will shape policy in the foreseeable future, such as ecosystem value accounting.



Greening finance to support ecological civilisation

It should not be overlooked that the People's Bank of China published the groundbreaking report, Establishing China's Green Financial System, in 2015. This was one of the earliest comprehensive reports in the world by a central bank on why and how to reform the financial system in order to raise capital to achieve environmental goals. Significantly, this report was prepared together with the UN Environment Programme, which meant the country absorbed high-level international thinking on how to green finance. In 2016, as host country for the G20 meeting held in Hangzhou, the Mainland used the occasion to discuss green finance, which followed its efforts to help shape and shepherd the 2015 Paris Agreement through the UN for the countries of the world to avoid dangerous climate change by limiting global warming to below 2°C, and to pursue efforts to limit it to 1.5°C, compared with pre-industrial levels.

Green finance has become a shorthand description for directing capital towards zero-to-low carbon projects and environmentally sustainable projects. The capital needed is enormous. According to a report released by a climate change think-tank at Tsinghua University

in 2020, it could cost the Mainland RMB174 trillion (about US\$26 trillion) in total. The cost of transforming the energy and electricity sector alone is estimated to cost RMB138 trillion from 2020–2050, or 2.6% of GDP annually. The transformation for other economies will likewise be in the trillions. Hence, governments must play a decisive role.

The Mainland's way is to make environmental protection a constitutional principle for both the ruling party and the nation. The set targets and timelines, plus the ensuing laws and regulations, are mandatory for the governance of the country. Party and government officials must align their development plans according to those goals within a legally enforceable regulatory framework, and companies too must improve performance accordingly, otherwise they will be penalised. Even in free-market economies, such as those of the European Union, it is recognised that the market alone cannot turn the ship around without clear and consistent policy and incentives. Hence, the aim is to use policy and legal instruments to change incentives to favour investments in green and zero-to-low carbon projects.

The Mainland's climate envoy, Xie Zhenhua, announced in late July this year (2021) that China's decarbonisation plans would be published soon and that the top leadership had created a 'leading small group' (*lingdao xiaozu*) to guide and oversee implementation. This is important because, within the Chinese governance structure, creating leading small groups is a mechanism used by the leadership to guide and supervise the nation's most important policies. These groups are usually chaired by a Politburo member, which shows the importance the leadership accords to the subject at hand.

Hong Kong must take note since the city serves as the nation's international financial centre. Hong Kong needs to be a part of the 'revolution' to clean up the city and to help raise capital for the country's net-zero ambition. Hong Kong also serves the Asia-Pacific region in capital raising. Under its Climate Action Plan 2030+, published in 2017, the HKSAR Government committed the city to reduce carbon emissions by 26%–36% from 2005 levels by 2030. It is about to publish an updated plan that will no doubt provide further action since the HKSAR Government has set the goal of achieving carbon neutrality by 2050.

A multidisciplinary challenge

Green finance is a multidisciplinary challenge, since it relates to a large range of investments across many sectors of business and markets. The green transition needs to be policy-led so that governments use regulatory tools to 'internalise externalities' in the sense that the negative environmental costs are reflected in prices. The purpose is to penalise negative outcomes and reward positive ones. The signal to the market is that investments in environmentally unsustainable projects, in particular projects with high carbon emissions, carry higher risks. This is what fuels discussions about the need to price carbon, which can be done through emissions trading or the setting of carbon taxes.

Pricing carbon is not easy. Infrastructure projects, such as renewable energy or waste-to-energy projects, involve long timeframes with multi-year projections of environmental impacts. At present, there is inadequate expertise built into the financial services industry to make such assessments. Assessments of green investments are still largely based on

threshold financial rates of return. To mobilise large amounts of capital for green investment, governments and professionals need to find a way to augment these financial returns by incorporating non-financial or societal returns into total returns, such as lower climate change risks, reduced pollution, improved public health and so on. There is a lot of innovative work to be done here. Environmental, social and governance (ESG) disclosure by listed companies is an example of an emerging trend to show investors how a company is managing such risks, including climate change-related risks.

A fast transition

Essentially, the Mainland must replace coal with natural gas during a fast transition away from high-to-lower carbon fossil fuels, and then replace natural gas with renewable, nuclear and yet to be popularised energy sources, such as hydrogen, ammonia and bioenergy. The first target is for the country to achieve peak carbon by 2030. Research by Tsinghua University shows it must then reduce carbon emissions at 8%–10% per year from 2030 onwards. These are tall orders, but these are the goals upon which the Mainland has based its national decarbonisation plans.

Yet, as the largest carbon emitter in the world, there is international pressure for the Mainland to peak earlier than 2030. What is certain is that climate change will continue to be part of the national and global agenda for decades to come. Speeding up will only put more demand on everyone and there is no time to waste. We can regard the achievement of carbon neutrality for the world between 2050 and 2060 as our collective date with destiny. Achieving this will require an all-hands-on-deck approach where the public and private sectors have to

cooperate to transform industries and businesses through both technological and management innovations.

Hong Kong has its work cut out. It can shift from being an international finance centre to being Asia's green finance hub. It is well placed to understand the Mainland's pathway to ecological civilisation and decarbonisation and seek to support it, while at the same time to be conversant with the green transformation in the Asia-Pacific region. Hong Kong can provide the intellectual and human resource talents to serve this massive 'brown to green' transition. This requires the Hong Kong-based workforce to understand 'sustainability 101', not only in science, engineering and biodiversity, but also in finance, accounting, planning, design and construction, professional services and public administration.

Employers in Hong Kong are keen to hire young people with a basic grounding in environmental sustainability. Universities are providing more courses. The younger generations are attracted to environmental clean-ups, and they want to innovate to dematerialise their lifestyles towards experiential richness and well-being. The Mainland's new development agenda, viewed through the lens of ecological civilisation and decarbonisation, offers a path worth pursuing by all. The professional bodies in Hong Kong can play a special role in continuing professional training, as well as helping to meet the needs of this fast-paced transition towards the net-zero carbon world.

Christine Loh SBS, OBE, JP, Chief Development Strategist, Institute for the Environment

The Hong Kong University of Science and Technology

Strategic stakeholder engagement

Theodora Thunder, Managing Director, Streeter Strategic Ltd, demonstrates the ways in which strategic stakeholder engagement provides a means for organisations to stay in touch with the rapidly changing ecosystem in which they operate in the post-Covid world.



The Review of Corporate Governance Code and Related Listing Rules, published in April this year by Hong Kong Exchanges and Clearing Ltd (HKEX), sets out to encourage, among other things, the 'effective engagement with shareholders and stakeholders' by listed companies in Hong Kong. This signals a potential regulatory response to the increasing investor demand for a better understanding of the influence and impact stakeholder expectations have on material risks to future corporate development, in particular in the environmental, social and governance (ESG) space. Box-ticking on internal energy consumption or employment by gender numbers is no longer the 'dish of the day'.

Post-Covid ESG pivot

While the Covid-19 pandemic is still very much with us, we have entered the 'post-Covid' world in the sense that the pandemic has made lasting changes to the business, social and political environment. The stakeholder engagement that influences ESG strategy development in post-Covid boardrooms arises from the internal appreciation of the still-evolving social licence to operate and the rapidly changing ecosystem (increasingly influenced by climate change) in which companies operate. This implies the need for a high-level strategy that recognises disruption around stakeholder expectations and their measurable impact across the spectrum of governance, social, economic and environmental issues.

Strategically engaging stakeholders in this business environment delivers valuable insight into the challenges ahead and sources of disruption.

Importantly, this disciplined approach informs resource allocation and management. Boards are charged to allocate resources and justify their decisions. The judicious use of corporate resources is clearly their responsibility and duty of care.

Principles-based engagement

Governance by definition implies a structured approach to organisational management. While most companies undertake stakeholder engagement, the potential risk management focus that strategic engagement brings to the table is often underestimated, or entirely missed, due to a lack of a well-organised and purpose-driven strategy and framework behind it. From a governance perspective, the identification and treatment of risks before they impact operations is cheaper than recovery after the fact.

Stakeholder engagement, due to its elastic nature, is best managed through a strategy based on principles for action, captured in a policy framework that guides rather than prescribes process. This has been the approach of many global ESG leaders, such as Unilever

in product development under its 'sustainable living plan', or Patagonia with its 'culture matters' strategy in employee engagement. The objective is to articulate the strategy and roadmap (governance and policy) while encouraging flexibility in the navigation and method of engagement (risk management and metrics). Using this framework gives the latitude to develop fit-for-purpose engagement while retaining the disciplined and transparent governance when measuring, managing and reporting the social, economic and environmental risks to organisational development.

The principles of inclusivity, materiality, responsiveness and impact, foundational to AccountAbility's AA1000 series (www.accountability.org), present a practical four-stage framework for stakeholder engagement in practice. Each principle (outlined below) serves a specific purpose towards strategy implementation and, in turn, facilitates next-step actions to create a cycle of momentum for continuous improvement. As a management tool, this cycle articulates expectations, documents material risks, guides and monitors the

Highlights

- while most companies undertake stakeholder engagement, the potential risk management focus that strategic engagement brings to the table is often underestimated
- boards cannot afford to be blindsided – strategic stakeholder engagement can serve as an early warning system across the spectrum of governance, social, economic and environmental issues
- stakeholder engagement, due to its elastic nature, is best managed through a strategy based on principles for action, captured in a policy framework that guides rather than prescribes process

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the identification and treatment of risks before they impact operations is cheaper than recovery after the fact
 ”

response mechanisms and provides the feedback and learning senior management and boards require for strategic decision making.

1. Inclusivity

Inclusivity invites stakeholder voices to have a say in the risks and decisions that will impact them. This alerts senior management to the disruptive influences and changing priorities within the stakeholder universe akin to the adage of being the 'canary in the coal mine'. Inclusivity creates the environment for constructive dialogue and ensures that all relevant stakeholders are involved and heard. The goal is to listen, learn and build trust.

2. Materiality

Materiality builds on the stakeholder voice as it represents a critical measure of impact the company has on the risks across its value chain and a voice that amplifies if mitigating actions operate as intended.

It is important to remember that materiality is largely a risk assessment process from the company perspective, and an exercise in voicing expectations and influence from the stakeholder perspective. Materiality can therefore potentially involve a judgement call between the two, especially when a conflict of interests arises.

Thanks to many converging standards, such as those of the Task Force on Climate-related Financial Disclosures and the Sustainability Accounting Standards Board, the concept of double materiality is fast becoming the norm in reporting. Double materiality makes it clear that organisations have a responsibility not only to report on the risks impacting them, but their own impacts on the economy, environment and society within which they operate.

3. Responsiveness

Responsiveness is where the rubber meets the road in developing and implementing fit-for-purpose mechanisms to manage material issues. It is important to act

transparently with stakeholders when developing a response to their feedback and to ensure that any actions align with the targets and goals of your ESG strategy. Prior to developing any initiative, the resources, internal competencies, management support and, critically, the buy-in from relevant stakeholders need to be in place. Without these, response is a non-starter.

On the opportunity side, issue owners should consider partnering with stakeholders to leverage outcomes and impact rather than just responding to expectations. Building in common goals when developing a response incentivises collaboration and increases the efficacy of actions.

Link REIT: a case scenario

The Hong Kong-based real estate investment trust, Link REIT, is one of the first listed entities in Hong Kong to publicly formalise and hold itself accountable to a board-level stakeholder engagement policy and process. When implementing its 'business as mutual' development strategy, the company recognised early the need for a structured stakeholder engagement policy supported by a disciplined companywide process to achieve stated ESG goals and targets.

'Stakeholder engagement allows us to benchmark how critical business relationships and interactions grow and improve, while providing a valued feedback loop for supporting delivery of corporate strategy,' comments Dr Calvin Lee Kwan, Head of Sustainability and Risk Governance, Link REIT.

At the operational level, Link's engagement policy instructs and facilitates 'business as mutual' across the group's several operating regions and business disciplines. Using the principles-based approach, the ESG strategy goals are articulated within the stakeholder engagement policy, while allowing for a diversity in operating cultures and stakeholder expectations in implementation. With this structure in place, the engagement process is more productive, produces more meaningful performance data, encourages trust and, importantly, adds to management's understanding of any emerging risks and potential development opportunities. Further, a key component is to provide the clear feedback to participants so that they know that their opinions are heard, encouraging them to continue participating in such exercises.

4. Impact

When assessing and reporting impacts, the board holds itself and its reputation to account for how its actions affect not just its stakeholders and organisational development, but also its broader ESG commitment to ecosystems and society. With effective and disciplined engagement supported by a structured reporting process, management can disclose more meaningful context to performance that demonstrates accountable responses to expectations, including the social licence to operate.

Internally, impact highlights the strategic and operational intent of engagement,

the maturity of the company's sustainability development management, efficiency of internal resources allocation and the levels of competencies to implement ESG strategy at all levels of the organisation, including the board.


Art or science?


Stakeholder engagement is often perceived and used more as an art than a science and is therefore difficult to organise into meaningful data points. Taking the steps to recognise engagement as a strategic governance tool, as HKEX encourages listed companies to do, suggests a company can transform art into science through a

structured management and process that informs decision-making at all levels of the organisation.

Theodora Thunder, Managing Director
Streeter Strategic Ltd

Streeter Strategic Ltd is an ESG consultancy that provides corporate ESG strategy advisory and competency programmes. The author is also a member of the Red Links Sustainability Consortium (www.redlinks.com.hk) and can be contacted at: thunder@streeter.com.hk.





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**The Hong Kong Chartered Governance Institute
Council Election for 2022
and Annual General Meeting 2021**

Nominations for candidacy for election to Council of the Institute have now been closed. The 2021 Annual General Meeting of the Institute will tentatively be held on 15 December 2021.

Pursuant to the Articles of Association of the Institute, only Fellows who are ordinarily resident in the Divisional Territory are eligible to stand for election. The HKCGI Council is also appointed as the China Committee of The Chartered Governance Institute. In the event that the number of candidates does not exceed the number of vacancies, those nominated will be deemed elected. Where the number of candidates does exceed the number of vacancies, a postal ballot will be conducted.

More details are available on the Institute's website: www.hkcggi.org.hk.

Data privacy and doxxing

Proposed changes to Hong Kong's data privacy law to tackle doxxing



Wynne Mok, Partner, and associates Jason Cheng, Ruby Chik and Kathleen Poon, Slaughter and May, explain new government proposals to amend the data privacy law in Hong Kong to deal with doxxing, as well as to strengthen the related investigative and prosecutorial powers of the Privacy Commissioner for Personal Data.

As foreshadowed in the paper prepared by the HKSAR Government on the proposed reforms in personal data privacy law and submitted to the Legislative Council Panel on Constitutional Affairs for discussions on 20 January 2020, the HKSAR Government, on 16 July 2021, gazetted its concrete proposals on how the Personal Data (Privacy) Ordinance (Cap 486) (PDPO) should be amended. It came as no surprise that the proposed amendments focus primarily on tackling doxxing and strengthening the powers of the Privacy Commissioner for Personal Data (Commissioner) to investigate and prosecute doxxing-related offences.

It is not debatable that doxxing – which is effectively malicious disclosure of an individual's personal data without his/her consent – is a serious concern that needs to be properly addressed, which the current data protection law does not adequately do as it only takes into account the consent of the data user, but not the consent of the data subjects whose data is being disclosed. There are debates, which started even before the Personal Data (Privacy) Amendment Bill 2021 (Bill) was introduced, on how the proposed anti-doxxing law would affect social media platforms, telecommunication carriers and the like. It is therefore worthwhile taking a closer look at the Bill from that perspective.

Primary offences of doxxing

The HKSAR Government proposes to criminalise doxxing under a two-tier structure:

First-tier summary offence. Anyone who discloses personal data without the data subject's consent, with an intent to cause any specified harm to the data subject or any of his/her family members, or being reckless as to whether any specified harm would be, or would likely be, caused, may face a maximum penalty of two years' imprisonment and a fine of HK\$100,000.

Second-tier indictable offence. Anyone who commits the first-tier summary offence may face indictment and more severe penalty if the disclosure in fact causes the specified harm. The maximum penalty is five years' imprisonment and a fine of HK\$1 million.

A key element of the proposed doxxing offences is the disclosure of personal data by the offender, which could be done by way of a post on an online platform. Another key element is 'specified harm', whether intended or actually caused, which is given a meaning that

is much wider than 'psychological harm' contemplated under section 64(2) of the current PDPO. The term 'specified harm' is proposed to refer to (i) harassment, molestation, pestering, threat or intimidation, (ii) bodily harm or psychological harm, (iii) harm causing a person reasonably to be concerned for his or her safety or well-being, or (iv) damage to a person's property. Further, the offences extend to cover any specified harm intended to be inflicted on not only the data subject, but also on people who are related to the data subject by blood, marriage, adoption or affinity.

Therefore, if a person posts information about another person on a social networking site with an intent to hurt the data subject's (or a family member's) feelings, or to encourage cyberbullying, he/she will be caught by the proposed anti-doxxing law. He/she may even be convicted on indictment if, as a result of the post, a stranger attacked the data

Highlights

- the HKSAR Government's recent proposed amendments to the Personal Data (Privacy) Ordinance (PDPO) include criminalising doxxing under a two-tier structure
- one key element of the proposed doxxing offences involves the concept of 'specified harm', which is much broader than the 'psychological harm' under the current PDPO
- the HKSAR Government also proposes that the Privacy Commissioner for Personal Data is empowered to issue cessation notices to remove doxxing content, and to cease or restrict access to online platforms containing such content

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 the proposed amendments focus primarily on tackling doxxing and strengthening the powers of the Privacy Commissioner for Personal Data to investigate and prosecute doxxing-related offences
 ”



subject or any of his/her family members on the street.

In Hong Kong, an agreement to commit an offence amounts to the crime of conspiracy and the persons involved in the agreement may be prosecuted for the offence. The offence of conspiracy may be charged under section 159A of the Crimes Ordinance (Cap 200). The Bill makes it clear that the Commissioner may prosecute an offence of conspiracy to commit a doxxing offence. Potentially, two or more individuals may be charged with an offence of conspiracy to commit a doxxing offence if they agree with one another that one of them will reveal someone else's private information on an online platform so as to make the data subject or his or her family member(s) a target of malicious attacks.

A few grounds of defence to the doxxing offences are proposed. A person could be exonerated if, at the time of disclosure, he or she reasonably believed that the disclosure was necessary for preventing or detecting crime, or that the data subject had agreed to the disclosure, or if the disclosure was required or authorised by law or a court order. Currently, under

section 64(4)(d) of the existing PDPO, a public interest defence is available to those who are engaged in news activities. The HKSAR Government proposes that the defence will only be available if the person charged can establish that the sole purpose of the disclosure was for a 'lawful' news activity.

New power to direct cessation of doxxing activities and content

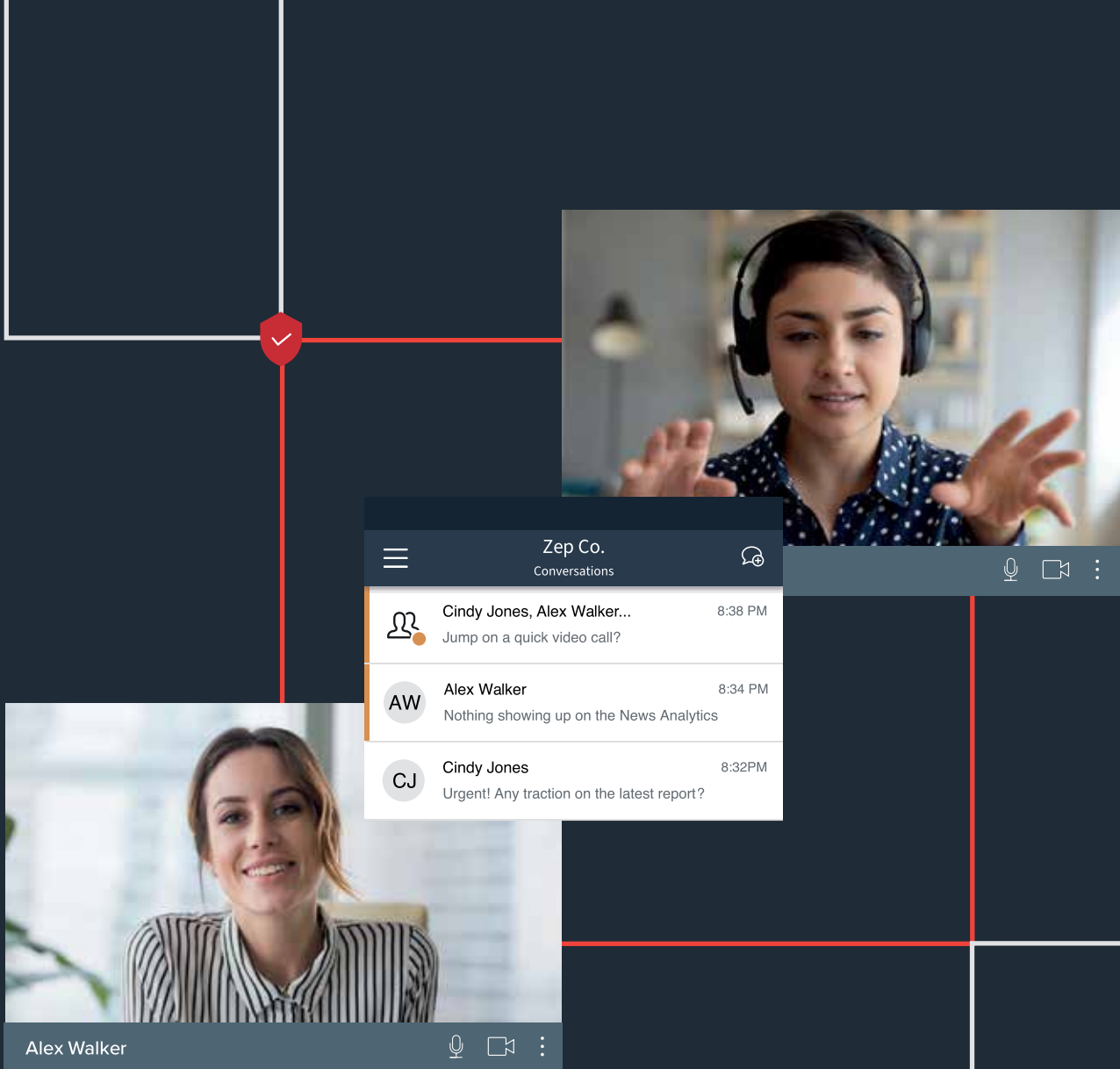
Apart from the prosecution power as mentioned above, the HKSAR Government proposes that the Commissioner will be empowered to issue notices to remove doxxing content, and even to cease or restrict access to online platforms which contain such content. This proposal, in particular, has sparked concerns on the part of online and technology firms whose services are currently accessible to the Hong Kong public.

The relevant provisions are summarised as follows:

a. The Commissioner may issue a cessation notice if it has reasonable grounds to believe that there is a written message or electronic message whereby personal data has

been disclosed without the data subject's consent, and that the first-tier offence has been committed. The subject message should relate to a Hong Kong resident or a person who was present in Hong Kong at the time of the disclosure, though the disclosure itself does not need to take place in Hong Kong.

- b. A cessation notice may be served on an individual who is present in Hong Kong, or a body of persons that is incorporated, established or registered in Hong Kong, or has a place of business in Hong Kong (defined as a 'Hong Kong person' under the Bill). If the subject message is an electronic message, the notice can be served on a non-Hong Kong service provider who has provided or is providing service (whether or not in Hong Kong) to any Hong Kong person.
- c. The Commissioner may direct the person subject to a cessation notice to take a 'cessation action' within a designated time period. Such actions may include steps to remove the subject message from the electronic



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platform on which the message is published, or stop or restrict access to the message or even the relevant electronic platform, or discontinue the hosting service for any part or the whole of the relevant electronic platform, so as to cease or restrict the subject disclosure.

- d. The Commissioner, however, may exercise this power only if it has reasonable grounds to believe that the person on whom a cessation notice is to be served is able to take the cessation actions as directed.
- e. The person on whom a cessation notice is served or anyone affected by the notice may appeal to the Administrative Appeals Board (AAB) within 14 days after the notice is served. However, notwithstanding the appeal process, the notice will remain effective pending the AAB's decision and must still be complied with within the designated timeframe.
- f. Indeed, non-compliance with a cessation notice is an offence, which carries a maximum penalty of a level-5 fine and imprisonment for two years on the first conviction.
- g. It is, however, a defence for a person charged with the offence to establish that he or she had a reasonable excuse for contravening the cessation notice, or alternatively, it was not reasonable to expect him or her to comply with the cessation notice (i) having regard to the nature, difficulty or complexity of the cessation action concerned, (ii) because the technology necessary for complying with the cessation notice was not reasonably available to him or her, (iii)

because there was a risk of incurring substantial loss to or otherwise substantially prejudicing the right of a third party, or (iv) because there was a risk of incurring a civil liability arising in contract, tort, equity or otherwise.

This will potentially allow the Commissioner to serve a cessation notice on online and technology firms globally that provide services to the public in Hong Kong, provided that the Commissioner reasonably believes that these firms are able to take the steps as required in the notice. Such firms may include operators of social networking sites, online search engine operators and internet service providers. It does not matter whether they have offices in the city. However, if they do (for example) have a branch office in Hong Kong, the branch office could be made the recipient of a cessation notice. If the branch office is only made up of administrative and support personnel, a question may arise to whether the branch office has the ability to comply with a cessation notice.

By way of an example, local administrative staff of a social networking site operator may not have the authority or ability to take down the doxxing content from the platform that is hosted and managed overseas. It would be debatable whether the branch office, in the circumstances, is obliged to procure compliance of the notice by its headquarters when it is not able to directly remove the content.

Furthermore, a service provider, when served with a cessation notice, may be faced with difficult choices, leaving aside whether it has the ability to comply with it. It may be necessary for the service provider to challenge the cessation notice through an appeal, if compliance with

“ the offences extend to cover any specified harm intended to be inflicted on not only the data subject, but also on people who are related to the data subject by blood, marriage, adoption or affinity ”

it will likely lead to lawsuits from third parties. However, as mentioned above, the service provider will still be obliged to comply with the notice within the specified timeframe (which is unlikely to be long) pending the results of the appeal. Consequences for non-compliance could be severe and depends very much on whether one of the defences available can be established.

It is worth mentioning that under Hong Kong law, if the person who commits the offence is a corporation, any director or officer of the corporation whose consent or connivance contributed to the commission of the offence is deemed to have committed the same offence, under section 101E of the Criminal Procedure Ordinance (Cap 221). Hence, it is possible for personal liability to attach to the management of a company where he or she is responsible for causing a failure by the company to comply with a cessation notice.

Notwithstanding the above, it is comforting to hear from the Secretary for Constitutional and Mainland Affairs,



the HKSAR Government, Erick Tsang Kwok-wai, that the anti-doxing law only aims to target those who maliciously leak another's personal information, rather than intermediate service providers, and that only persons with the ability to remove doxing materials would be asked to do so.

New investigative, enforcement and prosecutorial powers

To combat doxing activities and enforce the disclosure offences under the existing section 64(1) and the proposed new sections 64(3A) and (3B) of the PDPO more effectively, the HKSAR Government submits that the Commissioner be given more investigative and enforcement tools, comparable to those available to other law enforcement agencies and regulators such as the Police and the Securities and Futures Commission. In relation to a 'specified investigation' (which effectively means an investigation into the disclosure offences and ancillary offences under the proposed new sections 66E, 66I and 66O of the PDPO), the Commissioner or a prescribed officer (as defined under

section 9(1) of the current PDPO) are proposed to be conferred with the following powers:

- power to compel production of documents and information relevant to the investigation
- power to apply to a magistrate for a warrant to enter and search premises, and seize materials in the premises that contain evidence for the investigation
- power to apply to a magistrate for a warrant to access, detain, decrypt and search for any materials stored in an electronic device that the Commissioner reasonably suspects to be or to contain evidence for the investigation
- power to access an electronic device without warrant where it is not reasonably practicable to obtain a warrant, if it is reasonably suspected that the relevant offence has been committed, or is about to be committed, and the electronic device contains evidence for the investigation
- power to stop, search and arrest, without warrant, anyone who is reasonably suspected to have committed the relevant offences, and to use reasonable force to effect the search or arrest if the subject person resists or attempts to evade the search or arrest, and
- power to apply for an injunction where a person has engaged, is engaging or is likely to engage in conduct that would constitute a disclosure offence.

The HKSAR Government proposes that persons who, without lawful excuse, fail to comply with the Commissioner's document requests, provide false or misleading information to the Commissioner, or obstruct, hinder or resist the exercise of the above powers to search and arrest, shall be liable for an offence. The Commissioner shall have the power to prosecute such offences and the offence of conspiracy to commit such offences summarily.

It is also proposed that the Commissioner may prosecute the first-tier offence summarily. This means that more severe cases will be referred to the Police or the Department of Justice.

Next steps

As at the time of this article, the Bill has passed its First Reading at the Legislative Council. A Bills Committee has been formed to study the Bill before the Second Reading. The Bill is expected to go through the Legislature before the end of October 2021.

Whilst the Bill has yet to be passed by the Legislature, in view of the possibility that the Commissioner will be given wide investigative and enforcement powers, it is advisable for corporates to make a head start on formulating internal protocols and training programs so that local employees are well equipped to deal with cessation notices, requests for production of documents, searches and seizures of materials (including electronic devices).

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

Slaughter and May

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Slaughter and May

A test of mosaic theory in Hong Kong

Donald Lai ACG ACS, Solicitor, CPA, reviews the first unsuccessful attempt to apply the 'mosaic theory' defence in an insider dealing case in Hong Kong.



The decision of the Market Misconduct Tribunal (MMT) in the insider dealing case relating to Meadville Holdings Ltd (Meadville) in February 2021 should prompt governance professionals to strengthen internal controls relating to insider dealing. The case marked the first unsuccessful attempt to apply mosaic theory (see 'Mosaic theory' section below) to defend an insider dealing case in Hong Kong.

Case background

The former Chairman and Executive Director of Meadville, Tang Chung Yen Tom (Tang), was in an intimate relationship with Li Yik Shuen (Li) at the material time. In July 2009, Meadville planned to sell its principal business to a US-listed company. The negotiations continued until October 2009. Based on the agreement, the shareholders of Meadville would receive a dividend of HK\$3.40 per share. On 23 October 2009, the agreement was passed at a Meadville board meeting chaired by Tang.

From 23 to 28 October 2009, Li spent HK\$5.95 million to acquire about 2 million shares in Meadville at a price range of HK\$2.57 to HK\$2.79. Trading in Meadville shares was suspended from 30 October to 16 November 2009, pending an inside information announcement about the business sale and the dividend. The trading resumed on 17 November 2009 after Meadville announced the inside information. Li sold all her shares at the price range of HK\$3 to HK\$3.13 and earned about HK\$550,000.

Knowledge of inside information

Li came to possess inside information by piecing together information she received from Tang. After accidentally spotting Tang on the news in the Mainland, she looked into his

background. Tang mentioned to her that he was busy at work and had meetings with foreigners. He also said that he had to visit a factory in Dongguan and visit the US for business meetings. Li collated the information and concluded that a possible acquisition of Meadville by a US-listed company was imminent. She bought Meadville's shares before the details of the acquisition were announced.

The MMT found that there was no direct evidence of Li possessing inside information. Tang did not directly communicate the details of the acquisition to her, but she had been able to collate the information from incidental disclosures he made. The MMT ruled that Tang was the only source of Li's inside information and, as such, it ruled that Li had committed insider dealing.

Concerning Tang, the MMT held that he did not commit any market misconduct as he did not know, and did not have a reasonable cause to believe, that Li was dealing in Meadville shares. The MMT found that Tang was unaware that Li had purchased Meadville shares after a boyfriend in the Mainland had remitted about HK\$5 million to finance her share purchase.

Mosaic theory

Mosaic theory permits financial analysts to draw significant conclusions from the analysis of public and non-material, non-public information even if those conclusions would have been material inside information had they been communicated directly to the analyst by a company.

Free flow of information is essential for financial analysts to form an independent, informed investment decision. The US Supreme Court acknowledges the US Securities and Exchange Commission (SEC) view that analysts' initiatives to 'ferret out and analyse information' significantly enhances market efficiency, thus benefiting all investors (*Dirks v. SEC* (1983) 463 U.S. 646, 658). Moreover, the CFA Institute, the professional body of financial analysts, recognises mosaic theory as a valid method of analysis in its Standards of Practice Handbook. On this basis, analysts can expect to escape prosecution for insider dealing if they only make 'informed guesses' of inside information based on non-material, non-public information.

Nevertheless, the application of mosaic theory as a defence in insider dealing

Highlights

- the Meadville case demonstrates that the use of apparently incidental, non-public information to deduce inside information can form the basis of an insider dealing conviction
- governance professionals should arrange training sessions to enhance senior executives' awareness of inside information disclosure risks
- companies should set a clear policy and procedures on public disclosure of corporate actions

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”

cases has been at best uncertain.

Before the Meadville case, Hong Kong had no precedent in applying mosaic theory to insider dealing, but the US case law may be a helpful reference. In the Galleon Group case in 2011, Raj Rajaratnam, a hedge fund manager, tapped into his network of friends and close business associates to obtain insider tips and confidential information. Mr Rajaratnam tried to use the mosaic theory defence and claimed that the fragments of information he received did not affect his trading decision, but he was found guilty and sentenced to 11 years of imprisonment (*United States v Rajaratnam*, 09 Cr.1184 (RJH) (SDNY 29 November 2010)).

A different outcome resulted in the Steffes case in 2014. Steffes and other defendants were employees of a railway company that was about to be sold. Before the acquisition, the employees noticed sudden visits to their office by people in business suits, unusual information requests from management and surprising numbers of railway tours. On the basis of these observations, they surmised that an acquisition was imminent. They purchased the company's shares and call options and sold all securities after the acquisition was finalised, realising a profit of about

US\$1.6 million. The SEC charged the employees with insider dealing, but they were acquitted after a jury trial (*SEC v. Steffes*, Case No. 1:10-cv-06266 (N.D. Ill. Verdict 27 January, 2014)).

The Meadville case leaned more on the Galleon Group case than the Steffes case. Li pieced together public information, such as Tang's identity and position in Meadville, and non-material, non-public information, such as Tang's business schedules, to arrive at the inside information. Unlike the Steffes case, Li was never an insider of Meadville. She was not justified to gather the information in the first place. She obtained confidential information from Tang through an extramarital relationship, just as Mr Rajaratnam had acquired inside information from his network. Moreover, Li was not a business analyst. Her trading was purely for personal gain and did not enhance market efficiency. All these factors invalidated mosaic theory as a defence to her insider dealing charge, but the MMT did not enter into a detailed discussion of the validity of mosaic theory in Hong Kong.

The implications

The Meadville case demonstrates that the circulation of inside information is not exclusively about what goes on in

the office during office hours. An insider might not obtain the full details of the inside information from senior executives, but may instead exploit inadvertent disclosures of senior executives' scheduled meetings and whereabouts to deduce the inside information.

Moreover, while senior executives like Tang may not breach insider dealing provisions for the lack of *mens rea*, they will expose their corporations to high legal costs, and stress to handle the ongoing investigation and legal proceedings. When senior executives' private lives are exposed and intertwined with insider dealing, they also attract reputational risks to themselves and their corporations.

In this context, governance professionals should remind senior executives to be mindful of the potential damage their private lives may cause in scenarios like the Meadville case. While it is unrealistic to require senior executives to live a Puritan life, they should be careful not to divulge business matters, no matter how trivial, to anyone outside the corporation. In addition, governance professionals should arrange training sessions to enhance senior executives' awareness of inside information disclosure risks. The corporation should also set a clear policy and procedures on public disclosure of corporate actions.

Donald Lai ACG ACS

Solicitor, CPA

Donald Lai is a securities law specialist and a CSj contributor. His previous article – Working from home? – was published in the September 2020 edition of this journal.



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



Compensation order made against former listed company directors

Hong Kong Court of Appeal makes compensation order of HK\$622 million plus interest against former directors of Egana



Alan Linning, Partner, Tow Lu Lim, Partner, and Wilson Fung, Counsel, Mayer Brown, review a recent Court of Appeal judgment that resulted in a compensation order being made against three former directors of a Hong Kong listed company for breaches of duties.

On 25 June 2021, the Hong Kong Court of Appeal (CA) handed down its judgment in the Securities and Futures Commission (SFC)'s appeal against three former executive directors of EganaGoldpfiel (Holdings) Ltd (Egana), which is now in liquidation.

The SFC initiated the case against David Wong Wai Kwong, Peter Lee Ka Yue and Tony Chik Ho Yin (Directors) in 2011, pursuant to section 214 of the

Securities and Futures Ordinance (SFO) (Cap 571), in which the SFC sought disqualification and compensation orders against the Directors as a result of their role in a large-scale misapplication of funds belonging to the Egana group.

The Court of First Instance then made a disqualification order against the Directors, but declined to make a compensation order for the losses suffered by Egana as a result of the Directors' breaches of duties. The SFC brought the case to the CA, which recently made a compensation order of HK\$622 million plus interest, as sought by the SFC.

Background

Egana was formerly listed on the Hong Kong Stock Exchange. Trading of its shares was suspended in September 2007. Following Egana's winding up in May 2011, the listing of Egana's shares on the Hong Kong Stock Exchange was cancelled in January 2012.

Trading of Egana's shares was suspended because of queries raised by the public about Egana's finances. KPMG was appointed to conduct an independent review of Egana's financial position. KPMG subsequently found that Egana had 'doubtful receivables' of approximately HK\$2.55 billion, part of which consisted of a sum of HK\$622 million, being the proceeds of a loan granted by a syndicate of banks to Egana. This sum of HK\$622 million was transferred, via three 'debtors' (which were found to be mere conduits acting under the instructions of David Wong), to an entity owned by the family of Egana's then chairman (Transactions). The money was later used to effect a buy-back of a controlling stake in Egana.

At the Court of First Instance, the trial judge found that, as a result of the Directors' involvement in the Transactions, each of them had breached their duty of care and skill, as well as their duty to act in the best interest of Egana. In addition, David Wong was also

Highlights

- a recent Court of Appeal (CA) judgment upheld the Securities and Futures Commission (SFC)'s appeal against three former directors of a Hong Kong listed company, and made a compensation order of HK\$622 million plus interest
- the CA considered there was a clear causal connection between the wrongful conduct of the directors and the loss sustained
- this judgment may open the door to more claims by the SFC in the future for compensation orders for the benefit of shareholders and creditors



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proceedings themselves
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found to have breached his duty of not putting himself in a position of conflict.

While the trial judge made disqualification orders against the Directors and accepted that a compensation order can, where appropriate, be made irrespective of whether a respondent has received any financial benefits, in exercise of his discretion, he declined to make a compensation order. The reason being that issues relating to limitation period, remoteness, causation and mitigation were not entirely straightforward, and these issues were not sufficiently addressed at the trial. Accordingly, the trial judge accepted that it should remain with Egana's liquidators to assess whether it would be beneficial to bring proceedings in Egana's name.

Appeal decision

As to whether it was viable for Egana itself to pursue the Directors, the CA said the trial judge was in error. The CA considered it was unlikely for Egana to commence proceedings as:

- no proceedings had been brought by the liquidators against the Directors, despite the lapse of more than 10 years, due to the lack of funds
- if proceedings were brought by Egana now, the defence of limitation would be an issue, and
- the limited cash available in the liquidation restricted the liquidators' ability to commence fresh actions against the Directors.

The CA also took the view that the sum of HK\$622 million, which the SFC sought orders for the Directors to pay, was misapplied through the Directors' wrongful activities and was a loss readily ascertainable.

In the appeal, Peter Lee and Tony Chik contended that should Egana commence proceedings against them, they could raise the defences of causation, foreseeability, mitigation, contributory negligence and limitation, but these matters were not addressed by the SFC at the trial. The CA found this argument to be a 'red herring', saying that it should not be concerned with such potential defences when it was clear that no separate proceedings would be brought. Further, since the breaches fell into the category of 'involving an element of infidelity or disloyalty which engage the conscience of the fiduciary', causation was to be established on a 'but for' basis without the constraints of the common law rules on remoteness and foreseeability. In other words, once the plaintiff has shown a loss arising out of a transaction to which the breach is material, the plaintiff is entitled to recover the loss unless the defendant shows that the loss or damage would

have occurred in any event, which the Directors clearly failed to establish.

Taking into account the above matters and the fact that Egana had no objection to the making of a compensation order, the CA held that there were no other good reasons for refusing the compensation sought by the SFC, which would be payable to Egana and made available to its creditors.

Comment

The total amount payable by the Directors, including interest, will be over HK\$1.16 billion but it remains to be seen whether the Directors have the resources to comply with the compensation order. Nonetheless, this should still be a piece of long-awaited good news for Egana's creditors and shareholders.

The CA's judgment is also good news for the SFC as it indicates a willingness by the Court to exercise its wide discretion under section 214(2) of the SFO to make compensation orders, especially where there are impediments to the relevant listed companies in bringing proceedings themselves. This is one way to ensure that delinquent directors of listed companies are made to pay for their breaches of duties. It may open the door to more claims by the SFC in the future for compensation orders for the benefit of shareholders and creditors in particular, although it should also be remembered that in this case, there was a clear causal connection between the Directors' wrongful conduct and the loss sustained, which was readily ascertainable.

Alan Linning, Partner, Tow Lu Lim, Partner, and Wilson Fung, Counsel

Mayer Brown

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Professional Development

Seminars: August 2021

3 August

Enforcement series: FRC enforcement



Chair: Ernest Lee FCG FCS(PE), Institute Vice-President, Audit Committee Chairman and Mainland China Focus Group member, and Technical Partner, Deloitte China

Speaker: Marek Grabowski, Chief Executive Officer and Executive Director, Financial Reporting Council

10 August

Company secretarial practical training series: corporate compliance programme – essential elements & practical tips



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

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

12 August

IRD's reviews on charitable organisations – are you the next target and what's the practical solution?



Chair: Susan Lo FCG FCS

Speakers: Philip Hung, Director, Tax Controversy Services, and Felix Tsang, Senior Manager, Tax Controversy Services; PwC

17 August

Company secretarial practical training series: share transfer in HK private companies and e-stamping mechanism



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

Speakers: Carina Foo ACG ACS, General Manager, and Sam Lo ACG ACS, Company Secretarial Manager; CS Legend Corporate Services Ltd

18 August

Enforcement series: HKEX enforcement (Part 1)



Speakers: Karen Lee, Deputy Head – Enforcement Team, Hong Kong Exchanges and Clearing Ltd; and Ellie Pang, Institute Chief Executive

26 August

Restructuring and insolvency regime in Hong Kong: overview, case studies and roles of governance professionals



Chair: Daniel Chow FCG FCS(PE), Institute Treasurer, Council member, Professional Development Committee member, Education Committee member, Assessment Review Panel member and Investment Strategy Task Force member, and Senior Managing Director, Corporate Finance & Restructuring, FTI Consulting

Speaker: Terry Kan ACG ACS, Partner, ShineWing Specialist Advisory Services

31 August

Doing business in China series: onboarding requirements, considerations and case studies

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

Speaker: Sharon ZM Chen, Director of Commercial, Corporate Services, Vistra Group

Video-recorded CPD seminars

Some of the Institute's previous ECPD seminars/webinars can now be viewed on the Hong Kong Metropolitan University's online e-CPD seminars platform. (The Open University of Hong Kong was renamed effective 1 September 2021.)

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

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

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
20 October 2021	4.00pm–5.30pm	Artificial intelligence – legal and governance perspectives	1.5
28 October 2021	4.30pm–6.00pm	TCFD Reporting – overview, company secretary's roles, and investor's perspectives on climate change and investment	1.5
2 November 2021	4.00pm–5.00pm	Bridging the cultural divide – practical sharing	1
10 November 2021	4.00pm–5.30pm	Thinking ahead – legal privilege is important and needs to be protected	1.5

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

Membership

Forthcoming membership activities

Date	Time	Event
13 November 2021	1.30pm–3.00pm	Fun & Interest Group – coffee grounds mosquito coil-making & planting workshop (Group A)
13 November 2021	3.30pm–5.00pm	Fun & Interest Group – coffee grounds mosquito coil-making & planting workshop (Group B)
17 November 2021	1.00pm–2.00pm	Overview on enduring power of attorney (free webinar)

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

Membership (continued)

Membership activities: August and September 2021

28 August

Community service – soap recycling



17 September

Protect your vision – keep your eyes healthy (free webinar)



New Associates

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

Chan Man Fong	Ko Ching Fung	Li Ka Yee	Ng Yuen Kiu	Wong King Sum
Chan Yeuk Hang	Kwan Ka Ho	Li Xiangmei	Pao Ting Ting, Nicole	Wong Leung Hei
Chan Yiu Wing	Kwan Shu Sum	Lin Jianan	Pow Chun Ching, Johnathan	Wong Pui Ki, Doris
Chen Qiaocan	Kwong Yuk Pui	Lin Lap Yee	Shang Jialin	Wu Yuhong
Chen Yan	Lam Lai Chu	Lin Qingyan	So Chui Yee, Candy	Yeung Yin Ping
Cheung Ka Hei	Lau Lai Man	Liu Fuk Ming	Tam Ma Lai	Yu Wing Yan
Cheung Ting Hong	Lau Man Shan, Polly	Lo Mei Ling	Tam Man Sang	Zhang Wanling
Cheung Yiu Kuen	Law Kim Fai	Man See Nga	Tang King Yin	Zheng Chan
Choi Ho Yi, Phyllis	Lee Shuk Fan	Mu Lingxia	Tsang Kai Yi	Zheng Shaoqin
Chu Pik Man	Lee Yuen Ling	Ng Mo Chun	Tsang Lo	Zhou Yi
Fok Po Yi	Leung Kwan Yi	Ng Pui Yan	Wai Jonathan Robin	Zhou Zixuan
Ho Suet Ying	Leung Ross	Ng Siu Fun	Wei Hon Sum	
Hui Lai Ching	Leung Wan Kiu	Ng Yin Ting, Joyce	Wong Ka Yan	

New graduates

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

Bok Fan, Jessie	Chan Mei Ying	Chen Yuhan	Chow Ying	Fu Chanyi
Cai Yehu	Chan Sau Yee, Joey	Cheng Ching Sum	Choy Tsz Shan	Fung Chui Shan, Tracy
Chan Chuen Yan	Chan Tsz Lun, Janet	Cheng Qi	Chung Ho Chai	Fung Kam Chi
Chan Chun Kit	Chan Yeuk Hang	Cheung Hoi Tung, Kristy	Chung Wing Chi, Gigi	He Jingyu
Chan Ho Kwong	Chan Yuen Kwan	Cheung Mei Lok	Duan Ying	Hill Tobey A
Chan Kar Nang, Sherman	Chen Qiaocan	Cheung Wai Yi, Katriana	Fan Hoi Hang	Hou Lerui
Chan Lok Tung	Chen Yan	Choi Yee Ming	Feng Tao	Hu Guang

Huang Na	Leung Mei Yin	Mu Yan	Tsang Ka Yee	Yao Wenming
Huang Yu Zhu	Leung Tsz Yan	Ng Pui Yan	Tse Shuk Man, Susan	Yau Siu Chun
Hui Yuk Ting	Leung Wing Sum	Ng Siu Fun	Tse Yan Man	Yau Tsz Lun
Jiang Ying	Li Po Ki	Ng Tsz Shan	Tse Yi Lam	Yeung Kit Mei
Jin Jing	Li Qiang	Pi Wei	Wang Wei	Yeung Wing Chi
Kwan Ching Yiu	Li Xi	Ren Fang	Wei Wei	Yi Leili
Kwong Tze Wai	Li Xiangmei	Siu Yan Jing	Wong Cheuk Yan, Gordon	Yin Yue
Lai Yee Man	Li Zhuoqiong	Sou Shuk Ting	Wong Cho Lun	Yip Chun Wing
Lam Lai Chu	Lin Jianan	Srivastava Pallavi	Wong Hoi Yan, Wendy	Yip Ka Yi
Lau Pui Ling	Lin Yih Yee, Jessica	Tam Hoi Lam	Wong Man Ying	Yu Wai Kwan, Alexandra
Lau Tsz Ching	Liu Chensong	Tam Karson	Wong Natasha Chi Yan	Zhang Shu
Lee Shui Kam	Lo Mei Ling	Tam Pui Kei	Wong Yee Ki	Zhang Wanling
Lee Shuk Fan	Lo Shi Kwan	Tam Yuen Ling	Wu Cheuk Yeung	Zhang Yang
Lee Yuen Ling	Ma Kevin Hang Hey	Tan Ya	Wu Huiming	Zhang Ying
Leong Chi Fung	Ma Ling	Tang King Yin	Wu Lifang	Zheng Chan
Leung Chak Yan	Man So Shan	Tang Lai Fong	Wu Wai Ki	Zhou Zixuan
Leung Chi Ching	Mo Yili	Tong Chiu Yu	Wu Yuhong	
Leung Ching	Mok Yee Man	Tsang Chun Kit	Xing Jiwen	

Advocacy

Congratulations!

The Institute is delighted to announce that Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE), CGI Immediate Past International President and Institute Past President, and Executive Director and Company Secretary, CK Hutchison Holdings Ltd, has been elected as a member of the Commercial (First) Election Committee 2021. In addition, Ivan Tam FCG FCS, Institute Past President, and Deputy Managing Director, Chevalier International Holdings Ltd, has been elected as a member of the Insurance Election Committee 2021. All elected members are deemed to have made significant contributions to the long-term economic development of Hong Kong.

Congratulations to Ms Shih and Mr Tam.



Advocacy (continued)

The New Board Agenda – Hong Kong and Mainland corporations can build resilience by managing stakeholder interests with a new board agenda

On 15 September 2021, the Institute and Bain & Company jointly published a major thought leadership survey report titled The New Board Agenda (Survey Report), based on a survey of over 1,400 members of senior management of companies in Hong Kong and the Mainland.

The Survey Report focuses on how Hong Kong and Mainland corporations can build resilience by managing stakeholder interests under a new board agenda. The future-proof agenda needs to cover seven main topics, namely: the company's long-term purpose; future-proof strategy; response to disruption; environmental, social and corporate governance (ESG) strategy; talent strategy; business performance management; and risk and compliance management.

The Survey Report explains that the world has been experiencing a period of increased turbulence and disruptions over the last two decades. This turbulence is likely to continue and even intensify, with over 90% of the senior management of companies surveyed expecting more turbulence in the business environment in the next

3–5 years. Large corporates who run regional or global business footprints expect even more intense risks. Throughout the growing turbulence, the Survey Report finds that there has been a shift towards managing companies in the long-term interests of a broad set of stakeholders. The collective research also shows that boards that have discussed stakeholder management are better at managing turbulence across all dimensions.

In this connection, and as a token of appreciation for all those who responded to the survey, on 25 October the Institute will be hosting

a complementary webinar with Bain & Company on the same topic as the joint research report, for members, graduates and students, attendance at which will earn 1 CPD point.

To view the report and for more information about the webinar, please visit the Publications section of the Institute's website: www.hkcg.org.hk.



CCA signing ceremony – new collaborative course with CIHE

A new collaborative course agreement (CCA) programme, Master of Corporate Governance (MCG), offered by the Rita Tong Liu School of Business and Hospitality Management of Caritas Institute of Higher Education (CIHE), has now been included in the Institute's CCA arrangement, with effect from January 2022.

The curriculum of this 18-month part-time programme has been developed in line with the Institute's Chartered Governance Qualifying Programme (CGQP). Graduates from this programme will be eligible to apply for full exemptions from the CGQP examinations.



On 12 October 2021, Institute Past President, Council member and Education Committee Chairman Natalia Seng FCG FCS(PE) signed the agreement for this new collaborative course with the President of CIHE, Dr Mak Kin Wah BBS, JP, at a signing ceremony held on the CIHE campus. Institute Chief Executive Ellie Pang, Registrar Louisa Lau FCG FCS(PE) and members of the Secretariat staff also attended the ceremony.

The 58th Affiliated Persons ECPD seminars

The Institute held its 58th Affiliated Persons Enhanced Continuing Professional Development (ECPD) seminars, under the theme of 'Major transactions, connected transactions and insider dealing management and control' from 8 to 10 September 2021. The webinars attracted over 135 participants, mainly comprising board secretaries and equivalent personnel, directors, supervisors and other senior management from listed or to-be-listed companies from the Mainland and overseas.

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

- Hong Kong Securities and Futures Commission – enhanced responsibilities and accountabilities for directors and senior management
 - o part one: overview of regulatory focal points
 - o part two: role play – how can directors, independent directors,

senior management and board secretaries exercise due diligence?

- risk management and inside information control responsibilities and best practices of directors, supervisors, senior management and board secretaries
- interpretation of the HKCGI Guidelines for the Practices of Connected Transactions of A+H Share Companies
- the latest regulatory updates for listing in Hong Kong (series 3) – overview of the latest developments of the capital market in Hong Kong and interpretation of forefront issues
- experience sharing: value management of the market value of listed companies
- case study: analysis of typical cases of privatisation and spin-off listing

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



Celebrating the Mid-Autumn Festival 2021

As a caring employer and to celebrate the Mid-Autumn Festival, the Institute has ordered moon cakes from iBakery, a social enterprise under the Tung Wah Group of Hospitals, as well as fruit, for the Hong Kong Secretariat staff. iBakery trains and hires people with disabilities, and provides healthy and delicious food. The moon cakes were handmade by iBakery employees with varying abilities.



Advocacy (continued)

CSIA Annual Council meeting

The Council of Corporate Secretaries International Association Ltd (CSIA) held its Annual Council Meeting on 7 September 2021 via Zoom. Institute Chief Executive Ellie Pang and Institute Council member, Professional Committee Chairman, Professional Services Panel member and Technical Consultation Panel – Company Law Interest Group member Loretta Chan FCG FCS attended the meeting as representatives of the Institute. At the meeting, the Council elected the Honorary Officers for the year 2022.

CSIA Honorary Officers for 2022 are:

- President: Bode Ayeku (Nigeria)
- Vice-President: Nagendra Rao (India)
- Secretary: Chua Siew Chuan (Malaysia)
- Treasurer: Karyn Southgate (South Africa)

Educational Tour of Hongkong International Terminals Ltd (HIT) (香港国际货柜码头) and Tsz Shan Monastery (慈山寺)

On 25 September 2021, Edith Shih FCG(CS, CGP) FCS(CS, CGP) (PE), CGI Immediate Past International President and Institute Past President, and Executive Director and Company Secretary, CK Hutchison Holdings Ltd; Ellie Pang, Institute Chief Executive; and Rotto Wu, Institute student ambassador and a fourth year student in BBA (Hons) in Corporate Governance at the Hong Kong Metropolitan University (HKMU), led a group of HKMU students on an educational tour of HIT and Tsz Shan Monastery. Everyone enjoyed the educational retreat day, which marked the beginning of autumn. Professor Wong Yuk-Shan, SBS, BBS JP, former President of HKMU, and his wife Anna Wong also joined the tour.

Students of HKMU are regular recipients of donations made by The Hong Kong Chartered Governance Institute Foundation (Foundation) via scholarships and subject prizes. The Foundation was established by the Institute with the core mission of supporting education and research in company secretarial, legal, accounting and business studies in general, and corporate governance in particular.

For more information about the Foundation, please visit The Hong Kong Chartered Governance Institute Foundation Ltd page under the About Us section of the Institute's website: www.hkcgj.org.hk.



Good MPF Employer Award 2020–2021

For the fifth consecutive year, the Institute has received the Good MPF Employer Award and the MPF Support Award from the Mandatory Provident Fund Schemes Authority.

As an Institute promoting good governance policies and practices, we are delighted to have received these two awards.



Community service – support Pink Together 2021

As part of our ongoing commitment to the community, on 16 September four volunteers from the

Institute's Secretariat staff helped to pack goody bags to benefit those in need, as part of Pink Together 2021, an online campaign organised by the Hong Kong Breast Cancer Foundation



Please join us to support this meaningful event to raise public awareness of breast cancer and to promote the importance of breast health.

The Hong Kong Chartered Governance Institute

Annual Dinner 2022

Guest of Honour

Chan Mo-Po, Paul GBM GBS MH JP FCG FCS

Financial Secretary, The HKSAR Government

Thursday 20 January 2022

Ballroom, JW Marriott Hotel Hong Kong

Mark your diary!

The Hong Kong Chartered Governance Institute 香港公司治理公會 (Incorporated in Hong Kong with limited liability by guarantee)

www.hkcg.org.hk

Advocacy (continued)

Chartered Governance Qualifying Programme accreditation

The Institute's Chartered Governance Qualifying Programme (CGQP) equips company secretaries and governance professionals with the knowledge and skill sets required to support the board and senior management in corporate governance and regulatory compliance.

Collaborative Course Agreement (CCA)

As an alternative to the CGQP examinations, the Institute has developed collaborative courses with local universities, successful completion of which leads to full exemptions from the Institute's own qualifying programme. All five CCA programmes have been accredited by the Institute under the CGQP syllabus.

Institution	Programme
Caritas Institute of Higher Education	Master of Corporate Governance (effective from January 2022 intake)
City University of Hong Kong	Master of Science in Professional Accounting and Corporate Governance (Corporate Governance Stream) (effective from September 2021 intake)
Hong Kong Baptist University	Master of Science in Corporate Governance and Compliance (effective from September 2022 intake)
Hong Kong Metropolitan University (formerly known as The Open University of Hong Kong)	Master of Corporate Governance (face-to-face) (effective from September 2019 intake) Master of Corporate Governance (distance learning) (effective from January 2021 intake)
The Hong Kong Polytechnic University	Master of Corporate Governance (effective from September 2021 intake)

Partnership Bachelor's Programme (PBP)

A total of six Partnership Bachelor's Programmes (PBPs) are now accredited under the Institute's qualifying programme. Graduates of the PBPs are eligible for exemption status for a maximum of four modules of the Institute's CGQP, subject to registration and curriculum requirements being met.

Institution	Programme
Caritas Institute of Higher Education	Bachelor of Business Administration (Hons) in Corporate Management and Governance (effective from January 2020)
Hong Kong Shue Yan University	<ul style="list-style-type: none"> Bachelor of Business Administration (Hons) in Corporate Governance and Risk Management (effective from January 2021) Bachelor of Business Administration (Hons) (Corporate Governance Concentration) (effective from September 2021) Bachelor of Commerce (Hons) in Law and Business (Corporate Governance and Management Concentration) (effective from September 2021)
Hong Kong Metropolitan University (formerly known as The Open University of Hong Kong)	Bachelor of Business Administration (Hons) in Corporate Governance (effective from September 2021)
The Hang Seng University of Hong Kong	Bachelor of Business Administration (Hons) in Corporate Governance and Compliance (effective from September 2021)

A bird's eye view

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

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



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

Please contact:

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

Advocacy (continued)

The Hong Kong Chartered Governance Institute Foundation Ltd Scholarship

In fiscal 2021, the Foundation sponsored 28 subject prizes for students of collaborative courses and relevant degree programmes, as well as 20 scholarships to local universities and institutions, listed below in alphabetical order.

- Caritas Institute of Higher Education
- City University of Hong Kong
- Hong Kong Baptist University
- Hong Kong Metropolitan University
- Hong Kong Shue Yan University
- Lingnan University
- The Chinese University of Hong Kong
- The Hang Seng University of Hong Kong
- The Hong Kong Polytechnic University
- The Hong Kong University of Science and Technology
- The University of Hong Kong

Congratulations to all the awardees.





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Chartered Governance Qualifying Programme (CGQP)

November 2021 examination diet – key dates

Key dates	Description
12 October 2021	Pre-released case study for CGQP November 2021 examination diet
Early November 2021	Release of examination admission slip for CGQP November 2021 examination diet
17 December 2021	Closing date for examination postponement application for CGQP November 2021 examination diet
Mid-February 2022	Release of examination results for CGQP November 2021 examination diet
Mid-February 2022	Release of examination papers, mark schemes and examiners' reports for CGQP November 2021 examination diet
Late February 2022	Closing date for Examination Result Review application for CGQP November 2021 examination diet

Learning support for CGQP examination preparations

The Institute provides various learning support services for students to assist them with preparing for the CGQP examinations. The list of learning support options, such as videos of student gatherings and online video-recorded examination technique workshops, is available on the Learning Support page under the Studentship section of the Institute's website: www.hkcgj.org.hk.

Studentship activities:

9 September

Student Gathering (5): experience sharing on preparation for CGQP examinations



29 September

Governance Professionals Information Session



Fast Track Professional route

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

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

Policy – payment reminder

Studentship renewal

New policy effective from 1 July 2021

Students whose studentship expires in October, November or December 2021 should have received their renewal notice by email on 1 October 2021. Please be reminded to settle the renewal fee by Friday 31 December 2021.

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

Featured Job Openings

Company name	Position
Harneys Corporate Services (Asia) Ltd	Corporate Services Administrator
David James Recruitment China Ltd	Corporate Administrator – In't Law Firm
New World Department Store China Ltd	Assistant – Company Secretarial
Prudential Hong Kong Ltd	Senior Manager, Company Secretary
Earthcare Group Ltd	Administration Manager (Company Secretary)

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

New guidance on the use of artificial intelligence

On 18 August 2021, the Office of the Privacy Commissioner for Personal Data (PCPD) published new guidance on the ethical development and use of artificial intelligence (AI). The Guidance on Ethical Development and Use of AI recommends that organisations embrace three fundamental data stewardship values when they develop and use AI systems, namely, being respectful, beneficial and fair to stakeholders. In line with international standards, the guidance also sets out seven ethical principles to be followed.

1. Accountability – organisations should be responsible for what they do and be able to provide sound justifications for their actions.
2. Human oversight – organisations should ensure that appropriate human oversight is in place for the operation of AI.
3. Transparency and interpretability – organisations should disclose their use of AI and relevant policies while striving to improve the interpretability of automated decisions and decisions made with the assistance of AI.
4. Data privacy – effective data governance should be put in place.
5. Fairness – organisations should avoid bias and discrimination in the use of AI.
6. Beneficial AI – organisations should use AI in a way that provides benefits and minimises harm to stakeholders.
7. Reliability, robustness and security – organisations should ensure that AI systems operate reliably, can handle errors and are protected against attacks.

The guidance also provides a practice guide, structured in accordance with general business processes, to assist organisations in managing their AI systems.

The Guidance on Ethical Development and Use of AI is available on the PCPD website: www.pcpd.org.hk.

SFC update

New anti-money laundering guidelines

On 15 September 2021, the Securities and Futures Commission (SFC) released consultation conclusions on proposed amendments to its anti-money laundering and counter-financing of terrorism (AML/CFT) guidelines. The amendments aim to align the guidelines with the Financial Action Task Force's AML/CFT standards, which include additional guidance to facilitate the implementation of risk-based AML/CFT measures by securities industry participants. While the proposals received broad support, a considerable number of comments were made on the requirements for cross-border correspondent relationships. In response, the revised guidelines provide greater clarity and additional flexibility in meeting the requirements. The revised AML/CFT guidelines became effective on 30 September 2021, with the exception of the new cross-border correspondent relationships requirement, which will take effect on 30 March 2022.

Consultation conclusions on climate-related risks in funds

On 20 August 2021, the SFC issued amendments to the Fund Manager Code of Conduct as well as a circular setting out expected standards for fund managers managing collective investment schemes to take climate-related risks into consideration in their investment and risk management processes, and to make appropriate disclosures. This accompanies the release of the conclusions to the SFC's Consultation on the Management and Disclosure of Climate-related Risks by Fund Managers (published in October 2020). The new requirements are designed to help channel investment capital to companies with sustainable goals and to facilitate the transition to a low carbon economy. In developing the new requirements, the SFC made reference to the Task Force on Climate-related Financial Disclosures Recommendations, and also considered the global regulatory trend towards harmonisation and comparability of standards across jurisdictions.

More information is available on the SFC website: www.sfc.hk.



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CS Practical Training Series: Dissolution
of HK Private Company – Liquidation vs
Deregistration

Essential Updates on Intellectual Property
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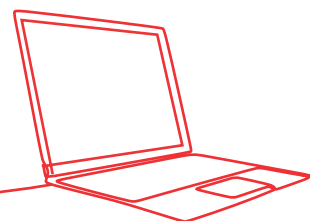
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