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

AI and directors' duties

Artificial intelligence
Board gender diversity
Guidance note update

75th CHARTERED GOVERNANCE Hong Kong YEARS ANNIVERSARY

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Good governance comes with membership

About The Hong Kong Chartered Governance Institute

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 the Chinese mainland and Hong Kong.

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

The Institute 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 6,800 members, more than 300 graduates and around 3,000 students.

Membership and studentship statistics update

As of 31 March 2024, the statistics were as follows:
Students: 2,389 **Graduates**: 398 **Associates**: 6,397 **Fellows**: 872

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AI – staying in the picture

This month's journal looks at a topic that has been front and centre of attention wherever you look these days. Will artificial intelligence (AI) take our jobs? Will it run amok and lead to the extinction of the human race? A healthy degree of scepticism is needed with regard to some of the more speculative notions feeding the hype surrounding AI. It is worth bearing in mind that this is a tool that is already proving to be beneficial in many areas of our lives. As far as our profession is concerned, it has already led to efficiency gains by automating many of the administrative aspects of our function.

Nevertheless, AI does pose challenges both for our profession and society at large. For governance professionals, the immediate challenge is keeping up with the rapid development of this technology. We cannot afford to take the view that addressing AI, along with other transformative technological innovations, is not in our job description. First and foremost, we need to develop a good understanding of the technology, and its potential capabilities and limitations, to be able to facilitate the board's oversight of AI. The board, after all, has the ultimate responsibility for ensuring that any AI implementation is consistent with the business's purpose and values.

We also need to stay up to date with the latest regulatory developments and this month's journal will be a useful primer in this space. Our first cover story, for example, looks at the European Union (EU)'s AI Act that is likely to be in force by the end of this year and provisional regulations on AI usage that came into effect in the Chinese mainland in August 2023. We should also, however, be keeping tabs on the wider legal developments, both local and global. In the US for example, where no equivalent of the EU's AI Act exists, litigation is nevertheless playing a role in testing the limits of this technology – particularly in areas such as data-privacy and copyright breaches.

Our Institute will, of course, be with you on this journey. Our focus is on keeping you up to date with all relevant developments via this journal and our CPD, guidance note and research output. The most recent guidance note published by our Technology Interest Group, for example, looks at the risks and opportunities of implementing AI tools, and at the crucial roles governance professionals are playing in advising directors and executives on how these can be best managed. The guidance – An Overview of Managing the Risks and Opportunities & Responsible Deployment of AI Tools – provides a good one-stop shop for all the main risk management issues involved in AI governance.

Finally, I would like to add that the AI revolution has only just begun and it is likely to transform our lives and work in ways we can barely imagine. Going forward, as the technology develops, there will be an increasing need for good governance to ensure that AI is used in a responsible and ethical manner. In this context, in addition to keeping up to date with the regulatory and legal developments discussed above, our focus ultimately needs to be on the ethics involved – including the implications for fairness, transparency, accountability and privacy.

David Simmonds FCG HKFCG

人工智能 - 置身事内

本期会刊将会着重探讨一个最近备受关注的话题：人工智能 (AI) 会使我们失业吗？它的发展会不会失控从而导致人类灭绝？对于一些围绕人工智能的投机性的概念炒作，我们需要保持一定的怀疑态度。值得注意的是，人工智能已被证明是对我们生活的方方面面都有利的一种工具。就我们的职业而言，它已经通过将我们职能中涉及到的许多行政工作自动化而提高了我们的工作效率。

尽管如此，人工智能确实给我们的专业以及整个社会带来了挑战。对于治理专业人员来说，目前最紧迫的挑战是如何跟上这项技术的快速发展步伐。我们不能认为应对人工智能以及其他变革性技术创新不在我们的工作范围之内。首先，我们需要充分了解这项技术及其潜在的能力和局限性，以便推动董事会对人工智能进行监督。毕竟，董事会对于确保人工智能的应用符合企业的宗旨和价值观负有最终责任。

我们还需要了解最新的监管动态，本期会刊将对此进行概要介绍。例如，我们的第一篇封面故事介绍了欧盟可能在今年年底生效的《人工智能法案》，以及中国内地已于2023年8月生效的《生成式人工智能服务管理暂行办法》。除此之外，我们还应该密切关注本地和全球范围内更广泛的法律动态。例如，在美国，虽然没有与欧盟出台的《人工智能法案》相类似的法律，但法律诉讼在限制这项技术的边界方面发挥着作用，特别是在数据隐私和版权侵犯等领域。

毋庸置疑，公会将伴您学习与了解这一领域。公会将着重通过本会刊和持续专业发展 (CPD) 计划、指引说明和研究项目，助力大家了解所有人工智能相关发展的最新情况。例如，公会的技术兴趣小组最近发布了一份指引说明，探讨了使用人工智能工具的风险和机遇，以及治理专业人士在向董事和高管建议如何以最佳方式管理这些风险和机遇方面所发挥的关键作用。这份名为《人工智能工具 - 风险和机遇管理及负责任的部署概览》的指引说明，为人工智能治理中涉及的所有主要风险管理问题提供了一个很好的一站式解决方案。

最后，我想补充一点，人工智能革命才刚刚开始，它很可能以一种我们难以想象的方式改变我们的生活和工作。展望未来，随着技术的发展，将越来越需要良好的治理，以确保人们会采取负责任的以及合乎道德的方式使用人工智能。在这种情况下，除了上文讨论的监管和法律发展之外，我们最终需要关注的是人工智能所涉及的道德问题，包括对公平、透明、问责和隐私的影响。

司马志先生 FCG HKFCG

AI-mindful boards

Navigating the technological landscape in fulfilment of fiduciary duties

As the technological landscape rapidly evolves, boards are faced with the challenge of harnessing the power of artificial intelligence (AI) while fulfilling their fiduciary duties. Dr Agnes KY Tai, Director of Great Glory Investment Corporation and Senior Advisor of iPartners Holdings Ltd, delves into the best practices for utilising AI and highlights the essential discussions boards need to engage in regarding this powerful technology.

While the foundations of AI go back to the 1950s and 1960s, it was only about a decade ago that advances in deep learning and neural networks accelerated the use of AI and generative AI (see 'What is the difference between AI and generative AI?' below) across diverse industries. Today, AI is everywhere. It is transforming manufacturing processes and data use practices across many sectors of the economy. It is in healthcare, self-driving cars, chatbots, virtual assistants, facial recognition systems and the algorithms used by online platforms to analyse user preferences and behaviour. AI is also now a common tool in the creative industries.

The increasingly widespread use of AI has significant implications for board oversight and accountability. Boards must establish effective governance frameworks for AI initiatives, aligning them with the company's strategic objectives and ethical standards. While AI can provide valuable insights, boards remain ultimately accountable for all decisions, whether AI-assisted or not. Maintaining oversight of risks and opportunities, as well as upholding full accountability, is crucial to ensure responsible and effective AI adoption.

What should be on the board's agenda?

Business model

Boards need to assess how AI can keep their businesses relevant and thriving – understanding the cost of not utilising AI is vital. Identifying skills gaps within the board, management, business units and the workforce is key to effective AI integration. Boards should explore how AI can provide a sustainable competitive edge in areas such as problem-solving, imagination and effective use of prompt engineering. Nevertheless, boards should also consider whether any pivoting of the business model to better exploit the potential of AI aligns with the company's purpose, principles and core values.

Strategic integration

Boards, if they have not already done so, will need to commence discussions on policy adoption for AI integration and risk mitigation. Evaluating resource requirements and potential outcomes across various strategic options is also essential. Developing a metrics-based strategic plan that enhances the business model, increases productivity, improves operational processes and customer experience, optimises the supply chain and enables data-driven decision-making is paramount.

The latest AI regulations

Given the evolving regulatory landscape, boards need to stay informed about new regulations such as the European Union (EU)'s AI Act that was published in June 2023 and China's provisional regulations on AI usage that came into effect in August 2023.

After being voted on by the EU Parliament on 13 March 2024, the EU's AI Act will undergo final approval in April. It will take effect

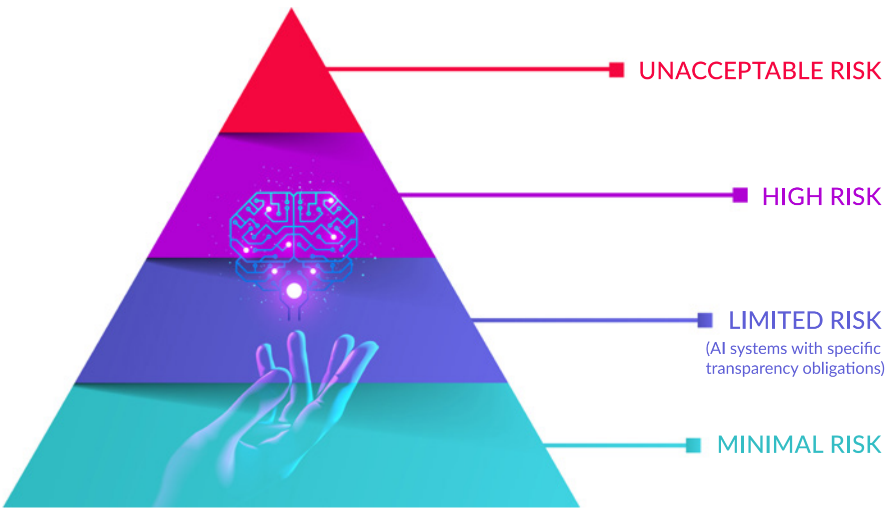
Highlights

- identifying skills gaps within the board, management, business units and the workforce is key to effective AI integration
- boards must stay current with evolving regulations and safeguard against AI-related risks, including fraud risk
- while AI can provide valuable insights, boards remain ultimately accountable for all decisions, whether AI-assisted or not

after 21 days, with prohibited systems provisions in force by the end of 2024. Additional provisions will be implemented gradually over the next two to three years. The Act requires prior authorisation for the use of real-time remote biometric identification systems. The Act also imposes significant penalties for non-compliance with the prohibited systems provisions, with fines of up to €35 million or 7% of global turnover.

The EU regulatory framework defines four levels of risk for AI systems (see 'A risk-based approach') based on the potential threat posed by these systems to the safety, livelihoods and rights of people.

A risk-based approach



Source: European Commission

1. Systems deemed to carry the highest level of risk ('unacceptable risk') will be banned.

2. Operators of systems deemed to be 'high risk' will be required to observe strict obligations – including ensuring adequate risk assessment and mitigation systems, appropriate human oversight and high levels of transparency.

3. For systems deemed to carry 'limited risk', the Act focuses on ensuring adequate transparency. For example, humans should be made aware that they are interacting with a machine when using a chatbot and AI-generated content (text, audio and video) will need to be identified as such.

4. The Act permits unrestricted use of systems deemed to be 'minimal risk' and the vast majority of AI systems currently used in the EU fall into this category.

In the Chinese mainland, the Interim Measures for the Management of Generative Artificial Intelligence Services (Interim Measures) were published on 13 July 2023, following a three-month consultation period. These measures, which came into effect on 15 August of that year, were developed through the collaborative efforts of seven key central government ministries and agencies. The measures specifically

What is the difference between AI and generative AI?

When it comes to AI and generative AI, definitions matter. There are many misconceptions about how these technologies work and what they can achieve. It is important to state at the outset that neither AI nor generative AI achieve a comprehensive simulation of human intelligence. AI systems in use today are generally trained to perform specific tasks, and they lack the broad range of complex reasoning, abstract thinking, common-sense understanding, creativity and emotional intelligence exhibited by humans.

Generative AI, as a subset of AI, refers to a class of algorithms and models that are designed to generate new content, such as images, text, music and other forms of media. Both AI and generative AI systems are trained on large datasets, but the latter has the ability to learn patterns and structures to create content not found in the training data.

> boards must establish effective governance frameworks for AI initiatives, aligning them with the company's strategic objectives and ethical standards

pertain to the provision of generative AI services to the public in China.

Any breach of the Interim Measures will result in penalties in accordance with the applicable laws and regulations of China. These include, but are not limited to, the Cybersecurity Law, the Data Security Law, the Personal Information Protection Law and the Law on Progress of Science and Technology of the People's Republic of China. Consequently, criminal sanctions may be imposed if the violation constitutes a crime. In cases where the violation impacts public security, administrative sanctions related to public security will be enforced.

Responsible use and risk management

Robust governance around data privacy, security and ethical AI usage is critical. Boards and governance professionals have to make sure that internal controls are sufficient to manage risks associated with AI deployment, including cybersecurity and regulatory compliance.

There was a dramatic demonstration of the importance of this in mid-January 2023, when a finance department employee of a multinational firm's Hong Kong office was scammed using deepfake technology. In a virtual meeting, digitally recreated versions of the company's Chief Financial Officer and other colleagues instructed the employee to make 15 bank transfers to five bank accounts involving a total of HK$200 million (US$25.6 million).

This deepfake scam was a first in Hong Kong involving such a large sum of money that was unlikely to be covered by insurance policies. In the wake of this case, police have promoted various tactics that employees and others can use to detect whether a fake digital recreation is being used. These tactics include asking colleagues in virtual meetings to move their heads and to raise questions that only the actual company executives would be able to answer. Boards must address fraud risks, as exemplified by deepfake AI scams, highlighting the need for comprehensive insurance policies.

Talent and adaptation

Board members and governance professionals should prioritise upskilling themselves in AI know-how to effectively guide talent strategy. They can play a pivotal role in providing employees with relevant AI training and fostering a culture of continuous learning. Boards must raise awareness of the risks of inputting sensitive information on public AI platforms and ensure that the organisation is prepared to integrate and capitalise on AI technologies.

Conclusion

While AI-related risks such as misinformation, disinformation and cyberattacks persist, boards that approach AI adoption with an open mind and a commitment to continuous learning will fare well. By carefully assessing the crucial aspects of AI and generative AI technologies, implementing robust risk management practices and empowering management with adequate resources, forward-looking boards can guide their organisations towards sustainable business growth in the AI era.

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> ***Previous CGj articles by Dr Tai are available on the journal website: https://cgj.hkcgi.org.hk.***

AI: the evolving legal landscape in Greater China

Ling Ho, Partner of the APAC IP practice, Clifford Chance, provides an overview of legislative developments in the Chinese mainland and Hong Kong relating to artificial intelligence (AI), and discusses the differing strategic approaches to addressing AI-related challenges in the two jurisdictions.

The People's Republic of China (PRC, the Chinese mainland) is a first mover in relation to AI regulation. It has had city or regional regulations in place for some time and, more recently, has enacted national AI regulations targeted at particular types of AI services or use. This article explores AI-related legislative developments in Greater China.

The global AI regulatory landscape

We are seeing powerful advances in AI and machine learning – including the introduction of generative AI with an apparent ability to create and personalise. Synergies with other developing technologies, such as neurotechnology and quantum computing, are expected to further expedite AI developments. This presents both vast opportunities and a range of legal, ethical and practical challenges. Organisations exploring AI opportunities are navigating a patchwork of overlapping laws and, in some cases, sector-specific regulation as they develop their AI strategies within their broader ethical, compliance and risk frameworks.

This landscape is evolving as governments globally consider whether to adapt existing legal frameworks to better address AI, with some countries developing AI-centric legislative and regulatory frameworks. A watershed moment will be the promulgation of the European Union (EU)'s AI Act, which is expected shortly. It will be a key milestone, introducing a risk-based framework for AI governance across the AI supply chain, with application beyond the EU and serious penalties for non-compliance.

Within this global landscape of evolving AI legal frameworks, the developments across Greater China demonstrate differing strategic approaches in addressing AI-related challenges. The approach varies from steadily putting in place targeted rules and regulations for AI in the Chinese mainland to, at the other end of the spectrum, reliance on existing laws overlaid with sectoral and subject area guidance from key regulators in Hong Kong. The common theme appears to be that governments are closely monitoring the fast-evolving developments in AI and maintaining an agile approach. In this article, we examine in more detail the AI-related legislative developments in the Chinese mainland and Hong Kong.

Emergence of the legal architecture for AI in the Chinese mainland

The PRC has been steadily putting in place rules and regulations to ensure responsible use of AI. Currently, the regulatory approach is agile and targets specific areas or uses of AI where lawmakers consider this to be necessary. This approach also means that the legislative landscape tends to be fragmented and overlapping, although the concepts underlying the regulation may be similar.

Generative AI

The GenAI Measures. In August 2023, the Cyberspace Administration of China (CAC) – the PRC's cyberspace security and internet content regulator – released provisional measures targeting content generation (including the generation of text, images, and audio and video content) using generative AI (the GenAI Measures). The GenAI Measures apply to any person that utilises generative AI technology to provide services to the public in the Chinese mainland, including those indirectly providing services through programming interfaces such as application programming interfaces (APIs). When considering the potential impact of the GenAI Measures, businesses should also be aware of the Personal Information Protection Law, the extraterritorial effect of which is triggered if the behaviour of individuals in the

Highlights

- in the fast-evolving AI landscape, governments globally are considering whether to adapt existing legal frameworks to better address AI, or to develop AI-centric legislative and regulatory frameworks
- the PRC, which is a first mover in relation to AI regulation, has been steadily putting in place targeted rules and regulations to ensure responsible use of AI
- Hong Kong has up to now relied on existing laws, together with sectoral and subject area guidance from key regulators, to deal with AI, but there are signs that the government is starting to take a more proactive approach to the issue

Chinese mainland is being analysed and assessed.

Some provisions in the GenAI Measures to note are that generative AI service providers must optimise algorithms to prevent the generation of inappropriate content by AI (for example, content that is discriminatory or inaccurate). Generative AI service providers are required to suspend or terminate services if such content or other improper use of the technology is discovered. Service providers capable of mobilising or influencing social viewpoints or public opinion are also required to complete a CAC security assessment and be ready to respond to relevant regulators in relation to the source of the training data used, as well as the algorithms and technical systems adopted. A service agreement must be put in place between the providers and users of generative AI services, and a complaints-handling procedure must be established by the generative AI service provider.

The NISSTC labelling and security requirements for generative AI service providers. Aimed at facilitating the practical implementation of the GenAI Measures, the PRC's National Information Security Standardization Technical Committee (NISSTC) – a government standards-setting body, of which one supervisor is the CAC – released practical guidelines for tagging or labelling of generative AI-created content (as required by the GenAI Measures) in August 2023, followed by security requirements in February 2024. The security requirements deal with, among other things, the source of training data, AI model security or safety (specifically, the accuracy and reliability of content generated and model transparency), wider security or safety measures (this encompasses various aspects of safety such as protection of minors and AI-generated content labelling and moderation) and security assessment.

The emerging AI framework

Other limbs of the PRC's emerging AI framework include:

Regulating deepfakes. The PRC has introduced regulation on deep synthesis data and technology – defined in the provisions as technology using generative and/or synthetic algorithms such as deep learning or virtual reality to produce text, graphics, audio, video or virtual scenes – which took effect in January 2023. The relevant provisions target illegal activity, such as the production and dissemination of false news, which endangers national security or infringes others' rights. It regulates deep synthesis service providers, technical support and users.

Rules on recommendation algorithms. Provisions on managing recommendation algorithms came into effect in the Chinese mainland in March 2022. The provisions apply to any entity that uses algorithm recommendation technologies to provide internet information services within the PRC. Service providers are required to ensure the fair and ethical use of such technology.

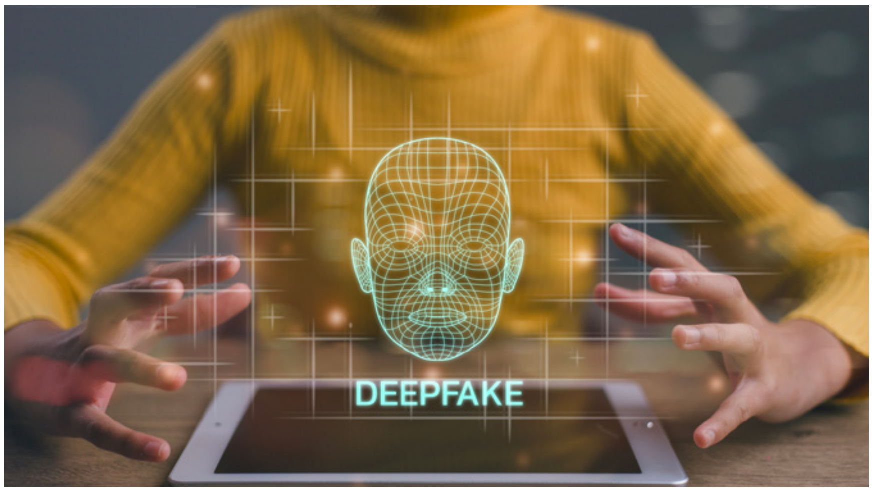
Ethical principles and related measures. The PRC introduced national-level guidance in the form of Opinions on Strengthening the Governance of Scientific and Technological Ethics in March 2022. The guiding tenet is enhancement of human well-being, with the opinions requiring the establishment of an ethics review committee for organisations engaged in certain activities, specifically in the areas of AI, as well as life sciences and medicine. Specific to financial institutions, the People's Bank of China correspondingly issued their Guidelines for Science and Technology Ethics in the Financial Sector in order to steer ethical governance in the sector. By way of example to be adapted by organisations in light of actual needs, the National New Generation Artificial Intelligence Governance Professional Committee issued a model code of ethics in September 2021.

The AI position in Hong Kong

To date, Hong Kong has relied on existing laws, together with sectoral and subject area guidance from key regulators, to deal with AI, with the government closely monitoring evolving developments. There are signs, however, that the government is starting to take a more proactive approach. In his response to a question regarding AI posed in Hong Kong's Legislative Council in January 2024, Professor Dong Sun, JP, the Secretary for Innovation, Technology and Industry, highlighted two areas the government is currently exploring:

1. the government has commissioned the InnoHK research centre to study and suggest appropriate rules and guidelines covering the accuracy, responsibility and information

> the common theme appears to be that governments are closely monitoring the fast-evolving developments in AI and maintaining an agile approach



security aspects of AI technology and its application, and

2. the government is studying the copyright issues arising from the development of AI technology, such as infringement issues stemming from the use of others' copyright for training purposes, and will conduct a consultation in 2024 to further explore enhancement of the existing protection provided by the Copyright Ordinance.

While we await these developments, we will discuss the AI guidance from key regulators currently applicable in Hong Kong.

Guidance from the data privacy regulator

The Office of the Privacy Commissioner for Personal Data (PCPD) calls for companies to review and critically assess the implications of any AI system on data privacy and ethics and, in particular, to follow the Guidance on the Ethical Development and Use of Artificial Intelligence, issued in August 2021. This guidance refers to internationally recognised AI ethics principles, including accountability, human oversight, transparency and interpretability, fairness and data privacy, as well as reliability, robustness and security. In February 2024, the PCPD published the results of its review of 28 organisations to understand their collection and processing of personal data in the use of AI and their AI governance structures. 21 organisations were found to use AI in their day-to-day operations, with 19 of them having established AI governance frameworks. Interestingly, only 10 organisations collected personal data through AI products and services. The PCPD reminded organisations of their responsibility to ensure data security in the development and use of AI systems.

Guidance from the securities regulator

In the financial services sector, a speech by the Head of Intermediaries of the Securities and Futures Commission (SFC) at the Web3 Festival in April 2023 emphasised that generative AI, as a novel technology, has its own limitations and flaws, and that it is therefore vital to harness its benefits in a responsible way. The CEO of the SFC had this to say regarding generative AI at the Hong Kong Investment Funds Association annual conference in June 2023: 'As a regulator, the SFC is guided by our philosophy to promote the responsible deployment of technology... firms must... make sure clients are treated fairly. We expect licensed corporations to thoroughly test AI to address any potential issues before deployment and keep a close watch on the quality of data used by the AI. Firms should also have qualified staff managing their AI tools, as well as proper senior management oversight and a robust governance framework for AI applications. For any conduct breaches, the SFC would look to hold the licensed firm responsible – not the AI.'

These same themes are contained in earlier SFC guidance, including the Guidelines on Online Distribution

> organisations will also need to identify appropriate decision-makers, look at their wider governance structures and processes, and consider their AI-related communications

and Advisory Platforms published in July 2019, dealing with the use of AI in the context of online distribution of investment products and 'robo-advice' (namely, automated investment advice), and the circular on algorithmic trading published in December 2016.

Guidance from the banking regulator
In November 2019, the Hong Kong Monetary Authority (HKMA) published one circular on High-level Principles on Artificial Intelligence and another on Consumer Protection in respect of Use of Big Data Analytics and Artificial Intelligence by Authorized Institutions. The principles set out are consistent with global themes for responsible use of AI, including for boards and senior management being accountable for AI-related outcomes, banks being required to ensure the explainability and ongoing monitoring of AI applications for producing fair and ethical outcomes, and the use of good quality data, together with the safeguarding of personal data. Relatedly, after a thematic examination of algorithmic trading (which may or may not involve AI), the HKMA published guidance in March 2020, which, in addition to reiterating the need for proper governance and regular review of algorithms, also discussed requirements for robust pre-trade controls such as risk limits and tolerance, proper 'kill' functionality to suspend trading, business continuity and incident handling, and proper documentation.

Guidance from the insurance regulator
The Insurance Authority (IA) considered how the current regulatory framework applies to AI chatbots in its periodical newsletter, Conduct in Focus (May 2023 issue). In terms of licensing the use of a chatbot in the insurance process, the IA cited the potential application of its Guideline on Enterprise Risk Management (GL 21), Guideline on Cybersecurity (GL 20) and Guideline on Outsourcing (GL 14). The IA emphasised the need for comprehensive testing under tight governance controls before deployment; clear disclosure of the chatbot's limitations, use and training dataset, as well as the use, storage and retention of data; and reporting controls and contingency plans. The IA emphasised an insurer or insurance intermediary's responsibility for a chatbot's output, as well as their overarching conduct and ethics requirements (including treating customers fairly and corporate governance requirements in the Code of Conduct).

Practical steps for AI strategy development or enhancement
When identifying and exploring opportunities for the use of AI, having multidisciplinary teams involved to ask the right questions to support responsible, informed decision-making is crucial. The starting point is to map the use of AI, understand the legal frameworks and risks, and develop appropriate oversight principles and robust governance programmes to mitigate those risks. Organisations will also need to identify appropriate decision-makers, look at their wider governance structures and processes, and consider their AI-related communications. Although the legal landscape for AI is evolving – across Greater China, the Asia Pacific region and globally – now is the time to develop AI legal and ethical strategies and risk-management frameworks.

Ling Ho, Partner, APAC IP practice
Clifford Chance

This article was adapted from 'AI: the evolving legal landscape in APAC'. The full article can be found on the Clifford Chance website: www.cliffordchance.com.

Buyers beware – M&As involving an AI-related business

Danny Kan, Partner, Stephenson Harwood, and Adjunct Assistant Professor, The Chinese University of Hong Kong, provides a clear and concise overview of the key issues a buyer should be aware of when considering the acquisition of an artificial intelligence (AI)-related business.

Unlike M&As involving a traditional business, where its tangible assets and historical financial results contribute to its core value, the crown jewel of an AI-related business is usually its proprietary technology and innovative business model, short of an established track record. Underlying the proprietary technology are the computer source code, algorithms and data. The valuation of an AI-related business hinges upon these intangible assets, as well as the experience and stability of its product development team, its future growth prospects and other dynamic factors. As such, the techniques for evaluating an AI-related business are somewhat complex, having to embrace these novel and fluid issues. So what are the key issues to look out for when buyers consider acquiring these businesses?

Fundamental concepts – AI, algorithms and data

What is AI?

AI, to many people, means automation, or 'smarter' versions of human beings potentially displacing the human workforce. In fact, AI is more than just automation. In practical terms, it is software that simulates human behaviour and intelligence. Underpinning such software are computational models and data. What's fascinating is that AI can engage in an independent learning process to develop itself further without the need for additional instructions – like a human baby who, starting from birth, develops its knowledge and skills from zero to unlimited levels.

How to train an AI system – data and algorithms

For an AI system to learn, it is first trained with a sample set of data (the training data) with the aim of identifying common attributes in groups of data or patterns inherent in a data set. As a simplified example, an AI system could be trained to distinguish an 'apple' from a 'banana' when it is initially provided with the essential features of each of these fruit. When given a sufficiently large

Highlights

- key issues to examine when considering the acquisition of an AI-related business include its proprietary technology, innovative business model, the experience and stability of its product development team and its future growth prospects
- a potential buyer should conduct an expert review of the ownership of the copyrights or patents relating to the intangible assets of the business, such as the computer source code, algorithms, training data, input data, output data and user interface design of the AI system
- the potential impact of regulatory scrutiny should be considered when planning for a deal, given that authorities in some jurisdictions may see a business with AI capabilities as posing national security concerns

training data set, the AI system should become more accurate when making such determination. In the context of anti–money laundering, for instance, an AI system could be trained to spot a suspicious transaction with attributes common to a sample set of suspicious transactions. In legal practice, it could be trained to spot an indemnity clause in a share subscription agreement.

Simply put, an algorithm is a mathematical model or formula, representing a procedure with certain embedded logic to accomplish a specific task. It is a series of instructions that are followed by computers, step by step, with a view to solving a problem or achieving a targeted outcome. Using the examples above, an algorithm would be a set of logic to identify the salient features of a suspicious transaction or an indemnity clause.

AI and business

As illustrated above, AI-related businesses require dealing with an enormous amount of data. AI-related M&As generally centre on intangible assets and the potential growth prospects of a business. Accordingly, the due diligence and negotiation process should be tailored to focus on those elements.

1. What is the product and who owns it?

The 'product' of an AI-related business consists of a wide range of elements. It encompasses a range of intellectual properties (IPs), such as the computer source code, algorithms, training data, input data, output data, user interface design of the AI system and more. The buyer should conduct an expert review of the ownership of the copyrights or patents relating to these intangible assets – is the target company the sole or joint owner of these IP rights? Do the employees or independent contractors who have contributed to the development of these intangible assets have a claim on the ownership of the relevant IP rights?

If the target company utilises third-party software or open-source software in its product development, we should ascertain to what extent such software has been utilised, which could in turn affect the ownership of the relevant IP rights. To reveal any infringement of third-party IP rights, we should also find out if the target company has the right to utilise such software under a valid licence.

In the M&A transaction documents, we should ensure that representations and warranties cover the ownership of the IP rights residing in the product, that no third-party licences or ownership rights have been infringed and that there is an absence of infringement claims.

2. AI governance model

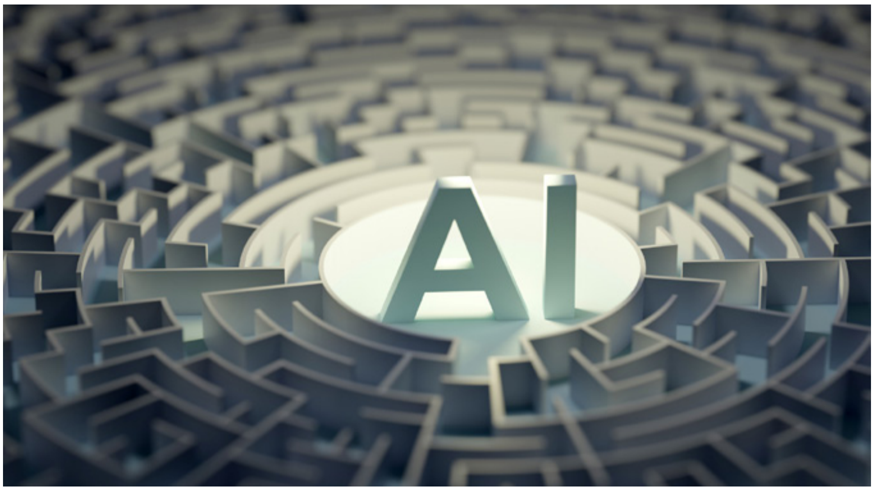
The buyer must critically assess if a target company adopts an effective AI governance or risk management framework. In particular, buyers should review for compliance with the ethical framework of relevant jurisdictions, such as the G7 AI Principles and Code of Conduct, the European Union (EU)'s Ethics Guidelines for Trustworthy AI, the US Artificial Intelligence Ethics Guide, the PRC Ethical Norms for New Generation Artificial Intelligence, the Hong Kong Ethical Artificial Intelligence Framework and the Hong Kong Guidance on the Ethical Development and Use of Artificial Intelligence. A common theme among these frameworks is to question whether there is sufficient human review and oversight when developing an AI system, and whether steps have been taken to mitigate AI-specific risks including security, bias and discrimination. Even if the target company has such a governance or risk management framework in place, the buyer should assess if there is a strong compliance culture to adhere to such a framework in practice. The most recently passed EU's AI Act, sometimes regarded as the world's first major legislation implementing some of the toughest AI regulations, also allude to these considerations.

To assess the quality of the AI-related product, the buyer should examine how the AI model is trained and the quality of the training data set – specifically, where and how the target company sourced the training data set, and how its AI model functions. Are the rights to such data transparent and auditable?

3. Data protection

Data protection is becoming ever more important with data-intensive AI-related businesses. A target company may be using data acquired from third parties when it first trained and then subsequently continued to develop its own AI model. During its operations, the target company may routinely transfer data across jurisdictional borders – for example,

> "the buyer must critically assess if a target company adopts an effective AI governance or risk management framework"



when data is stored in one country while it is processed in another. This gives rise to a range of data protection issues. Certain jurisdictions classify data into different categories depending on the nature of the data, while the categories are subject to varying protection requirements. By way of illustration, under the PRC Regulations on Promoting and Regulating Cross-border Data Flow and the EU General Data Protection Regulation, cross-border data transfers can be prohibited for certain types of data, or the data handler may be required to conduct a security assessment or obtain regulatory approval before transferring data offshore. Further, if an AI system involves personal data (for example, if the training data set contains personal data), more thoughts should be given to the applicable data protection laws, such as the Hong Kong Personal Data (Privacy) Ordinance and the PRC Personal Information Protection Law.

In the due diligence process, the buyer should consider how the data has been obtained, as well as from where and from whom. If personal data is involved, has the target company developed and implemented any data protection compliance program? M&A transaction documents should require the target company to give comfort on its compliance with the applicable data protection laws arising from its development and/or use of AI systems, and that it has proper policies and procedures in place to ensure compliance.

4. Employment and incentive plans

As with many M&As, it is important to ensure the key personnel contributing to the success of the target company would stay on after completion of the deal. For AI-related M&As, the long-term ability to develop and maintain the AI-related product is typically a crucial question to ask. In this regard, the buyer should identify the key technical personnel contributing to the long-term success of the product – encompassing researchers, computer scientists, program developers, software managers and so on – and their likelihood to stay on with the target company. A careful examination of the relevant employment agreements and incentive plans is desirable.

Tech companies generally reward and retain their staff by granting stock options as part of the compensation package. The terms of such packages must be reviewed and the corresponding tax implications must be assessed. Non-compete and confidentiality obligations binding the key personnel should be scrutinised. The buyer should also assess whether algorithms underlying the AI systems are protected as trade secrets, which afford a higher level of protection in certain jurisdictions as, unlike patents or copyrights, trade secrets can be protected without registration (meaning no procedural formalities are required) and for an unlimited period of time.

5. Shareholding structure and shareholder rights

Tech companies would typically secure several early rounds of

> **AI systems evolve with the ingenuity of business founders and technology developers, and hence the issues stemming from AI-related businesses are dynamic**

funding and investors in each round may be granted certain special rights. These rights may not be reflected in the main transaction documents, but are embedded in side letters agreed between the company and the investors. A new investor may want to negotiate for similar rights. There could be different classes of share issued by a tech company. Holders of each class of shares may be entitled to different voting rights. For pre-IPO companies, new investors should also pay attention to the conversion mechanics (or restrictions from conversion) of preferential securities into tradable ordinary shares.

6. Regulatory scrutiny

Regulatory scrutiny of foreign investments has increased in many jurisdictions, particularly those involving a transfer of ownership in AI systems. Authorities may see a business with AI capabilities as posing national security concerns – even more so if the technology can be used for defence purposes or involves a high volume of personal data. For instance, the Committee on Foreign Investment in the US regularly reviews transactions involving critical technologies for national security risks. Against this backdrop, the potential impact of regulatory scrutiny should be considered when planning for a deal. In some cases, regulatory approval needs to be obtained before signing the M&A transaction documents. If preapproval is not obtained, the buyer should plan for post-deal regulatory enquiries and consider how the buyer's interests could be protected if the regulator subsequently raises concerns about the deal. In short, analyse potential political and regulatory implications early in the process.

7. Anti-trust

Anti-trust agencies scrutinise whether the investments of big tech firms into smaller players enable dominant firms to exert undue influence or gain privileged access in ways that could undermine fair competition. An AI system depends on a set of data inputs. Control over one or more of those data inputs may be regarded as creating unlawful barriers to entry, slowing innovation or generating opportunities for unlawful product bundling, tying and exclusive dealing. As such, anti-trust agencies may review if a company's data collection and aggregation process would trigger anti-competitive concerns. In practice, the buyer should conduct an anti-trust risk assessment when planning for the deal.

Conclusion

The above highlights some of the key issues to look out for when a buyer examines an AI-related business and is by no means exhaustive. AI systems evolve with the ingenuity of business founders and technology developers, and hence the issues stemming from AI-related businesses are dynamic. This will continue to pose new challenges for buyers as the market in this space develops – buyers beware!

Danny Kan

Partner, Stephenson Harwood, and Adjunct Assistant Professor, The Chinese University of Hong Kong

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Guidance update

CGj highlights some of the latest guidance notes added to the Thought Leadership section of the Institute's website in the first quarter of 2024.

The Institute regularly publishes guidance notes keeping practitioners up to date on all the latest developments in governance, risk and compliance. In the first quarter of 2024, the Institute published guidance notes covering:

- the roles of governance professionals in building and maintaining an effective whistleblowing framework
- new British Virgin Islands compliance obligations
- the practices of directors of Chinese mainland companies listed in Hong Kong
- recent developments in competition law
- decision-making processes in family businesses
- startup governance, and
- due diligence considerations for D&O insurance.

This article highlights some of the key recommendations of the Institute's latest guidance notes. Readers can access the full publications in the Thought Leadership section of the Institute's website: www.hkcgi.org.hk.

Whistleblowing – the roles of governance professionals

The latest guidance note issued by the Institute's Ethics, Bribery and Corruption Interest Group, titled Whistleblowing – the 'Software' and the 'Hardware' to thrive (Part 1), offers practical advice on the roles of governance professionals in this area of practice. Part 2 of this guidance note will discuss some developments relating to listed companies on whistleblowing.

An essential first step in creating an environment where employees can voice concerns about wrongdoings within an organisation is to ensure that the board and senior management support a speak-up culture. Fundamentally, the effectiveness of whistleblowing systems is all about trust – employees need to feel that their concerns will be taken seriously and that wrongdoings will be addressed promptly.

The guidance note suggests a number of ways that organisations can build this trust. Directors and senior managers should, for example, hold regular meetings with employees to address whistleblowing concerns. The message needs to be loud and clear that complaints will be handled fairly and that there will be no reprisals against complaints made in good faith.

> “corporate governance is not a one-time effort, but is an ongoing process”

Organisations should also be providing training for directors, senior management and ethical leaders to become role models. The necessary soft skills should include training in effective communication, collaboration, conflict management, decision-making and resilience under stress. Governance professionals will often be involved in facilitating this training.

They will also typically be involved in the communication of ethical expectations within organisations. The fight against corruption and fostering business ethics will only succeed if there is an entity-wide joint effort, and governance professionals can play a key part in promoting codes of conduct and

Highlights

- the effectiveness of whistleblowing systems is all about trust – employees need to feel that their concerns will be taken seriously and that wrongdoings will be addressed promptly
- governance professionals can play a key role in helping family business decision-makers understand how important it is to keep some personal impulses separate from business decisions
- in the context of rising director risks and liabilities in the current operating environment, finding the best directors' and officers' insurance is an essential part of risk mitigation

ethical standards to foster the right organisational culture.

'Good communication also ensures that all understand the expectations of ethical behaviour and that reporting channels are clear and accessible,' the guidance note states.

Communication with stakeholders outside the organisation is also crucial. The organisation must explain and promote its whistleblowing policy and practices with suppliers, customers, subcontractors and business partners.

While the above recommendations deal with the 'software' needed for an effective whistleblowing system, the guidance note also addresses the 'hardware' issues. These mainly involve the practical side of establishing and running an effective whistleblowing framework. For example, the guidance note gives useful suggestions on what whistleblowing channels should be considered. These should enable employees to report their concerns anonymously and ensure that the organisation can collect the scope of information that will be needed for analysis. Typically, they will include email and phone lines, but with the growing digitalisation of business operations, many organisations have established web-based whistleblowing platforms.

The guidance note also discusses the benefits of appointing a conduct observer to act as the point of contact for reporting concerns and to be responsible for training and monitoring ethical conduct.

'Instituting a conduct observer within every team encourages employees to speak with him/her when they see wrongdoings occurring. It promotes a culture in which employees can openly discuss ethical dilemmas, fostering trust and mutual respect among employees. Employees may also feel more comfortable speaking with a close counterpart,' the guidance note says.

Finally, the guidance note also discusses the issue of whether to use external whistleblowing service providers. Clearly, organisations will need to weigh up the costs and benefits of using external support and the guidance note emphasises that there is no 'one size fits all' approach. Nevertheless, where a whistleblowing system is run by an external service provider, this can give employees added reassurance that they are safe from retribution and that their complaint will be followed up.

'Engaging an external service provider not only eases case management but also ensures unbiased processing of the reports and upholds the integrity of the process,' the guidance note explains.

Supporting the decision-making process of family businesses

Family businesses hold a unique position in the corporate landscape as they are not only the oldest form of business, they also make up the majority of businesses around today. The latest guidance note published by the HKCGI Wealth Management Interest Group – Supporting Decision Making Process of Family Businesses – explores key strategies for governance professionals supporting family business leaders in making informed and effective decisions.

One of its main themes is that governance professionals need to think beyond the technical areas of their competence when advising family business decision-makers. To excel in this area of practice, they will need to have a good understanding of the intricate personal and psychological factors at play. These might include the need to manage intergenerational family ties and to preserve the family legacy.

Decision-makers in family businesses are often faced with a difficult balancing act – they need to make decisions that are commercially sound and that will protect the firm's assets. Sometimes such decisions will not please all family members. Governance professionals therefore need to gain a deep understanding of the family dynamics. Only by comprehending the intricate relationships and personal histories within the family can they provide guidance that takes into account the dynamics that influence decision-making.

Such knowledge will also help governance professionals build trust and rapport with family employers, and this will put them in a better position to promote best practices and good governance. Governance professionals can play a key role in helping decision-makers understand how important it is to keep some personal impulses separate from business decisions and to ensure that decisions align with the organisation's long-term goals, the guidance note says.

> for a startup, having independent and non-executive directors with the right authority cannot be overstated

Startup governance

Good governance is no less crucial for startups, but, by their very nature, firms in their infancy will usually be starting from a low base when it comes to the usual components of governance frameworks. In March this year, the Institute published a guidance note (Startup Governance – Board and Structuring Issues) that offers a practical, step-by-step introduction to the process of building a good governance framework for startups.

The main focus of the guidance is on the crucial role played by the board. It begins with a sobering look at just how badly things can go wrong in the absence of an effective board. The fate of FTX – the cryptocurrency exchange that filed for bankruptcy in November 2022 – has been back in the news recently with the conviction of its co-founder Sam Bankman-Fried for fraud. Bankman-Fried was sentenced to 25 years in prison by a judge in March this year. Power and control of FTX were concentrated in the hands of Bankman-Fried and his coterie of friends. In an environment where there were no checks and balances on the power of the decision-makers, fraud and malpractice quickly brought the organisation down.

The guidance note highlights the essential components of an effective board. First in this list is the importance of independent directors. 'For a startup, having independent and non-executive directors with the right authority cannot be overstated,' the guidance note says.

It suggests that independent directors forming one-third of the board will be a good initial yardstick to work towards. Moreover, it is best practice to have an independent chair of the board, rather than letting the CEO double up in this role. An independent nomination committee for nominating director candidates is also a recommended best practice. 'If the persons proposing director candidates are not independent, the possibility of having the elements of independence would be reduced,' the guidance note points out.

While it is often the practice for startup boards to have shareholders appointed as board members for commercial reasons, the guidance points out that from a governance standpoint such directors cannot be considered independent.

The guidance note also emphasises that, as the startup's business develops, there should be implementation of board assessment to provide constructive feedback on the board's effectiveness and to identify any gaps in developing the business. Corporate governance is not a one-time effort, but is an ongoing process. This is a key point to bear in mind because startups, by their very nature, will usually have a rudimentary governance framework in the early stages of their development. The contribution of governance professionals in this context can help lay the governance groundwork for a resilient and thriving organisation.

D&O insurance

The risks and liabilities of directors have increased dramatically in the current operating environment. In this context, finding the best directors' and officers' (D&O) insurance is an essential part of risk mitigation. Nevertheless, the due diligence processes involved in the selection of appropriate D&O insurance coverage is no simple matter. A recent HKCGI guidance note – Beyond Pricing Considerations for D&O Insurances – sheds light on the many issues that need to be considered.

As the title of the guidance note suggests, the focus is on the considerations beyond the premium price. Governance professionals involved in sourcing D&O insurance should pay close attention, for example, to coverage assessment. In particular, does the D&O policy cover emerging risks, such as cyber and ESG risks? In the current operating environment there has been a rise in the number of cybersecurity incidents resulting in regulatory investigations regarding whether directors have

Credits

The HKCGI guidance notes published in the first quarter of 2024 are set out below. The Institute would like to thank everyone involved in their production.

January

Whistleblowing – the 'Software' and the 'Hardware' to thrive (Part 1). This HKCGI Ethics, Bribery and Corruption Interest Group guidance note (13th Issue) was authored by William Tam ACG HKACG, Partner of Deloitte China. The Interest Group members are: Dr Brian Lo (Chairman), Cynthianna Yau, Mary Lau, Michael Chan, Ralph Sellar and William Tam ACG HKACG.

British Virgin Islands (BVI) Annual Return and Other Recent Compliance Obligations (Amended). This HKCGI guidance note was authored by Leon Mao, Head of Advisory and Managing Director, North Asia, Vistra.

Guidelines on Practices of Directors of Mainland Companies Listed in Hong Kong. This Chinese-language HKCGI guidance note was produced in collaboration with DLA Piper LLP.

February

2023 in Review (Parts 1 and 2). These two Competition Law Interest Group guidance notes (13th and 14th Issues) were authored by Natalie Yeung, Partner, Slaughter and May, with input from Alexander Lee, Counsel, Michele Ho, Associate, and Yvonne Ngai, Legal Assistant, Slaughter and May. The Interest Group members are: David Simmonds FCG HKFCG, Institute President (Chairman), Adelaide Luke, Alastair Mordaunt, Brian Kennelly QC, Mike Thomas and Natalie Yeung.

March

Supporting Decision Making Process of Family Businesses. This HKCGI Wealth Management guidance note (3rd Issue) was authored by Patricia Woo, Partner and Global Co-Head of the Family Office Practice of Squire Patton Boggs. The Interest Group members are: Edmond Chiu FCG HKFCG(PE), Institute Council member, and Jenny Choi FCG HKFCG(PE) (Co-Chairs), Willa Chan ACG HKACG, Wilson Cheng, Hazel Fok ACG HKACG(PE), Catherine Lee, Lee Chee Weng FCG HKFCG, Winnie Shek and Alice Yip.

Startup Governance – Board and Structuring Issues. This HKCGI guidance note is a collation of the thoughts of Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), Honorary Adviser to Council, Past International President and Institute Past President, and Executive Director and Company Secretary, CK Hutchison Holdings Ltd. The guidance was prepared by Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive.

Beyond Pricing Considerations for D&O Insurances. This HKCGI guidance note was authored by Melody Qian, SVP, Greater China, Global ProFin, Lockton Companies. Michael Ling FCG HKFCG, Joint Company Secretary of CLP Holdings Ltd, and Chairman, Institute Technical Consultation Panel, also contributed.

The Institute would also like to thank April Chan FCG HKFCG, Institute Past President, and Michael Ling FCG HKFCG, Chairman of the Institute's Technical Consultation Panel, for their oversight of the Institute's guidance notes, and Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive, who is the Contributing Editor of the Institute's guidance notes. Comments and suggestions are welcome, and should be sent to: mohan.datwani@hkcgi.org.hk.

breached their fiduciary duties. It is therefore important to pay attention to the cyber coverage of existing or prospective D&O policies. Are cybersecurity incidents explicitly covered? Governance professionals would do well to look very closely at the drafting of the relevant clauses in the policy.

Most D&O policies these days cover legal expenses relating to formal interviews or document production costs when a director or senior manager is involved in an official investigation. Some policies, however, will only cover internal investigations carried out in response to a request from an official body. Governance professionals should look at whether the policy covers costs incurred at the pre-investigation stage, as well as costs associated with dawn raids and with self-reporting to official bodies. There might be exclusions to pay regulatory fines or other non-permitted indemnities at law.

Another important consideration is the claims reputation of the insurer. Knowing the insurer's reputation for a smooth claim process and for paying claims is important. The governance professional might want to ask whether the insurer has its own experienced claims staff, or whether it uses outside law firms for its claims. They should also look at the number of D&O claims the insurer has handled and paid in the past five years.

> ***The guidance notes covered in this article are available in the Thought Leadership section of the Institute's website: www.hkcgi.org.hk.***

Perception-reality gap on the benefits brought by female directors in Hong Kong

Authors from the School of Business, The Hang Seng University of Hong Kong, discuss the results of their recent survey on perceptions of board gender diversity in Hong Kong listed companies.

Board gender diversity has been a significant global trend, stimulated by various jurisdictions' guidelines and/or laws aimed at increasing the presence of women on the boards of listed companies. Some regulators have adopted the 'comply or explain' governance mechanism (for example, the US, the UK and Australia). The comply or explain system requires firms either to satisfy board gender diversity requirements, or to explain the reasons for any failure to comply with those requirements. Meanwhile, some countries or regions have enacted legislation requiring a set quota of female representation on the board (for example, France, Spain, Italy, the UAE and India).

Board gender diversity in Hong Kong

The Hong Kong Stock Exchange (HKEX)'s revised Listing Rule 13.92 mandates the end of single-gender boards after 31 December 2024. Nevertheless, this Listing Rule, which came into effect on 1 January 2022, may not necessarily improve the powerbase of female directors. After all, gender stereotypes or gender-based discrimination is usually rooted in cultural norms. In this study, we investigate whether the perception of female directorship in Hong Kong aligns with the actual performance of listed companies that include female directors on the board.

The advancement of women in Hong Kong is evident through employment and educational opportunities. However, more traditional influences remain strong in a large sector of the population. These ingrained perspectives include a greater acceptance of subordinate social roles for women and lower expectations for female leadership representation. Even as family duties shift with the rise in the number of domestic helpers, statistics show Hong Kong continues to lag behind its Western counterparts when it comes to women in senior management and board positions. The joint effect of these factors likely contributes to ongoing discrepancies between perception and reality. Outdated perceptions that women should not, or cannot, be leaders fail to align with the proven capabilities of female directors and executives. The extent of the contribution and benefits that female directors bring to a company's performance and corporate governance may not be well recognised.

The benefits of board gender diversity

Research indicates that one of the primary benefits of board gender diversity is that the inclusion of female directors enhances monitoring by the board. Studies have shown that female directors are more responsible, accountable and careful compared with their male counterparts (Fondas and Sassalos, 2000; Schmitt, Realo, Voracek and Allik, 2008). Women tend to take their roles seriously in the boardroom, which can lead to improved corporate governance (Singh and Vinnicombe, 2004; Usman, Zhang, Wang, Sun and Makki, 2018; Ain, Yuan, Javaid, Usman and Haris, 2021). In addition, female directors communicate more effectively with external entities (Kravitz, 2003; Huse and Solberg, 2006). As gender equality becomes more mainstream in society, companies are under increased pressure to conform to social values and to respond with a more gender-diverse board. Female participation on the board can thus promote women's rights and strengthen the firm's legitimacy in society (Cox and Blake, 1991; Cox, Lobel and McLeod, 1991).

Survey of Hong Kong listed companies

To understand the perception of female directorship among Hong Kong

Highlights

- HKEX now mandates the end of single-gender boards for listed companies after 31 December 2024, but it is unclear whether this will necessarily improve the powerbase of female directors
- a survey of listed companies undertaken by The Hang Seng University of Hong Kong reveals that 61% do not support a mandatory board diversity requirement, while 79% do not agree that female directors benefit the board
- survey findings show a perception-reality gap in Hong Kong regarding the contribution made by female directors, with traditional cultural influences still downplaying the leadership capabilities of women

Figure 1: Do you support HKEX's adoption of the board diversity requirement?

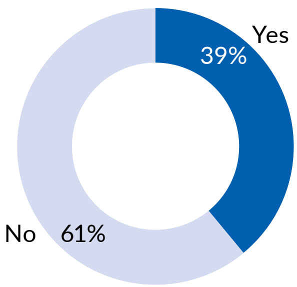


Figure 2: Do you agree that female directors bring benefits to a firm's performance or corporate governance?

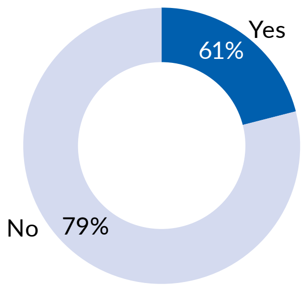
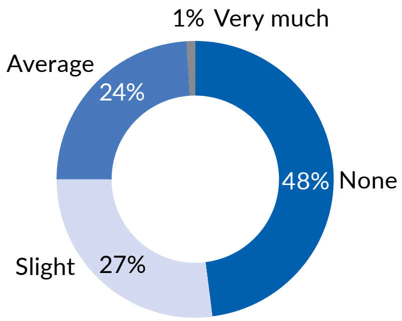


Figure 3: How much discrimination do you feel female directors face in Hong Kong?



listed firms, we conducted a survey in July and August 2021. We contacted the investor relations departments of all listed companies by telephone, or via an email questionnaire. We did not record the name or sex of the respondents, but we reminded them that their responses would be representing the firm. However, we acknowledged that some of our survey results would be subjective, based on the respondents' personal perceptions. Out of a population of 2,568 listed firms in Hong Kong as of July 2021, we received 95 valid responses. Our sample size represents approximately 95% confidence level with a 10% margin of error.

The survey, comprising seven questions in total, was divided into three sections to understand: (1) the respondents' support for the board diversity rule adopted by HKEX (three questions in total), (2) their agreement with the benefits brought by female directors (two questions), and (3) their opinion on the discrimination faced by female directors in Hong Kong (one question). The survey questions, discussed below, were short, specific and simply written to avoid ambiguity or vagueness.

Support for the board diversity rule

Our first survey question asked the respondents whether they supported HKEX's adoption of the board diversity requirement. Specifically, we defined the board diversity requirement as a modified Rule 5605(f) of the Nasdaq Listing Rules, namely that all listed companies in Hong Kong are required to have at least two diverse directors, including one female director and one non-Chinese director, or to explain why the board does not include such diverse directors. 61% of respondents were against such a proposal (see Figure 1). They explained that it is difficult to appoint a diverse director (41% of those who did not support the idea) and that appointing a diverse director cannot improve board efficiency (45%).

We then asked the respondents whether they supported HKEX's requirement for mandatory disclosure of board-level diversity statistics. 78% of respondents supported this idea. Of those who were against the proposal, 81% supported voluntary disclosure on the basis that it would provide more flexibility to a firm to disclose information suitable for investors.

Agreement with the benefits brought by female directors

Next, we asked the respondents whether their company has any female directors at the moment. 66% of respondents replied positively, which is consistent with our empirical findings (see below). When we further asked the respondents whether they agree that female directors bring benefits to a firm's performance or corporate governance, 79% of respondents disagreed (see Figure 2). For those who recognised female directors' contribution to the company, they suggested that female directors have more professional knowledge and expertise (60%), can improve the firm's reputation (65%), can improve employee satisfaction (55%) and can improve the firm's stock price (45%).

HKU SPACE
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HKU School of Professional and Continuing Education

75th CHARTERED GOVERNANCE Hong Kong YEARS ANNIVERSARY

Certificate for Module

(The Hong Kong Chartered Governance Institute Examinations Preparatory Programme)

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

COURSE INFORMATION

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

Programme Title	QF level	QR Registration No.	QR Registration Validity Period
Boardroom Dynamics 4	4	21/001317/L4	01 Dec 2021 - on-going
Corporate Governance 4	4	21/001318/L4	01 Dec 2021 - on-going
Corporate Secretaryship and Compliance 4	4	21/001319/L4	01 Dec 2021 - on-going
Hong Kong Company Law 4	4	21/001320/L4	01 Dec 2021 - on-going
Hong Kong Taxation 4	4	21/001321/L4	01 Dec 2021 - on-going
Interpreting Financial and Accounting Information 4	4	21/001322/L4	01 Dec 2021 - on-going
Risk Management 4	4	21/001323/L4	01 Dec 2021 - on-going
Strategic Management 4	4	21/001324/L4	01 Dec 2021 - on-going

TARGET STUDENTS

1. Be 21 years old or above. (Students should be either a Hong Kong permanent resident or have valid permit to study in Hong Kong)
2. Students aiming to prepare for the HKCGI CGQP examinations.

Award:

Certificate for Module

Fee per subject:

HK$4,700 (36-hour lectures)
HK$6,200 (45-hour lectures)

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

This course has been included in the list of reimbursable courses under the Continuing Education Fund.

4 This course is recognised under the Qualifications Framework (QF Level 4).

CONTACT INFORMATION
Programme Enquiries (HKU SPACE)
(852) 2867 8485
hkcgi@hkuspace.hku.hk

Accredited Institution ASIIN 2022-2028
HKU SPACE was awarded the ASIIN Institutional Accreditation seal for its quality management in teaching and learning.

We then asked the respondents to propose some ways to increase board diversity. Common suggestions included appointing directors with different professional backgrounds (93%), different age groups (84%), different ethnic or cultural backgrounds (67%) and overseas education or working backgrounds (61%).

Opinions on the discrimination faced by female directors

Finally, we asked the respondents how much discrimination they felt female directors face in Hong Kong. Most of the respondents considered that female directors face 'none' (48%) or 'slight' (27%) discrimination. 24% of respondents felt that female directors face 'average' discrimination and only 1% of respondents expressed the opinion that female directors face 'very much' discrimination (see Figure 3).

Empirical evidence of the benefits brought by female directors

To empirically test whether female directorship is positively associated with both financial reporting quality and firm performance, we constructed a sample comprising all Hong Kong listed companies between 2001 and 2019. 65% of our archival sample firms had at least one female director, which is consistent with our survey results (66%). On average, the percentage of female directors on boards was 12%. 29% of our archival sample firms had a dual CEO/Chairman role, suggesting centralised and concentrated power in a few key individuals in the company. The ratio of independent non-executive directors on the board was 40%.

Our main empirical test results show that female directors are more likely to constrain the practice of earnings management. Moreover, firms with a higher ratio of female directors tend to have a higher return on assets and return on sales. This evidence supports prior research demonstrating that female participation in the boardroom is beneficial to financial reporting quality and financial performance. Our further empirical test results reveal that benefits brought by female directors primarily come through the female executive directors' executive effect, rather than the female independent directors' monitoring effect. Meanwhile, our analysis shows that the special state-dominant ownership structure in state-owned enterprises (SOEs) hampers the ability of female directors to fulfil their duties successfully, as female directorship is not significantly associated with financial reporting quality or financial performance in SOEs, but the association does remain significant in non-SOEs.

Discussion

Our findings reveal an interesting perception-reality gap in Hong Kong regarding female directors. While empirical evidence demonstrates that including women on boards enhances financial reporting and performance, survey responses show disagreement and scepticism about these benefits. In addition, over 60% opposed the mandated board diversity requirements. This disconnect highlights the complex cultural dynamics at play in Hong Kong. Progressive values championing female empowerment now intersect with traditional perspectives prescribing gender roles and biases. Although women have advanced, cultural norms still appear to downplay their leadership capabilities.

> **“outdated perceptions that women should not, or cannot, be leaders fail to align with the proven capabilities of female directors and executives”**

Outdated biases persist, obstructing the recognition of the value that diversity brings. Stereotypes and tokenism may further hinder women from maximising their governance impact.

The evidence in this study indicates that female representation on the board is desirable, but that cultural factors cannot be neglected. It remains to be seen whether the end of single-gender boards after 31 December 2024 will simply become a practice of tokenism.

Assistant Professors Hong Weng Lawrence Lei, Yam Wing Siu, Ling Na Belinda Yau and Weiyin Vivian Zhang

School of Business, The Hang Seng University of Hong Kong

The authors can be contacted at: lawrencelei@hsu.edu.hk, ywsiu@hsu.edu.hk, belindayau@hsu.edu.hk and vivianzhang@hsu.edu.hk.

75th YEARS ANNIVERSARY CHARTERED GOVERNANCE Hong Kong

Corporate Governance Paper Competition and Presentation Awards 2024

Theme: Overcoming Governance Obstacles in NGO Administration

The annual Corporate Governance Paper Competition and Presentation Awards organised by the Institute aims to promote the importance of good governance among local undergraduates. This is a great opportunity for students to learn about teamwork and to research, write and present their thoughts on the selected theme.

Awards:

Best Paper
HKD11,000

Best Presentation
HKD6,000

Audience's Favourite Team
HKD2,000

The best paper will be published in the HKCGI monthly journal.

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Supporting organisations:

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香港都會大學 李兆基商業管理學院 Hong Kong Metropolitan University Lee Shau Kee School of Business and Administration

樹仁大學

Lingnan University 嶺南大學 香港 Hong Kong

SFU 聖方濟各大學 Saint Francis University

CUHK LAW THE CHINESE UNIVERSITY OF HONG KONG 香港中文大學

會計學系 DEPARTMENT OF ACCOUNTANCY 香港恒生大學 THE HANG SENG UNIVERSITY OF HONG KONG

THE HONG KONG POLYTECHNIC UNIVERSITY 香港理工大學

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HKU LAW

For enquiries, please contact the Qualifications and Assessments Section at (852) 2830 6039 or email student@hkcgi.org.hk.

“having knowledge and awareness of governance and compliance issues is advantageous not just for legal and compliance staff, but also for frontline staff”

Ginger Keung, Executive Director, Non-Bank Business – Institutions Department of a large bank

Ginger Keung

What is your current role and what was your career path to this role?

'After graduating from university, I joined a bank and initially handled transactions and other operational tasks. I was then promoted to a sales role and became the first point of contact for institutional clients. Over the years, I gradually accumulated experience and now work with larger clients. My company encourages employees to pursue advanced studies and the Institute's qualification programme is one of those on the list. Since I deal with various institutional clients, it is important to understand corporate forms and the relevant governance issues. Preparing for the exams has helped me better comprehend the corporate governance and compliance framework of a bank, as well as management's business perspective. Having knowledge and awareness of governance and compliance issues is advantageous not just for legal and compliance staff, but also for frontline staff.'

When did you first hear the terms 'company secretary' and 'governance'? What was your impression of these terms?

'I first came across company secretaries when I was opening bank accounts and conducting KYC for institutional clients. While opening accounts is a standard procedure, it can still be confusing for a fresh graduate. When I first started working, I wasn't familiar with the relevant provisions or the various bank and legal documents. I therefore sought assistance from colleagues with a company secretary background and did my own research, after which things became much clearer. I often encounter highly professional company secretaries from listed or private companies, who ensure the smooth progress of our work. Their level of expertise has left a lasting impression on me.'

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

'First, it is important to understand how and why a company operates. There are countless codes and rules in the banking industry, some of which are quite complex. Governance professionals need to be aware of the underlying reasons behind such provisions. Second, excellent communication skills are vital. Conflicts do occur between different parties and the art of good governance is about effectively resolving those conflicts.'

What is your chosen route to complete the Institute's qualifying programme and what advice would you give to people who are considering qualifying as a Chartered Secretary and Chartered Governance Professional?

'I have chosen to take the Chartered Governance Qualifying Programme exams because this route offers more flexibility in terms of scheduling. Reviewing past papers and watching the Institute's exam-preparation videos works well for me. The other option was to enrol in a master's degree programme. However, this would have required a significant investment and, because most of the classes were conducted online during the pandemic, it didn't suit my needs. For those who choose to take the exams, I suggest thinking flexibly because the exam papers often include case studies and there are always a number of approaches to achieving a specific goal. Those who simply memorise formulaic answers may not be able to adapt.'

As a member of the younger generation, how do you think governance will evolve in the future?

'Hong Kong's financial institutions are highly regulated and there is a sophisticated governance framework in place. I believe governance of the banking industry will continue to be robust. It's worth noting that with shorter innovation life cycles, new technology is emerging faster than ever. To nurture a healthy development environment for these trends, it is necessary to introduce fit-for-purpose regulatory frameworks and governance arrangements. I expect governance in areas such as AI, data security and biotechnology to increasingly come into the spotlight.'

姜鉴轩先生

“认识治理和合规事宜，提高有关意识，不仅对法律及合规人员有好处，前线员工也可从中得益”

姜鉴轩先生，大型银行机构业务部非银业务总监

请问您目前的职位是什么?能告诉我们您的职业发展经历吗?'

‘我大学毕业后加入了银行，一开始处理一些银行交易和其他事务性的工作，之后晋升为销售人员，成为企业客户与银行的第一个接触点，几年来慢慢累积了经验，现在服务一些规模较大的客户。公司鼓励员工进修，公会的资格课程是公司推荐我们参加的其中一个项目。我平时接触的都是企业客户，需要理解不同的公司形式和相关治理事宜；为这个考试作准备，让我更了解银行的公司治理和合规架构，以及管理层的商业考虑。认识治理和合规事宜，提高有关意识，不仅对法律及合规人员有好处，前线员工也可从中得益。’

您第一次听到‘公司秘书’或‘公司治理’是什么时候?您当时对这些专业名词有什么印象?

‘我最初接触到公司秘书这个职位，是在银行帮企业客户开户口，处理客户尽职审查程序的时候。开户口是标准程序，但对于初入职场的人来说，可以是很复杂的一回事。最初我不太清楚相关的条文，也不熟悉各种银行及法律文件，于是找有公司秘书背景的同事帮忙，自己又做了点资料搜集，才更清楚了解这项工作。在日常工作中，我经常遇到上市或私人公司的公司秘书，他们非常专业，总能让工作顺利推进，他们的专业程度令我印象深刻。’

您认为成为一名成功的治理专业人士需要具备哪些素质?

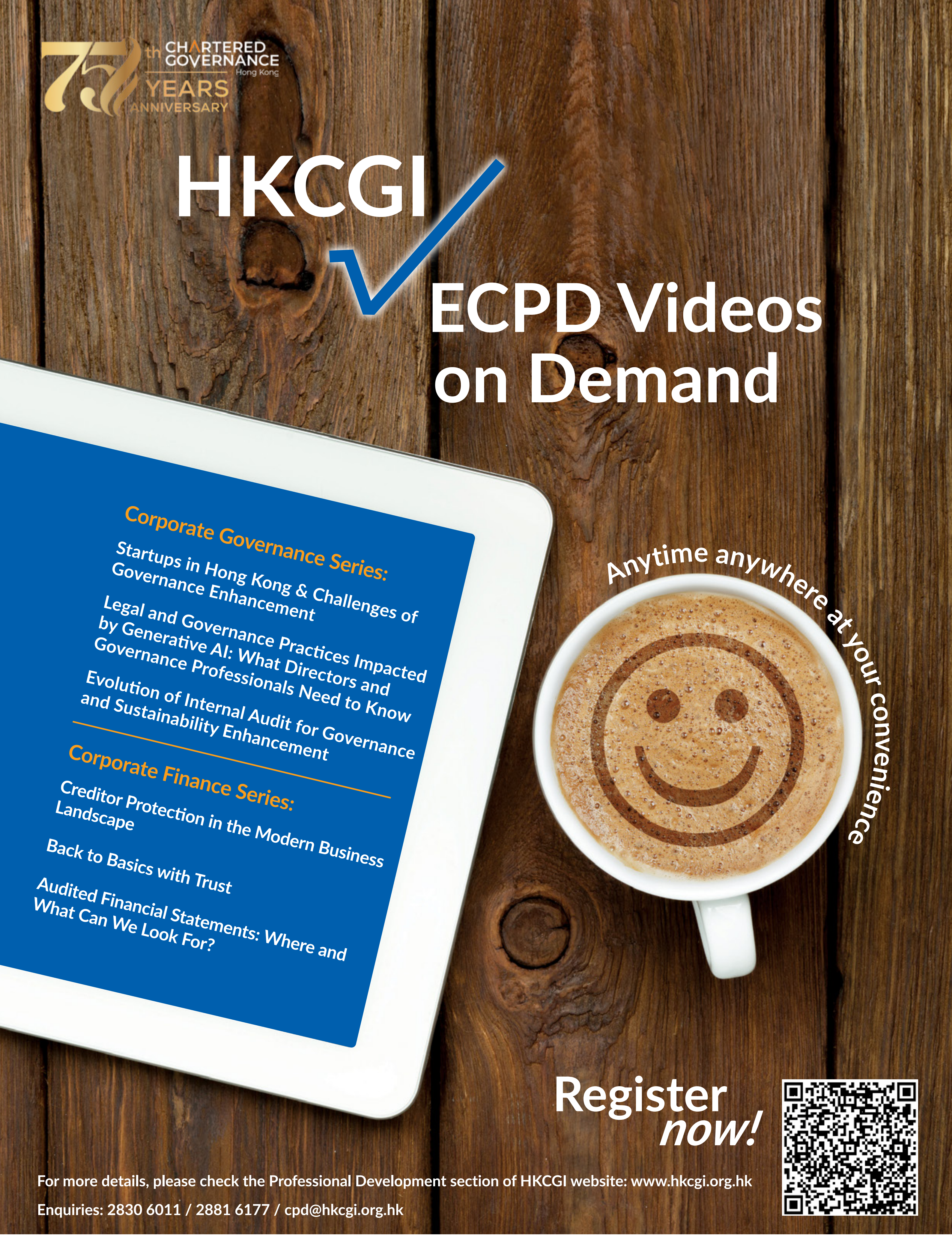
‘首先要理解公司的运作模式，以及以这种模式运作的原因。银行业有无数守则和规则要遵守，有些规定还很复杂；治理专业人士需要知道这些条文背后的缘由。第二，良好的沟通技巧十分重要。各方之间总会有矛盾，而良好管治的艺术，就是要能有效地解决这些矛盾。’

您完成公会的资格计划的路径是怎样的?对于那些有想去成为特许秘书和公司治理师的人，您有什么建议?

‘我选择参加公会的特许公司治理专业资格课程考试，因为时间安排上比较自由，可以自己温习过去的试卷，观看公会为学员准备考试的网上影片，这安排很适合我。另一途径是读硕士课程，但这需要投入大量资金，而且在疫情期间多数时间是网路上课，不符合我的需要。我建议选择考试的朋友采用灵活的思考方式，原因是试卷里有很多案例研究，而要达到特定目的有许多不同的方法，死背公式化答案的人未必能随机应变。’

作为年轻一代的一员，您认为‘治理’将来会如何发展?

‘香港的金融机构受到严格监管，治理架构已经发展得很成熟，我认为银行业的治理以后会维持稳健。值得留意的是，创新周期趋短，科技推陈出新的速度前所未见。为了让这些趋势有健康的发展环境，必须引进恰当的监管架构和治理安排。预料日后人工智能、数据安全和生物科技等领域的治理，将会日益受关注。’


75th CHARTERED GOVERNANCE Hong Kong YEARS ANNIVERSARY
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For more details, please check the Professional Development section of HKCGI website: www.hkcgi.org.hk
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Professional Development

Seminars: March 2024

6 March

Unveiling notifiable transactions: new disclosure/valuation requirements, issuers' and directors' duties, and shareholders' approval

Chair: *Michelle Ho FCG HKFCG(PE), Institute Professional Services Panel member, and Managing Director, Governance Services, Computershare Asia*

Speakers: *Brian Wong, Partner, Baker McKenzie; Kevin Chan, Senior Director, Jones Lang LaSalle Corporate Appraisal and Advisory Ltd; and Bryan Ko, Head of Asia, Georgeson*

7 March

Signs of a shifting whistleblowing landscape in the workplace

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

Speakers: *William Tam ACG HKACG, Institute Technical Consultation Panel – Ethics, Bribery and Corruption Interest Group member, and Forensic Partner, Deloitte China; Yvonne Chan, Deputy Executive Director, Hong Kong Business Ethics Development Centre, ICAC; and Jun Kwong, Partner, MinterEllison LLP*

12 March

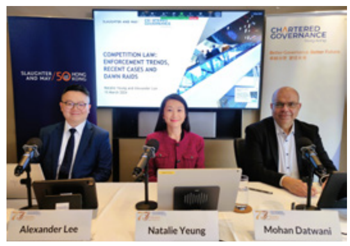
Revised PRC Company Law (effective 1 July 2024): a practical brief

Chair: *Patrick Wong FCG HKFCG, Institute NextGen Group Co-Convenor and Membership Committee member, and Director, Aoba CPA Ltd*

Speakers: *Alan Xu, Co-Managing Partner, Zhong Lun Hong Kong; and Jiaen Zhu, Partner, Zhong Lun Shenzhen*

13 March

Competition Law: enforcement trends, recent cases and dawn raids



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

Speakers: *Natalie Yeung, Partner, and Alexander Lee, Counsel, Slaughter and May*

21 March

Annual reporting by wholly foreign owned enterprises and representative offices in China

Speaker: *Shirley Sung ACG HKACG, Director, Corporate Services, Tricor China*

28 March

The art of resolving global disputes: navigating international commercial arbitration

Chair: Richard Leung JP FCG HKFCG, Institute Special Entry Scheme Interview Panel member, and Barrister-at-law, Des Voeux Chambers

Speaker: Look Chan Ho, Barrister, Des Voeux Chambers

ECPD seminars/Videos on Demand

ECPD training is organised by the Institute to facilitate its members and other governance professionals to acquire governance knowledge, corporate secretarial skills, and related thought leadership and best practices.

In addition to in-person seminars, ECPD training is delivered via live webinars or pre-recorded videos for maximum accessibility and flexibility.

Details of the Institute's forthcoming ECPD seminars and ECPD Videos on Demand are available in the Professional Development section of the Institute's website: www.hkcgi.org.hk.

For enquiries, please contact the Institute's Professional Development Section: (852) 2830 6011, or email: cpd@hkcgi.org.hk.

Membership

New Associates

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

Chan Hei Tung	Kwok Sin Ting	Ng Kwai Yung
Cheng Wan Wing	Kwong Tsz Wai	Ng Man Yee
Cheng Wing Ming	Lam Kam Kong, Nathaniel	Su Xiaohang
Cheung Wai Wing	Chan Hei Tung	Tam Wing Yan, Nathalie
Fang Yuqi	Lam Yiu Wang	Tsang Hei Man
Ho Tin Lai	Lee Po Yan	Wong Ming Sze
Hui Sze Tung	Leung Kin Yik	Zhong Wei
Ji Xin	Liu Ka Yi	

New graduates

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

Law Man Yu
Wong Ho Yin
Wong Kit Ying

Membership (continued)

Fee structure 2024/2025

The Council, having taken into consideration the current financial resources of the Institute, has approved the fee structure for members, graduates, students and Affiliated Persons for the financial year 2024/2025.

Subscription and related fees for members, graduates, students and Affiliated Persons for 2024/2025, which will apply from 1 July 2024 to 30 June 2025, are set out below.

Members and graduates

Items	Amount (HK$)
Annual subscription	
Fellows	2,750
Associates	2,350
Graduates (holding the status for less than 10 years, ie on or after 1 August 2014)	2,030
Graduates (holding the status for more than 10 years, ie before 1 August 2014)	2,750
Concessionary subscription	
Retired rate (note 1)	500
Reduced rate (note 1)	500
Hardship rate (note 1)	1
Senior rate	100
Election fees	
Fellows	2,100
Associates	2,100
Graduate advancement fee	2,030
Re-election fees	
Fellows	3,470
Associates	3,150
Graduates	2,630
Other fees	
Certificate replacement (member, graduate, Affiliated Person)	200 per copy
Membership or graduateship confirmation	250
Issue of physical membership or student card	200
Transcript application	200 per copy

The Chinese Mainland's Affiliated Persons Programme

Items	Amount (HK$)
Annual subscription	2,410
Registration fee (for new Affiliated Person who registered between 1 July and 31 December)	2,410
Registration fee (for new Affiliated Person who registered between 1 January and 30 June)	1,205

Students

Items	Amount (HK$)
Studentship registration and annual renewal	
Registration fee	1,400
Re-registration fee	1,650
Late studentship registration administrative charge (note 2)	700
CCA late registration charge (note 3)	700 per month
Late CCA studentship registration administrative charge (note 3)	700
Renewal fee	1,000
Examinations and exemptions	
Examination fee	1,400 per module
Examination postponement fee	1,000 per module
Examination appeal fee	2,200 per module
Exemption fee	1,400 per module
Exemption reapplication fee (note 4)	700
Exemption appeal application fee	1,400
Late exemption application administrative charge (note 5)	700
Other fees	
Transcript application	200 per copy
Examination technique workshop	850 per workshop

Notes:

1. For the above concessionary subscription rates, applications must be submitted to the Secretariat on or before Sunday 30 June 2024. All applications are subject to the approval of the Membership Committee, the decision of which is final. Members and graduates can submit their applications online via their user account. Application forms can also be downloaded from the Resources section of the Institute's website: www.hkcgi.org.hk.

2. An administrative charge will be applied to late studentship registrations submitted within the following specific periods for taking the corresponding examinations in November and June.

Late studentship registration period	Examination diet
1–15 August 2024	November 2024
1–15 February 2025	June 2025

3. For students who enrol in the Institute's Collaborative Course Agreement (CCA) programmes, an administrative charge will be applied to late studentship registrations submitted after the designated deadline. The updated policy on the late CCA studentship registration administrative charge is applicable to all CCA students who commence their CCA programme studies from 1 July 2024 and onwards.

Membership (continued)

4. An additional administrative charge for each exemption reapplication will be applied to students who do not settle their exemption fees within the designated period following the exemption approval.

5. An administrative charge will be applied to all late applications on further exemption and to all CCA full exemptions after the designated period.

All members, graduates and students must renew their status with the Institute by settling the respective annual subscription fee. The renewal notice and the debit note for the year 2024/2025 will be sent to all members, graduates and students by email in early July 2024. They should settle their payment no later than Monday 30 September 2024. Failure to pay by the deadline will constitute grounds for membership, graduateship or studentship removal.

For enquiries, please contact the Institute's Secretariat: (852) 2881 6177, or email as appropriate: member@hkcgi.org.hk, or student@hkcgi.org.hk.

Membership activities: March 2024

2 March
Calling of the guardians – from professional ethics to corporate governance (visit to the ICAC)

9 March
Mentorship training – emotionally fit leaders and professionals

16 March
Community Service – Easter cookies baking workshop

Forthcoming membership activities

Date	Time	Event
25 May 2024	10.00am–12.00pm	Fun & Interest Group – handmade soap-making workshop (月亮手工皂) (morning session)
25 May 2024	2.00pm–4.00pm	Fun & Interest Group – handmade soap-making workshop (月亮手工皂) (afternoon session)
30 May 2024	1.00pm–2.00pm	Effective communication skills for governance professionals – module 1: foundations for effective communication (free webinar)

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

Advocacy

The Society of Chinese Accountants & Auditors (SCAA) Spring Dinner 2024

On 26 February 2024, Ernest Lee FCG HKFCG(PE), Institute Immediate Past President, and Technical Partner, Deloitte China, attended the SCAA Spring Dinner 2024 as the Institute's representative to celebrate the Year of the Dragon.

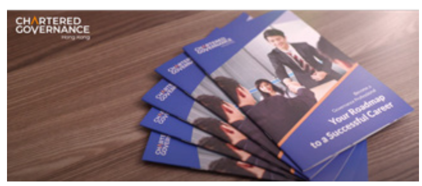
HKCPS luncheon talk on the 2024–2025 budget by the Financial Secretary

On 13 March 2024, David Simmonds FCG HKFCG, Institute President, Edith Shih FCG(CS, CGP) HKFCG(CS, CGP(PE), Honorary Adviser to Council, Past International President and Institute Past President, and Ivan Tam FCG HKFCG, Past President and Institute Representative to The Hong Kong Coalition of Professional Services (HKCPS), together with other Council members, attended a luncheon with the Financial Secretary, organised by HKCPS. The Honourable Paul Chan Mo-po, GBM GBS MH JP, Financial Secretary of the HKSAR Government, and Fellow of the Institute, delivered the keynote address at the luncheon, in which he discussed the latest budget and his vision for Hong Kong's financial future. Ms Shih joined the forum discussion panel with Mr Chan and spoke on behalf of the Institute.

Exciting behind-the-scenes look at the work of the Institute's Council, committees and Secretariat

Learn more about the Institute's strategic decision-making framework, the role and functions of Council, and the work of various committees and the Secretariat, and discover how their collaborative efforts are shaping the future of excellence in governance in Hong Kong and beyond.

Be a part of the Institute's journey towards Better Governance. Better Future, and experience the passion, expertise and dedication that drive us forward. The video can be found on the Institute's website: https://www.youtube.com/watch?v=k6_3d3ZcR1gfeature=youtu.be.



Advocacy (continued)

2024 Regional Board Secretaries and Corporate Governance Professionals Panel meetings in Beijing and Shanghai

The Institute organised two Regional Board Secretaries and Corporate Governance Professionals Panel meetings (regional meetings), under the theme of ESG Reporting and Climate Disclosure Practices, in Beijing and Shanghai on 6 and 7 March 2024, respectively. A total of 84 local board secretaries, directors and senior executives from companies listed in Hong Kong participated in the two regional meetings.

Dr Gao Wei FCG HKFCG(PE), Chief Representative, Beijing Representative Office, chaired both meetings. Ellie Pang FCG HKFCG(PE), Institute Chief Executive, talked about the mission and work of the Institute at the meeting in Beijing. Ms Pang and Dr Gao, along with speakers from the China Association for Public Companies, Lenovo Group, Fosun Group, PwC, S&P Global Ratings and Oliver Wyman, shared their insights at the meetings from various perspectives and discussed a range of practical ESG-related issues.

The Institute would like to express its sincere thanks to China Minsheng Bank and Fosun Group for their invaluable support of the two meetings. Additionally, the Institute would like to extend its gratitude to the speakers and participants for their active involvement and support of the Institute.







Academic Advisory Panel luncheon

The Institute held its Academic Advisory Panel (AAP) luncheon on 21 March 2024, which was attended by 12 AAP members or their representatives from local universities. CK Low FCG HKFCG, Institute Council member and Qualifications Committee Chairman, thanked the members and academics for their staunch support of the Institute.

Recent developments and the promotion of the Institute's professional qualification to the younger generation, as well as other educational matters, were shared and discussed during the luncheon.

Chartered Governance Qualifying Programme (CGQP)

June 2024 examination diet timetable

The June 2024 examination diet of the CGQP will be held between 11 and 20 June 2024.

Week one

Date/Time	11 June Tuesday	12 June Wednesday	13 June Thursday
9.15am–12.30pm*	Hong Kong Company Law	Interpreting Financial and Accounting Information	Corporate Secretaryship and Compliance

Week two

Date/Time	17 June Monday	18 June Tuesday	19 June Wednesday	20 June Thursday
9.15am–12.30pm*	Corporate Governance	Strategic Management	Risk Management	Hong Kong Taxation Boardroom Dynamics

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

Key dates

Key dates	Description
7 May 2024	Pre-released case studies for the Part 2 modules: Risk Management, Strategic Management and Boardroom Dynamics
23 May 2024	Release of examination admission slips
11–20 June 2024	Examination period
11 July 2024	Closing date for examination postponement applications
Late August 2024	Release of examination results
Late August 2024	Release of examination papers, mark schemes and examiners' reports
Early September 2024	Closing date for examination results review applications

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

For details of the CGQP examinations, please visit the Examinations page under the Chartered Governance Qualifying Programme subpage of the Studentship section of the Institute's website: www.hkcgi.org.hk.

For enquiries, please contact the Qualifications and Assessments Section: (852) 2830 6010, or email: exam@hkcgi.org.hk.

Chartered Governance Qualifying Programme (CGQP) (continued)

Learning support

The Institute provides a variety of learning support services for students to assist them with preparing for the CGQP examinations.

Examination technique online workshops and student seminars

Video-recorded examination technique online workshops and student seminars are available for subscription to assist with preparing for the CGQP examinations.

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

For enquiries, please contact the Qualifications and Assessments Section: (852) 2830 6010, or email: exam@hkcgi.org.hk.

Studentship activities: March 2024

20 March

Student Gathering: sharing from outstanding students in the CGQP examinations (focusing on part one)

Professional talks, career talks and fairs at universities

The Institute continues to liaise closely with universities to inspire and encourage more young people to consider governance as a career. The Institute arranged with the following universities to hold a number of professional talks, career talks and fairs for their respective students in March 2024.

Date	Univeristy
1 March	The Education University of Hong Kong
13 March	Lingnan University
15 March	The Chinese University of Hong Kong, Shenzhen
21 March	Hong Kong Metropolitan University
1, 22 and 28 March	The Hong Kong Polytechnic University

Notice

Update of the CGQP studentship policy

The CGQP studentship policy for the following has been updated with effect from 1 July 2024:

- studentship registration (Collaborative Course Agreement (CCA) programme entry)
- studentship renewal and maintenance requirements (CCA programme students)
- study timeframe requirements (CCA programme students)
- application for CCA full exemption
- application for further exemption, and
- studentship removal.

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

Featured job openings

Company name	Position
MTR Corporation Ltd	Assistant Manager – Company Secretarial (Ref: 240000HU)
MTR Corporation Ltd	General Manager – Governance and Company Secretarial (Ref: 240000UP)
The Hong Kong Chartered Governance Institute	Officer (Ref: QA2024-05)
The Hong Kong Chartered Governance Institute	Senior Officer/Officer, Marketing and Communications (Ref: MKT 2024-05)

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

New HKEX climate-related disclosure requirements

Hong Kong Exchanges and Clearing Ltd (HKEX) has published the conclusions to its consultation on the enhancement of climate-related disclosures under its ESG framework. The consultation set out proposed changes to the Hong Kong Listing Rules to align with the IFRS S2 Climate-related Disclosures published by the International Sustainability Standards Board (ISSB) in June 2023.

Key changes

A new Part D will be introduced to Appendix C2 of the Hong Kong Listing Rules, setting out the Environmental, Social and Governance Reporting Code (currently the Environmental, Social and Governance Reporting Guide). Part D sets out disclosure requirements for climate-related risks and opportunities to which issuers are exposed under four core pillars, namely governance, strategy, risk management, and metrics and targets. Non-climate-related disclosure requirements, as set out in Parts A to C of the ESG Reporting Code, will continue to apply.

- Scope 1 and Scope 2 greenhouse gas (GHG) emissions disclosure will be mandatory for all (both Main and GEM board) listed issuers in Hong Kong in respect of financial years from 1 January 2025.
- Scope 3 GHG emissions disclosure will be mandatory for LargeCap issuers (defined as Hang Seng Composite LargeCap Index constituents) for financial years from 1 January 2026 and all Main Board issuers will be required to disclose their Scope 3 emissions on a comply or explain basis for financial years from 1 January 2025.
- Issuers will be required to disclose, among other things, their governance process, controls and procedures to monitor and manage climate-related risks and opportunities, the progress of their transition plans and climate-related targets, and their internal carbon price if they have one. These non-GHG emissions disclosure requirements will be phased in. For LargeCap issuers, they will be subject to comply or explain in respect of financial years commencing on or after 1 January 2025, becoming mandatory from 1 January 2026. For Non-LargeCap Main Board issuers, they will be subject to comply or explain from 1 January 2025. For GEM issuers, they will be subject to voluntary disclosure from 1 January 2025.

Implementation reliefs

Some aspects of the new requirements are subject to implementation reliefs. For example, the new Scope 3 GHG emissions disclosure requirement is subject to a 'reasonable information relief'. This means that an issuer is required to use all reasonable and supportable information without undue costs and effort when the issuer selects the measurement approach, inputs and assumptions it uses in measuring Scope 3 GHG emissions. Further reliefs include: a 'capabilities relief' (an issuer's skills, capabilities and available resources when assessing and disclosing climate-related information are acknowledged); a 'commercial sensitivity relief' (an issuer is allowed to withhold disclosure of commercially sensitive information regarding climate-related opportunities, provided that specific conditions are met); and a 'financial effects waiver' (an issuer can provide qualitative information instead of quantitative information when disclosing climate-related impacts, provided that certain conditions are satisfied).

Guidance

HKEX has also published guidance (Implementation Guidance) to assist issuers' compliance with the new climate-related disclosure requirements. HKCGI will shortly be publishing a guidance note providing governance professionals with an overview and executive summary of the new disclosure requirements. The guidance will provide direct tips to assist governance professionals in their compliance and advisory roles relating to the new requirements.

The consultation conclusions are available on the HKEX website: www.hkex.com.hk. The forthcoming HKCGI guidance note will be published in the Thought Leadership section of the Institute's website: www.hkcgi.org.hk.