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The journal of the Hong Kong
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ACRU 2024 review

Climate disclosure

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July 2024

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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.

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Membership and studentship statistics update

As of 31 May 2024, the statistics were as follows:

Students: 2,384 **Graduates:** 370 **Associates:** 6,430 **Fellows:** 876

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ACRU at 25

Before turning to the theme of this month's journal, I'd like to update you on a major innovation that our Institute will be launching later this month. On the back of the success of our ESG Reporting Certification Course, we recognise that there is a need in the market for a professional body for those involved in sustainability policy and practice in Hong Kong, the Chinese mainland and beyond. Our Sustainability Governance Academy will be the first of its kind in Hong Kong and represents no small achievement for our Institute. It will not only facilitate expertise sharing and training, but will also provide a voice for those working in sustainability locally and in the wider region. I am very excited to see this innovation become a reality and hope to see you at the launch on 31 July 2024 at the HKEX Connect Hall.

This month's CGj covers our latest Annual Corporate and Regulatory Update (ACRU), which celebrates its 25th birthday. As one speaker at this year's event pointed out, 25 years ago emails were still a novelty and around 40% of the world's population was yet to be born. Many speakers commended the Institute on its quarter-of-a-century track record in hosting this dialogue.

Over the years, ACRU has tracked how governance and compliance expectations have been changing. One salient trend – no surprises here – is that today anyone involved in governance, risk and compliance work needs to stay up to date with a much more extensive spectrum of issues than they did a quarter of century ago. Back then, our members were more narrowly focused on the listed company sector and our 25th ACRU is a clear demonstration of the degree to which that core scope of practice has expanded to include a broad range of sustainability and technology issues.

This year's ACRU, for example, included an update on the new climate-related disclosure requirements about to be implemented under Part D of the ESG Code in the Listing Rules, as well as an in-depth analysis of the potential risks involved in the artificial intelligence (AI) tools already commonly in use. In addition, the forum was able to cover a large variety of issues, including all the latest developments in competition compliance, corporate reporting, directors' duties, company law reform, data security, data breaches, and ethics and anti-corruption.

Two other trends were in evidence at this year's ACRU. The first is the degree to which regulators, both here in Hong Kong and also more generally in the region, have been collaborating to improve the efficiency with which they enforce the market

rules. The second is the increased liability faced by directors, managers and professional practitioners with responsibilities for preventing fraud and malpractice. Speakers from Hong Kong Exchanges and Clearing Limited and the Securities and Futures Commission warned that, even where individuals are not directly involved in wrongdoing, they can be held accountable if they fail in their duties to maintain the appropriate internal controls.

In the context of the above trends, the work of governance professionals is a good deal more complex in today's regulatory environment, but rest assured that the Institute is dedicated to supporting its members in rising to this challenge. We have continued to build and expand our professional development services. As well as the Academy mentioned above, we have launched new certification courses in both ESG and anti-money laundering and counter-financing of terrorism (AML/CFT). We have also launched a new Cantonese-based Foundation Course in Listing Rules compliance. That got underway at the end of last month and two further sessions will be held this month and in August.

David Simmonds FCG HKFCG

第25届企业规管最新发展研讨会

在谈及本月会刊的主题之前，我想先向大家介绍一下公会将于本月底推出的一项重要创新举措。在公会的ESG报告证书课程取得成功的基础上，我们意识到市场需要一个专业机构，为香港、内地和其他地区参与可持续发展政策和实践的人员提供服务。在香港同类机构中，公会可持续发展治理学院将是首创，也是公会的一项重要成就。它不仅能够促进专业知识的共享和持续培训，还将为本地区从事可持续发展工作的人士提供发声的机会。我很高兴看到这一创新成为现实，并希望能在2024年7月31日于香港交易所大厅举行的启动仪式上见到大家。

本月会刊报道了公会今年举办的第25届企业规管最新发展研讨会。正如今年研讨会上一位发言人所指出，25年前，电子邮件还是个新鲜事物，全球约40%的人口尚未出生。许多发言者对于公会举办这一研讨会已有四分之一个世纪的历史表示赞赏。

多年来，该研讨会一直在关注治理和合规期望是如何变化的。一个显著的趋势是，与四分之一世纪前相比，如今任何从事治理、风险和合规工作的人都需要了解更广泛的前沿问题，这一点并不令人意外。当时，公会会员更多地将精力集中在上市公司领域，

而第25届企业规管最新发展研讨会则清楚地表明，治理人士的核心业务范围已经扩展到包括广泛的可持续发展和技术问题。

例如，今年的研讨会包括了与气候相关的新披露要求这一议题，这将纳入《上市规则》中的《环境、社会与管治报告守则》D部分的内容，同时，深入分析了已经广泛使用的人工智能(AI)工具所涉及的潜在风险。此外，研讨会还涵盖了广泛的议题，包括竞争合规、公司报告、董事职责、公司法改革、数据安全、数据泄露以及道德和反腐败方面的所有最新进展。

今年的研讨会呈现出两个趋势。一个趋势是，香港以及本地区更广泛的监管机构一直在通力合作，提高执行市场规则的效率。其次是董事、经理和专业执业人士在防止欺诈和舞弊方面所面临的责任增加。来自香港交易所和证券及期货事务监察委员会的发言人警告说，即使个人没有直接参与不法行为，但如果他们未能履行职责保持适当的内部控制，也会被追究责任。

在上述趋势下，治理专业人士的工作在现今的监管环境下变得更为复杂，但请放心，公会将全力支持会员迎接挑战。公会将继续建立和扩大我们的

专业发展服务。除可持续发展治理学院外，公会还推出了ESG和反洗钱及反恐融资(AML/CFT)的新证书课程。此外也推出了一个新的《上市规则》合规基础课程(广东话)。该课程已于上月底开课，本月和八月还将举办两期。



司马志先生 FCG HKFCG

Hong Kong's new ESG Code – are you ready?

ACRU 2024 review – part one



The Institute's 25th Annual Corporate and Regulatory Update (ACRU), held in hybrid mode on 7 June 2024, was a useful opportunity to get all the latest information and advice regarding the incoming regime for climate disclosures in Hong Kong. CGj highlights the key takeaways relevant to this, as well as other top compliance and governance concerns discussed at the forum.

This year, the Institute's ACRU forum is celebrating its 25th birthday. Clocking up a track record of a quarter of a century is no small feat for a CPD forum and many speakers at this year's event commended the Institute on this achievement.

ACRU has grown to become the most popular ECPD event hosted by the Institute. The one-day conference brings together governance stakeholders in an open dialogue about the top issues in governance and compliance. This year's forum updated participants on everything from regulatory filing dates to high-level reminders about what good governance and compliance should look like.

Preparing for Hong Kong's enhanced climate-related disclosure regime

In his ACRU presentation, Paul Malam, Head of Policy and Secretariat Services, Listing Division, Hong Kong Exchanges and Clearing Limited (HKEX), gave practical guidance on how companies can prepare for the new climate-related disclosure requirements soon to be implemented under Part D of the ESG Code in the Listing Rules.

GHG emissions disclosures

The new requirements applicable to the disclosure of greenhouse gas (GHG) emissions, in particular Scope 3 GHG emissions disclosures, have been getting a great deal of attention

from the market. Since Scope 3 emissions comprise those generated by the entities in issuers' value chains (including both upstream suppliers and downstream customers), collecting the relevant data is likely to be a challenge.

Recognising this, together with the fact that listed companies in Hong Kong vary greatly in terms of the resources and capabilities available to them, HKEX has opted to phase in the requirements relating to Scope 3 GHG emissions in a way that allows smaller-scale issuers more time to prepare.

It will be mandatory for all listed companies to report on their Scope 1 and Scope 2 GHG emissions (those generated by the issuer itself and from its energy purchases, respectively) from financial years beginning 1 January 2025. This is

quite straightforward and Mr Malam pointed out that over 93% of issuers are already in compliance.

Scope 3 disclosures will be subject to 'comply or explain' for all Main Board issuers from financial years commencing on or after 1 January 2025. For LargeCap issuers (constituents of the Hang Seng Composite LargeCap Index), Scope 3 reporting will become mandatory from financial years commencing on or after 1 January 2026 (see 'New climate requirements effective dates'). GEM issuers will be given the flexibility to report on Scope 3 and the other new ESG Code requirements on a voluntary basis.

Implementation reliefs

Mr Malam added that Scope 3 disclosures will also be subject to

Highlights

- all Main Board listed companies will be required to disclose Scope 3 GHG emissions on a comply-or-explain basis from January 2025 and, for LargeCap issuers, this requirement will become mandatory from January 2026
- to address issuers' concerns about the more challenging climate-related disclosures, four different categories of implementation relief have been introduced
- even where directors and professional practitioners are not directly involved in fraud, they may find themselves subject to enforcement actions by regulators for their part in the control failures that permitted the fraud to take place

New climate requirements effective dates

	Scope 1 and Scope 2 GHG emissions	Other new climate requirements
LargeCap issuers*	Mandatory Financial years commencing on or after 1 January 2025	Comply or explain Financial years commencing on or after 1 January 2025
Main Board issuers (other than LargeCap issuers)		Mandatory Financial years commencing on or after 1 January 2026
GEM issuers		Voluntary Financial years commencing on or after 1 January 2025

* Issuers that are Hang Seng Composite LargeCap Index constituents throughout the year immediately prior to the reporting year.

a 'reasonable information relief' – meaning that organisations will only be required to report reasonable and supportable information available at the reporting date that can be obtained without undue cost or effort. Four implementation reliefs have been introduced to address concerns over the reporting challenges that issuers may face.

In addition to the reasonable information relief, some of the new ESG Code requirements will be subject to a:

- capabilities relief – organisations will only be expected to report to a level based on the skills, capabilities and resources available to them
- commercial sensitivity relief – organisations will not be required to disclose climate-related opportunities if that would seriously prejudice the economic benefits that could

be realised in pursuing such opportunities, and

- financial effects relief – where the financial effects of climate change are difficult to quantify, they may be disclosed on an aggregated basis, or organisations may opt to give qualitative disclosures.

HKEX recognises that sustainability reporting is a journey and it would be unrealistic to expect perfection from day one, Mr Malam said. Accordingly, it has published its Implementation Guidance for Climate Disclosures, which provides practical guidance on preparing relevant disclosures. The Implementation Guidance, for example, includes a table of sources of publicly available scenario models to assist issuers in their compliance with the requirement to disclose the impact of different scenarios of climate change on their business. Moreover, Mr Malam added that

issuers should adopt a method that is commensurate with their circumstances in its scenario analysis.

'In its first ESG report, an issuer can use qualitative storylines and then try to beef up the disclosure in subsequent reports. We don't expect perfection from the very start,' he said.

The bigger picture

To conclude, Mr Malam pointed out that the new ESG Code requirements are part of a larger roadmap for Hong Kong. They represent the first step in preparing listed issuers for the sustainability disclosure standards currently under development by the Hong Kong Institute of Certified Public Accountants (HKICPA).

HKICPA is the standard-setter for developing local sustainability disclosure standards aligned with those of the International Sustainability Standards Board (ISSB). The Hong Kong standards

“
just as a doctor's calling
is to heal patients and
a lawyer's calling is to
uphold the rule of
law, the calling of a
governance professional
is to serve as the guardian
of good governance
”

Mary Lau, Executive Director, Hong Kong Business Ethics Development Centre, Independent Commission Against Corruption

are intended for cross-sectoral observance, including for listed companies and regulated financial institutions. The government will work with financial regulators and stakeholders to launch a roadmap on the appropriate adoption of the ISSB Standards within 2024 to facilitate green and sustainable financial services.

Managing conflicts of interest

Conflicts of interest have been a growing area of enforcement work for HKEX and Jon Witts, Head of Enforcement, Listing Division, HKEX, anticipates that it will continue to be a major theme of its investigations.

His main message was that conflicts can arise in many different forms, including between the interests of an organisation and the personal interests of individuals working for it, and also when an individual

has potentially conflicting duties to different organisations. The law and regulations do not give a full checklist of what constitutes a conflict, but they do make clear that the scope is broad and that directors are under a very wide duty to be transparent about any potential conflict. It is not a defence for directors to argue that, since they were not influenced by the potential conflict, they didn't need to declare it.

'If you even think there's a sniff of a conflict, then you need to do something about it – speak up, get it addressed, get it out in the open,' he said.

Mr Witts added that declaring a conflict doesn't necessarily mean that the relevant business has to be abandoned. In fact, it is the transparency that enables the conflict to be managed properly and therefore potentially for the business to proceed.

Where theory meets practice

Conflicts of interest are also a central concern of the Hong Kong Business Ethics Development Centre (HKBEDC) of the Independent Commission Against Corruption (ICAC). This year's ACRU was fortunate to have Mary Lau, Executive Director of the ICAC's HKBEDC, to speak on this theme. Her presentation focused on best practices with real-life scenarios.

When to avoid and when to declare.

What should you do if you are approached by a friend who asks you to help him or her apply for a new position at your company? The relevant principle to bear in mind here is the need to 'avoid or declare' a

conflict of interest. Whether to avoid or declare, Ms Lau pointed out, would be based on your own involvement in the hiring process. If you are not involved, you can avoid the conflict of interest by telling your friend to contact the relevant department handling the hiring process. If you are involved, you would need to declare to the company as soon as possible your potential conflict to protect yourself and achieve the transparency mentioned by Mr Witts earlier. Arrangements should then be made by the company to manage the declared conflict of interest.

Mishandling conflicts of interest can distort and cast doubt on the reliability of one's professional judgement, attracting criticism and suspicion. In addition to breaching the code of conduct of the company or the profession, it can lead to criminal offences such as deception or conspiracy to commit fraud, if fraudulent acts such as falsifying documents to conceal conflicts are involved. On the other hand, if an advantage is offered or accepted during the mishandling of conflicts of interest, it may constitute a breach of the Prevention of Bribery Ordinance (POBO).

When is a gift a bribe? The POBO, which is enforced by the ICAC, establishes the offence of offering and receiving a bribe with potential penalties including imprisonment for seven years and a fine of HK\$500,000.

Nevertheless, there can be circumstances when the right way to handle this common conflict of

interest scenario is not immediately obvious. The Q&A at the end of Ms Lau's presentation raised a question relevant to this issue. If an employee of a service provider is offered a gift from a client in appreciation of his or her work, could this be deemed as bribery?

In answering this question, Ms Lau referred to the four defining elements of a bribery offence under the POBO, which can be easily memorised as the 'four As' – any Agent may commit a bribery offence if, without his or her principal's Approval, he or she solicits or accepts any Advantage for any Act in relation to the principal's affairs. The offeror of the advantage in such circumstances may also contravene the POBO.

Ms Lau pointed out that in the scenario described above, the employee is an agent while the gift, regardless of its monetary value, is an advantage offered in relation to the agent's official duty. The employee should therefore refer to the company's code of conduct to see whether staff are allowed to accept advantages on stated conditions and should seek approval from the principal for the acceptance if necessary. Ideally, the code should specify the conditions under which the company allows staff to receive advantages – for example, where the interest of the company will not be impaired and the staff member's objectivity will not be affected, the advantage is not solicited and the value of the advantage is nominal.

Accountability for control failures

The importance of having effective internal controls is a staple ACRU

theme. Regulatory investigations that uncover fraud or malpractice invariably also uncover underlying problems with the internal controls that are supposed to prevent fraud and malpractice from occurring.

This year, however, there was an added dimension to this theme – who should be accountable for failures of internal controls? In this context, Mr Witts pointed out that regulators and law enforcement agencies globally are increasingly taking the view that those directly guilty of malpractice are not the only legitimate target of investigation and enforcement.

'No matter what capacity you're in, whether you're a director or working with the directors, whether you're an internal or external auditor – everyone's got a role to try to make sure that bad things can't happen,' he said.

He pointed out that the controls in place to ensure compliance and good governance are predicated on the responsibility of key individuals to play their part in monitoring what is going on and stepping in where problems arise. Even where such individuals are not directly involved in malpractice, they may find themselves under investigation for their part in the control failures that enabled the malpractice.

Similarly, the presentation by Flora Ma, Director, Corporate Finance Division, Securities and Futures Commission (SFC), highlighted both the deliberate schemes by individual directors and senior managers to defraud the company and the

shareholders, and the board's failure in its duty to make proper inquiries and exercise independent judgement.

She emphasised that directors have a responsibility to develop and maintain appropriate and effective internal controls and risk assessment systems to safeguard the company's assets, prevent and detect fraud, and ensure the accuracy of the company's financial reports. Directors should also regularly review and assess the effectiveness of the internal control systems and make appropriate enhancements where needed.

'We believe a robust internal control system is the cornerstone of good corporate governance, enabling directors to fulfil the expectations of shareholders and stakeholders, and to guide the companies to sustainable growth and success,' Ms Ma said.

Her colleague and fellow ACRU presenter, Charles Chan, Director, Enforcement Division, SFC, also addressed this theme. He discussed the recent case against Mayer Holdings Ltd before the Market Misconduct Tribunal (MMT) in which nine current and former senior executives were fined a total of HK\$4.65 million for late disclosure of inside information. In addition, the MMT imposed disqualification orders against the executives, one of whom was a former company secretary and financial controller of the company.


'Senior executives of listed companies, including executive and non-executive directors and company secretaries, have duties to implement

effective corporate governance, to ensure full compliance with the law and the rules and regulations, and to prevent and detect occurrences of corporate fraud and misconduct. They should be inquisitive, professional and diligent, and should act with integrity. Our job is to hold those who fail to discharge their duties personally accountable. Each one of us needs to do our part to uphold financial market integrity in Hong Kong as an international financial centre,' Mr Chan said.

The fact that a key defendant in the Mayer Holdings case was a company

secretary brought the message home to the ACRU audience that the responsibilities of governance professionals come with elevated liabilities. Ms Lau of the HKBEDC urged governance professionals to recognise and uphold their professional calling.

'Just as a doctor's calling is to heal patients and a lawyer's calling is to uphold the rule of law, the calling of a governance professional is to serve as the guardian of good governance, thereby contributing to Hong Kong's economic stability, prosperity and level playing field,' she said.

She added that governance professionals are in a unique position to assist organisations to uphold the highest standards of governance and to build up a strong ethical culture. They should use their expertise in risk management, compliance and stakeholder engagement to promote and shape organisations' compliance and integrity cultures. 

Don't miss the Climate-related Disclosure Update hybrid seminar to be hosted by the Institute and HKEX on 31 July 2024. More details are available on the Institute's website: www.hkcg.org.hk.



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Technology issues featured prominently in this year's ACRU. CGj outlines the main message of the forum in relation to the management of artificial intelligence (AI) tools, data security and paperless communications.

As organisations increasingly integrate emerging technologies into their operations, the need for effective internal controls relating to the attendant risks and for revised governance frameworks better adapted to the digital era has become increasingly evident. This second part of our ACRU review summarises the key takeaways of the forum relating to technology governance.

Managing AI tools in financial markets

Henry Tsang, Director, Intermediaries Supervision, Intermediaries Division, Securities and Futures Commission (SFC), focused his ACRU presentation on the risks associated with using generative AI (Gen AI) tools, especially those affecting financial market stability, market integrity and investor protection.

He attributed the meteoric rise of ChatGPT, the most well-known Gen AI chatbot, to its ability to respond to natural language prompts so users don't need to be programming experts to use it. Nevertheless, Mr Tsang suggested that financial regulators and the industry alike should scrutinise how the emerging technology actually works to improve their understanding and management of the risks involved in order to harness its opportunities.

Hallucination risk

As Gen AI is trained to guess the next word in a sequence based on probabilities, Mr Tsang emphasised that it can make things up that often

seem plausible – giving rise to the hallucination risk. He cited the case of a lawyer in the US who used ChatGPT to help him write a federal court filing. In the filing, ChatGPT cited at least six cases that do not exist, but insisted they were real when the lawyer asked further.

Bias and intellectual property risks

Both traditional and Gen AI models are trained on vast amounts of data, some of which may have been used without the relevant copyright owners' consent. This exposes developers and users of the AI models to lawsuits on copyright infringement.

Equally well documented is the tendency for AI models, both traditional and generative, to replicate the same biases found in its training data. Mr Tsang cited the case of Amazon's recruitment AI application that learned to favour

male over female job applicants because it was fed the CVs of mostly male employees.

Misinformation risk

Another well-known risk associated with Gen AI is its ability to generate highly convincing fakes. An example of this was when an AI-generated image of a fire at the Pentagon in May 2023 went viral on social media. The picture, along with the caption stating that there had been an explosion near the Pentagon, caused sharp falls in global equity and bond markets. This highlights the disturbing potential of this technology for market manipulation and damage to market stability.

Concentration risks

Equally concerning from a market stability perspective are the risks emanating from the ownership concentration of the AI sector. A very small number of service providers currently supply the necessary

Highlights

- the ability of generative AI to create highly convincing fakes has sobering implications in terms of the threats this technology poses to market stability
- data users need to establish clear internal policies and procedures on data governance and data security, including appointing a suitable individual in a leadership role to have specific responsibility for data security
- a listed company may rely on implied consent for disseminating corporate communications electronically, provided that this is permissible under its articles of association and the relevant laws of the jurisdiction where the company is incorporated

technology and infrastructure to develop and run AI models. This has given rise to misgivings about the operational resilience of the financial firms using this technology – how would they be able to maintain critical operations and client services if their service provider fails?

Moreover, this concentration also results in a ‘herding’ risk, which is likely to exacerbate shocks and amplify market volatility in times of market stress. If financial market participants are all using the same AI models supplied by the same providers, the risk is then that all these AI models would behave in the same way and this herding behaviour could undermine financial stability.

Cybersecurity risks

Cybersecurity risks are a top concern for organisations across all sectors of the economy and society, but those associated with using Gen AI technology are still relatively underappreciated. Mr Tsang walked the ACRU audience through the many ways that cybercriminals have sought to exploit AI models and their underlying data. These range from hackers stealing confidential information used to train the AI, through to tricking AI models into outputting the desired answers via adversarial attacks, data poisoning or prompt injection attacks.

How is the market adapting?

To conclude, Mr Tsang examined how the SFC-regulated firms are adapting to the above risks. Methods include:

- having a human in the loop to review the AI outputs for factual accuracy
- warning users that answers created by AI may not be accurate, and
- using Retrieval Augmented Generation – a technique for enhancing the accuracy and reliability of Gen AI responses by providing a ground truth from which to retrieve accurate and up-to-date information.

Data security

Another issue that has been high on the agenda of governance professionals over the past years is the increased vigilance needed with regards to data security. Two speakers from the Office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD), updated ACRU on the latest developments relating to this theme.

Data security and managing data breaches

Brad Kwok, Chief Personal Data Officer, Compliance & Enquiries Division, PCPD, shared some relevant statistics from the PCPD on the upward trend in the number of data breach incidents reported in Hong Kong. In 2023, the PCPD received 157 data breach notifications, while the number of data breach incidents involving hacking more than doubled, showing a significant increase from 29 cases in 2022 to 64 cases last year. In light of this, Mr Kwok focused his presentation on how organisations can improve their data security measures and how they can best handle data breaches to minimise the damage caused.

Improving data security measures. Data Protection Principle 4 in Schedule 1 to the Personal Data (Privacy) Ordinance (PDPO) requires data users to take all practicable steps to protect the personal data they hold against unauthorised or accidental access, processing, erasure, loss or use. Mr Kwok stressed the need for data users to establish clear internal policies and procedures on data governance and data security. This will include appointing a suitable individual in a leadership role to have specific responsibility for data security. Moreover, data users should provide sufficient training to staff on a regular basis. Data users should also implement technical and operational security measures, as well as carry out periodic risk assessments to identify risks and draw up mitigation measures for the identified risks in a timely manner. In the event that a data user engages a data processor to process personal data, the data user should adopt contractual or other means to properly manage the data processor to ensure compliance with the data security requirements.

Devising a data breach response plan.

The impacts of a data breach incident – both in terms of reputational damage and financial cost – can be devastating. Mr Kwok outlined a number of recommendations on how data users can manage a data breach to minimise the harm caused.

The key takeaway here is to devise a data breach response plan. This plan should include a set of procedures to be followed in the event of a data breach, as well as the strategy for identifying, containing, assessing and

managing the impact brought about by the incident from start to finish.

Mr Kwok also addressed the essential steps involved when responding to a data breach. These steps entail the immediate gathering of all the essential information, containing the data breach and assessing the risk of harm. Once information has been gathered, organisations should consider giving data breach notifications to the affected data subjects, the PCPD and other law enforcement agencies, and should ensure that the breach is adequately documented for a post-breach review.

Cross-boundary flow of personal information within the GBA

Personal information processors and recipients who are registered (for organisations) or located (for individuals) in the Greater Bay Area (GBA) may now easily carry out cross-boundary transfers of personal information by executing agreements that adopt the Standard Contract for Cross-boundary Flow of Personal Information Within the Guangdong-Hong Kong-Macao Greater Bay Area (Mainland, Hong Kong) (GBA SC), in compliance with the requirements of the relevant laws and regulations of their respective jurisdictions,

including, in particular, the Personal Information Protection Law of the PRC and the PDPO of Hong Kong. In this context, Clemence Wong, Senior Legal Counsel (Acting), PCPD, centred her ACRU presentation on the obligations and responsibilities of personal information processors and recipients under the GBA SC.

She emphasised at the outset that the PCPD recommends that data users adopt the GBA SC, which applies to cross-boundary transfers of personal information between Hong Kong and nine cities in the Chinese mainland that are within the GBA.



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'By adopting the GBA SC, enterprises and organisations can demonstrate that they have taken all reasonable precautions and have exercised due diligence to ensure that the relevant data will not be collected, held, processed or used in the Chinese mainland in any manner that, if it took place in Hong Kong, would be in contravention of the PDPO,' she said.

Under the GBA SC, personal information processors are required, among other things, to:

- obtain the consent of personal information subjects prior to the cross-boundary transfer of personal information, in accordance with the laws and regulations of the jurisdiction concerned
- execute agreements that adopt the GBA SC, and
- conduct a personal information protection impact assessment on the intended transfer within three months before the filing date.

Data users in Hong Kong who wish to rely on the GBA SC when conducting cross-boundary flows of personal data from Hong Kong to the specified Chinese mainland cities are also reminded of their existing obligations, including the six Data Protection Principles, under the PDPO.

Paperless communications

This year's ACURU updated participants on the legislative and regulatory reforms aimed at modernising and streamlining

corporate communications for both listed and non-listed companies.

The implications for listed companies

In December 2023, Hong Kong Exchanges and Clearing Limited (HKEX) revised the Listing Rules to enhance its listing regime on paperless communications. In his ACURU presentation, Patrick Yu, Senior Vice-President, Listed Issuer Regulation, Listing Division, HKEX, highlighted the three major changes under the revised rules:

1. issuers are required to send submissions to HKEX electronically only
2. the number of documents that need to be submitted to HKEX has been reduced, and
3. issuers are mandated to send corporate communications to shareholders through electronic means.

Regarding point three above, Mr Yu explained that a listed company may rely on implied consent for disseminating corporate communications electronically, provided that this is permissible under its articles of association and the relevant laws of the jurisdiction where the company is incorporated. He added that over 90% of issuers do not have articles that restrict electronic submission.

Mr Yu added that issuers can choose to fulfil the requirement for electronic disseminations either by sending the documents to

shareholders individually through electronic means (for example, by email), or by making the documents available on the HKEX's and issuer's websites. One caveat here, however, is that actionable corporate communications (such as documents seeking shareholder instructions as to how they want to exercise their rights) must be sent to shareholders individually. These communications can be disseminated in hard copy form only if functional electronic contact details are not provided, or if the laws and regulations applicable to the listed company concerned do not allow electronic communication. An exception, as Mr Yu pointed out, is the provisional allotment letter for a rights issue. The letter, in addition to being an actionable corporate communication, is also a temporary document of title and, accordingly, must be despatched in printed form under the Listing Rules.

The wider implications for Hong Kong

The above measures are germane to listed companies, but the government is keen to promote paperless communications more widely in Hong Kong. To this end, it has proposed amendments to the Companies Ordinance to enable both listed and non-listed companies incorporated in Hong Kong to benefit from the implied consent mechanism. The government hopes to introduce a Companies Ordinance amendment bill to this effect into the Legislative Council in the second half of 2024.

Carol Hau, Solicitor (Company Law Reform), Companies Registry, updated ACRU on these proposed amendments to the Companies Ordinance. Similar to the HKEX reforms, the amendments to the Companies Ordinance would introduce an implied consent regime for listed and non-listed companies incorporated in Hong Kong for dissemination of corporate communications by means of a website, where there is a provision in their articles of association that permits dissemination of corporate communications by this means. Ms Hau explained that companies should

therefore first examine their articles of association to assess whether there is such a provision.

In addition, companies would need to comply with the requirement to send a first-time notification to their shareholders in hard copy form, or electronically if the express consent of such shareholders has been obtained, to inform them of the new arrangements before the implementation. Listed companies are not required to send a separate notification to each shareholder every time a new document is uploaded to their website, under the

implied consent regime. However, non-listed companies must first obtain the express consent of each shareholder before the requirement for separate notification can be obviated. Companies should also bear in mind that shareholders are entitled to request that companies provide documents or information in hard copy form under the Companies Ordinance. The implied consent regime would be additional to the existing express consent and deemed consent regimes for dissemination of corporate communications by means of a website under the Companies Ordinance. [CGI](#)

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The road ahead

ACRU 2024 review – part three



This third and final part of our review of ACRU 2024 looks at the leading compliance and governance trends that should be on the watch list of governance professionals in the year ahead.

The regulatory landscape, both locally and globally, continues to evolve at a rapid pace and the Institute's latest ACRU was a useful reminder of the many issues that will be high on the agenda for governance professionals in the year – and the years – ahead.

Regulatory collaboration

Like last year, the ever-closer collaboration between regulators was a central theme of this year's ACRU. The presentation by Kenneth Luk, Senior Director, Enforcement Division, Securities and Futures Commission (SFC), confirmed that this trend is improving the efficiency and effectiveness of enforcement activities.

Mr Luk emphasised that the collaboration between the enforcement teams of the SFC and Hong Kong Exchanges and Clearing Limited (HKEX) has resulted in a disciplinary process that offers both the fairness of due process in the criminal cases handled by the SFC, and faster outcomes and remedies for the disciplinary actions undertaken by HKEX.

'While some enforcement outcomes and remedies can only be obtained through commencing legal proceedings by the SFC, many corporate misconduct cases can be appropriately and effectively dealt with by HKEX,' he said.

There has also been a trend for greater collaboration with regulators outside Hong Kong. For example, crucial evidence in the recent case against

Global Uin Intelligence Holdings Ltd, a company based in Singapore but listed on the GEM market in Hong Kong, was obtained with the assistance of the Monetary Authority of Singapore.

The SFC has also been collaborating with other regulatory bodies within Hong Kong. For example, Hong Kong's first tripartite regulatory operation by the SFC, the Accounting and Financial Reporting Council and the Independent Commission Against Corruption, which is still ongoing, involves two Hong Kong listed companies on suspicion of falsifying corporate transactions totalling HK\$193 million.

'Our partnership with other regulators allows us to pool our resources, expertise and intelligence to bring swift enforcement actions against individuals and corrupt corporate practices that undermine market integrity and erode investor confidence,' Mr Luk said.

Highlights

- the trend for greater collaboration and sharing of information between regulators is improving the efficiency and effectiveness of their enforcement activities
- the enforcement approach of the Competition Commission is based on substance over form – whatever label organisations seek to give to their behaviour, the essential question is whether or not the competitive process is being harmed
- attempting to bury bad news, or to put a positive spin on market communications, can constitute making misleading disclosures

The presentation by Charles Chan, Director, Enforcement Division, SFC, added further detail to this picture, with reference to cases involving regulators in Hong Kong and the Chinese mainland.

One of the main challenges of cross-border investigations is the need to collect relevant data held outside Hong Kong. In the Changgang Dunxin Enterprise Co Ltd case, Mr Chan explained, the SFC was assisted by the China Securities Regulatory Commission to independently retrieve bank records in the Chinese mainland. This demonstrated that the bank records in that case had been fabricated.

Nevertheless, another hurdle to cross-border enforcement actions is the difficulties involved in enforcing court orders against individuals not resident in Hong Kong. In the Changgang Dunxin case, the SFC has been able to secure a court order against a former

executive director and chief financial officer (CFO) of the company, while the case against three other directors is still ongoing. The former executive director and CFO has been ordered, amongst other things, to pay the company the full misappropriated sum of HK\$163 million (with interest), notwithstanding the agreement of the court and the SFC that there is no evidence to suggest that he has personally received any of the misappropriated funds.

Competition compliance

In his ACRU presentation, Lester Lee, Executive Director (Legal Services), Competition Commission (Commission), outlined the fundamental principles involved in competition law and enforcement, and gave practical guidance on how organisations can minimise the risk that they may become involved in the Commission's enforcement work.

Cardinal principles of competition law

The first cardinal principle of competition law, Mr Lee said, is that the law is there to ensure a level playing field for firms to compete in an open market and the fact that a firm is driven out of the market is not necessarily an indication that there is a problem with the competitive process in the market. 'The law is there to protect competition, not competitors,' he said, 'and survival of the fittest is the law of any functional economy.'

The second cardinal principle is that the law is concerned with substance rather than form. This is critical to bear in mind in terms of the approach the Commission will take in its enforcement actions.

Mr Lee cited the example of a company wanting to restrict the ability of downstream customers to buy their products below a certain price. This will generally be deemed as resale price maintenance, which contravenes the First Conduct Rule of the Competition Ordinance. If a company calls its arrangements 'a recommended reseller price', or 'a suggested retail price', this does nothing to alleviate its liability. It doesn't matter what label you put on the particular conduct, it's whether or not as a matter of substance the arrangement harms competition. The Commission looks at whether there are contractual provisions and monitoring of the resale price maintenance, and whether the perception of the downstream customer is that there is a hard requirement they must follow.

'When we talk about the enforcement of competition law, it's not just the label or the form of the conduct that we look at, it is actually the substance that matters. The essential question, ultimately, is whether or not the competitive process is being harmed. You can call your conduct a cat, but if it is a dog it will still bark,' Mr Lee said.

Key takeaways for senior managers

Mr Lee's presentation focused on three key takeaways for senior managers.

1. Don't cheat, compete. There is an economic incentive for firms to cooperate instead of competing, but that is unlawful in no ambiguous terms under the Competition Ordinance.

2. Consider the consumer's perspective.

Mr Lee urged anyone in doubt about whether any particular behaviour is anti-competitive to consider it from the consumer perspective – is what you are doing ultimately harmful to the consumer?

3. Report to, and cooperate with, the Commission.

Mr Lee also urged senior managers to immediately report any conduct they suspect to be anti-competitive to the Commission and to cooperate with the Commission when under investigation. He pointed out that the Commission has a leniency programme to incentivise early reporting and cooperation. Under this programme, organisations can get immunity from prosecution or reductions in any penalties.

The value of staff training

Mr Lee concluded his presentation with a cartel detection game based on real-life examples of collusion between competitors. He presented a slide showing three supposedly 'independent' bids that were faxed to the tendering firm. The identical time charts at the top of the faxes alerted staff to the fact that the bids were sent from the same fax machine. In a second example, the collusion was uncovered because two supposedly separate bids were sent in the mail, but the envelopes bore identical handwriting.

This cartel detection game has a serious side, Mr Lee pointed out. He emphasised that the message for ACRU participants is the value of training frontline staff to be able to detect the red flags of anti-competitive behaviour.

Corporate reporting

Quality financial reports are critical to an informed and efficient market, and several speakers at this year's ACRU focused on corporate reporting issues.

Late publication of financial results

Patrick Yu, Senior Vice-President, Listed Issuer Regulation, Listing Division, HKEX, addressed the issue of the timeliness of listed issuers' financial reporting.

There was a slight increase in the number of companies failing to publish their financial accounts on time this year. Trading was suspended for 70 listed companies (up from 59 in 2022)

with a year-end of 31 December 2023. The main reason was that they couldn't complete the audit in time.

Mr Yu made the point that if companies find themselves in this position they have an obligation to properly inform the market about the reasons for the delay. In its review of issuers' announcements, HKEX observed instances where the issuers used boilerplate language and where important information for investors – such as what information was still missing, the materiality involved and whether there had been disagreements with the auditors – was lacking. Mr Yu urged issuers to

improve the level of their disclosures in any late publication of financial results announcements.

Mr Yu's presentation also introduced Hong Kong's new treasury share listing regime and covered a number of regulatory reminders on issues such as board diversity, e-registration of prospectuses, disclosure of consideration for M&As and financial filings through HKEX's e-submission system.

Maintaining proper internal and financial reporting controls

In January this year, HKEX published its latest report on listed companies'

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financial statement disclosures.

William Wong, Head of Accounting Affairs, Listing Division, HKEX, updated participants on the findings and recommendations of the HKEX Review of Issuers' Annual Reports 2023 (Review).

The Listing Division undertakes its annual review as part of its monitoring activities, and it focuses both on issuers' compliance with the Listing Rules and relevant accounting standards in their reporting, but also, more generally, it considers whether information was adequately and sufficiently disclosed to allow shareholders to properly assess the matters reported on.

Mr Wong said that HKEX was pleased to see a substantial decrease in problematic lending transactions and a gradual improvement in issuers' disclosure of their moneylending activities since it started to monitor this area three years ago.

Nevertheless, the Review drew attention to deficiencies in issuers' risk management and internal control systems. The key recommendations, Mr Wong said, for management in general and the audit committee in particular, are that:

- management needs to establish a policy to identify risks emerging from changes in the external environment
- management should, under the audit committee's oversight, develop appropriate control systems to mitigate identified risks and to regularly review the adequacy of these systems

- issuers should properly plan their audit as early as practicable – agreeing on audit fees, preparing a detailed audit plan and informing the auditors of significant areas of concern, and
- in the event of a change of auditors, issuers should be mindful of the additional time required by the new auditors.

Communicating bad news

Jon Witts, Head of Enforcement, Listing Division, HKEX, was another ACRU speaker who addressed corporate reporting issues. He warned that attempting to bury bad news, or to put a positive spin on market communications, can constitute making misleading disclosures.

'If your business isn't working as well as you'd like it to, it's not okay just to bury that news and pretend it's not happening. Also, there's a temptation for some directors when they're looking at some bad news to try to gloss over it so that they can get the good news story out there,' he said.

He cited a case relevant to this issue. In 2021, China Haisheng Juice Holdings Co Ltd made a series of announcements relating to a disposal. As a major transaction, the disposal was subject to the Listing Rule requirement to obtain shareholders' approval as a condition prior to completion. In fact, the company completed the disposal before taking steps to seek shareholders' approval. This was a breach of the Listing Rules and Mr Witts highlighted the way that the announcements compounded the breach by deliberately misleading shareholders about the

actual situation. Some of these announcements disguised the fact that the disposal was completed before getting shareholder approval and at no point were shareholders informed of the serious financial problems the company was experiencing.


Companies Registry update

Hong Kong's new company redomiciliation regime

In addition to her sharing on the topic of paperless communications (see part 2 of the ACRU review), Carol Hau, Solicitor (Company Law Reform), Companies Registry (CR), also discussed the government's plan to develop a mechanism to enable companies domiciled overseas to redomicile to Hong Kong.

Without the inward company redomiciliation regime, companies wishing to redomicile to Hong Kong may only achieve similar objectives by going through complicated procedures that involve substantial costs. The Institute was an original advocate for an inward redomiciliation regime in Hong Kong and it proposed such a regime to the Financial Services and the Treasury Bureau in 2019 as a way to attract business back to Hong Kong.

Ms Hau shared with ACRU the chief features of the proposed regime and the application procedures for companies wishing to take up this new opportunity.

She was followed to the podium by her colleague Mendy Lam, Assistant Registry Manager (Registration), CR, who explained the common reasons for the CR returning specified forms for correction. 

25 Years of Excellence

Please join us in celebrating the 25th anniversary of the following members of The Hong Kong Chartered Governance Institute.

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Poon Wai Kuen
Sin Pui Shan
Sit Yau Hung
So Ka Man
Szeto Mei Sim
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Wong Kwok Keung
Wong Mun Tong, Ricky
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Wong Sau Mei
Wong Siu Fong
Wong Yee Wah
Woo Chung Ping
Woo Shiu Fun
Yam Sien Man, Ivy
Yan King Fai
Yau Chi Fai, Kenny
Yeung Kit Ling
Yeung Siu May
Yik Suk Har
Yip Kwok Keung
Yip Pui Yee
Yum Pui Yan, Penny
Yun Wai Lun
Yung Pui Pui



Carbon trading in China: key considerations for navigating the schemes



In the second and final part of their article, Terry Yang, Partner, Jane Chen, Senior Associate, and Kirsty Souter, Senior Associate, Clifford Chance, discuss the challenges for international investors in navigating the China carbon market and the key considerations when structuring carbon trades that have a PRC nexus.

Issues to consider in navigating the schemes

Trading access for foreign entities

The current regulatory framework of the People's Republic of China (PRC, China) has not expressly provided a feasible route for institutions domiciled outside the PRC to be a direct participant trading in China's national Emissions Trading System (ETS) (the National ETS Market) or under the China Certified Emission Reduction (CCER) scheme (the National CCER Scheme) (that is, being a direct account holder on the relevant trading venue or the registrar).

As elaborated in part one of this article (see last month's CGj), both the Interim Administrative Regulations on Carbon Emission Trading (2024) (the ETS Regulations), which took effect on 1 May 2024, and the Administrative Measures on Voluntary Greenhouse Gas Emission Reduction Transaction (Trial Implementation) (2023) (the CCER Measures), issued in October 2023, provide flexibility for 'other qualified entities' to be included as eligible trading participants and the competent regulators are expressly required to formulate the cross-border trading rules. However, under the current regulatory regime, international investors wishing to trade in the National ETS Market – the mandatory carbon market – or under the National CCER Scheme – the voluntary carbon market – will need to trade through an entity domiciled in

the PRC, subject to the satisfaction of the relevant eligibility requirements as set out by trading centres/registries.

It is noted that PRC regulators are aware of the importance of internationalisation of carbon products and will likely address this issue in the future. This is expressly reflected in (i) article 3 of the ETS Regulations, which points out that the State will enhance international collaboration in the National ETS Market, and (ii) article 29 of the CCER Measures, which provides that the Ministry of Ecology and Environment (MEE) will, together with the relevant authorities, formulate the rules that apply to trading and to using CCER on a cross-border basis.

In addition, international investors may consider or continue trading in certain regional markets which provide (a) a

feasible route for eligible international investors to be a direct participant, including carbon emissions exchanges in Guangzhou, Shenzhen and Hubei, and (b) favourable treatment in remitting cash into and outside the PRC in connection with the relevant regional carbon emissions trading scheme. However, as there are no express rules facilitating cross-market trading, whether and how the purchase and sale of CCERs under the National CCER Scheme interact with regional markets and/or other internationally recognised schemes is not yet clear.

Notably, the People's Bank of China (PBOC) has demonstrated its support in facilitating cross-border cash remittance in connection with foreign entities' participation in PRC carbon emission trading activities without imposing any express and specific

Highlights

- international investors wishing to trade in the mandatory or voluntary carbon markets will need to trade through an entity domiciled in the PRC, subject to the satisfaction of the relevant eligibility requirements
- significant developments in the futures and derivatives market, such as the establishment of the Guangzhou Futures Exchange as the venue to trade carbon futures products, provide international investors with further options in gaining exposure to China's carbon markets
- as the regulatory framework governing carbon trading in the PRC is still developing and evolving, careful consideration of how to design suitable risk mitigants will be required

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regulatory framework
governing carbon
trading in China
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foreign exchange control measures in this regard. We expect that a similar approach to foreign exchange formalities will likely be adopted in relation to cross-border cash remittance in connection with CCER trading activities in the future.

Futures and derivatives over carbon products

In the futures and derivatives market, one of the most significant developments was the establishment of the Guangzhou Futures Exchange in April 2021, which is the venue to trade carbon futures products that have been developed and approved by the China Securities Regulatory Commission. In late 2023, the National Association of Financial Market Institutional Investors also issued the China Carbon Derivatives Trading Definitions for market participants to consider and use in China's carbon derivatives trades. As there are available schemes permitting international investors to access the China futures and derivatives market directly, these developments provide

international investors with further options in gaining exposure to China's carbon markets.

Key considerations for international investors

Market participants should consider various issues when structuring carbon transactions that have a PRC nexus (see 'Key considerations').

Uncertainty over the legal nature of CEAs and CCERs. The legal nature of certified emission allowances (CEAs) and CCERs is not currently specifically addressed under statutes in China, a key issue experienced in many other international carbon trading markets. Whilst it is recognised under certain judicial precedents that CEAs are recognised as 'valuable assets' – and in practice there are PRC banks accepting CEAs as collateral for commercial loans – as neither CEAs nor CCERs are formally recognised as 'property' under the PRC's Civil Code (2020), it remains to be clarified by regulators whether pledge registration at the exchange level is sufficient for the purposes of perfecting security interest under PRC law, and how this affects the validity and enforceability of a contract under PRC law.

Currently, the trading, clearing and settlement rules of CEAs/CCERs are similar to the setup provided for futures trades on exchanges. However, in light of uncertainties over the legal nature of CEAs/CCERs, when structuring the transactions, issues such as whether there is settlement finality and/or the impact of a potential bankruptcy of a PRC counterparty should be examined.

Complexity of the regulatory framework.

The regulatory framework governing carbon trading in the PRC is developing and may evolve significantly over time. Depending on the specifics of different business models, how to design suitable risk mitigants in order to manage such regulatory uncertainties requires careful consideration. For example, investors that step in at the project development phase (such as acting as or partnering with a project developer) will need to think about setting up a series of milestone events to manage the risks throughout the project lifespan, including risks specific to different counterparties involved and the types of transaction to be carried out. If institutions want to trade financial products with CEAs or CCERs as the underlying product, they should also consider the implications of regulatory rules governing the relevant financial products.

Challenges in managing cross-departmental supervisory requirements.

The ETS Regulations set out a cross-departmental regulatory cooperative system to be applied to the National ETS Market, with:

- MEE leading the management and supervision of carbon emission trading
- MEE, the State Administration for Market Regulation (SAMR), PBOC and the National Financial Regulatory Administration (NFRA) providing support in respect of supervision, information and enforcement, and
- MEE and the National Development and

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Reform Commission (NDRC) formulating the greenhouse gases and industries covered by CEA trading for the State Council's approval.

The CCER Measures have only clarified the supervisory responsibilities of the issuing regulators of these measures, with:

- MEE leading the management and supervision of voluntary greenhouse gas emission trading, and
- SAMR supervising and managing the licensed Verification Institutions.

As to whether PBOC, NFRA or NDRC will also be assuming similar responsibilities in the supervision and management of the National CCER Scheme, and whether there are other regulators to be included, needs to be further clarified by the State Council.

As the regulatory framework is developing, the regulators involved and their respective responsibilities may evolve over time, and market participants will need to carefully consider their compliance strategy. When engaging with highly regulated counterparties, such as securities firms approved by the China Securities Regulatory Commission to trade CEAs using proprietary funds, the regulatory requirements affecting the counterparty may also impact the trading documentation. For futures and derivatives transactions involving CEAs or CCERs, whether and how the relevant financial regulators

and MEE will cooperate and supervise these trading activities also remains to be seen.

Outlook

It is expected that the PRC government will continue to issue secondary rules and industry guidance to further refine the regulatory framework governing carbon trading in China. In light of the complexity involved in the chain of carbon trading transactions, companies that trade or want to trade carbon in China must prepare to set up a system to monitor the carbon trading regulatory framework on a regular ongoing basis, and to structure carbon

trading transactions to cater for the potential changes and uncertainties in the regulatory landscape.

Terry Yang, Partner, Jane Chen, Senior Associate, and Kirsty Souter, Senior Associate

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Part 1 of this article, in which the authors provide an overview of the mandatory and voluntary carbon market in China, with a focus on the regulatory framework in relation to the National CCER Scheme, was published in last month's edition of CGj.

Key considerations

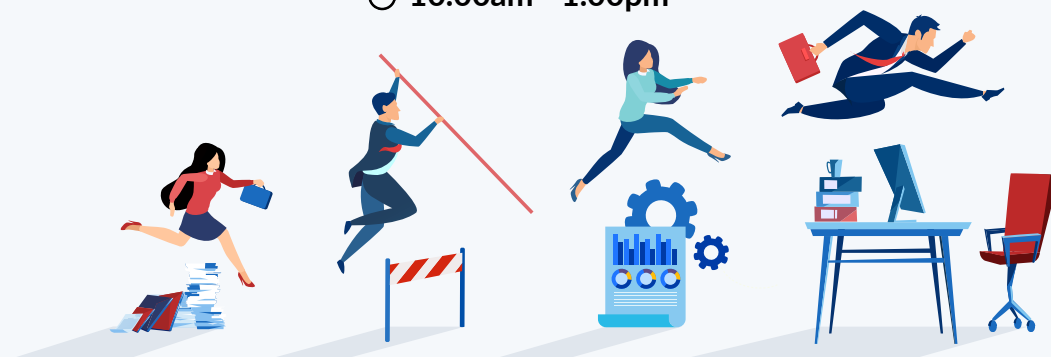
- The National ETS Market was launched in 2021 and the ETS Regulations took effect to regulate the operation of the National ETS Market on 1 May 2024.
- The relaunch of China's voluntary carbon market under the National CCER Scheme will link up the PRC mandatory and voluntary carbon markets at the national level.
- The current regulatory framework for trading of mandatory carbon credits and voluntary carbon credits in China expressly provides for international investors to be able to participate, subject to the formulation of more detailed implementation rules.
- Various legal and practical challenges – including the lack of clarity in regulatory rules and uncertainty over the legal nature of CEAs and CCERs, and the difficulties in managing cross-departmental supervisory requirements – will need to be carefully considered by international investors when participating in China's carbon markets, whether through trading carbon credits, carbon futures or over-the-counter derivatives linked to such underlying assets.

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A new chapter: next evolutionary phase of the new PRC Company Law

Corporate governance



In the first of this two-part article, Ian K Lewis, Partner, Mayer Brown, together with Elfie Wang of Shanghai Meng Bo Law Office, examine the recent amendments to the PRC's company law regime and the impact of those changes on corporate governance structures and requirements.

The long-awaited amended Company Law (New Company Law) of the People's Republic of China (PRC, China) was enacted on 29 December 2023, effective from 1 July 2024. The new amendments are arguably the most significant since China established its company law regime back in 1993.

In this article, we discuss the changes impacting corporate governance, with amendments relating to (among other things) directors' responsibilities, the role of supervisors, requirements regarding quorum and the role of the Communist Party. In part two, to be published in next month's CGj, we will look at the issues related to liability.

Background

PRC companies – specifically referring to limited liability foreign invested companies, rather than alternative legal entities such as joint stock companies – adopt multilayered governance structures similar to many other jurisdictions, with the shareholder(s) as the highest authority empowered to appoint the board of directors, or executive director(s) under the previous regime, and supervisor(s).

The board has the power to engage a general manager responsible for the daily management of the company. The New Company Law retains this structure, but has introduced a series of changes, as outlined below.

Board of directors

In the past, there has often been a general assumption that directors will act in accordance with the wishes of the shareholders who appointed them. The role of the board has now been strengthened and enhanced, encouraging directors to act much more independently.

The following points are particularly notable.

- Directors are delegated with the powers to supervise the capital contribution of the shareholder(s).
- Shareholders' power to remove directors has been restricted under the New Company Law and directors may now bring a claim against the company for indemnification if they are removed without justification. The law is vague as to precisely what 'indemnification' would mean in such circumstances, but it appears clear that shareholders may no longer remove a director at their discretion. Further regulation or judicial interpretation can be expected.
- The previous Company Law has long stated that the board is responsible to the shareholders – however, this provision has been removed from the New Company Law.
- The New Company Law contains clear requirements regarding directors' duties of loyalty and obligation to act in the best interests of the company.

The New Company Law also amends requirements regarding board composition, with the old size restrictions (until recently requiring a board to comprise between three and

Highlights

- the PRC's New Company Law, effective from 1 July 2024, impacts various aspects of corporate governance, including directors' responsibilities, the role of supervisors and requirements regarding quorum
- the legal representative of a company is now required to play an active role in the conduct of a company's business
- in state-funded companies, including foreign invested companies in which the state holds a controlling share, the Chinese Communist Party is now required to play a leading role, which is something that foreign investors may need to review in the context of both established joint ventures and the establishment of new entities

13 directors) being changed so that the upper limit has now been removed. This allows greater flexibility for companies with multiple shareholders.

Legal representative

The legal representative has for many years been recognised as having ostensible authority to represent a PRC company vis-à-vis the outside world and is one of the most important (and indeed onerous) roles in a company.

It has previously been a requirement that the role of legal representative should be taken by the company's chairman, executive director or general manager. However, there has been no explicit requirement that the legal representative should be directly involved in the company's business affairs. In practice, this has sometimes led to a gap between the liability of a legal representative and the actual role he or she plays in the company.

The New Company Law now requires that the role of legal representative must be taken up by a director or the general manager, having authority and responsibilities to attend to the day-to-day affairs of the company, thus encouraging active involvement by the legal representative in the conduct of a company's business.

The intention is to encourage legal representatives to act responsibly and to remove the excuse (sometimes given) that such person was not actually involved in the conduct of the business of a company. This reflects the higher level of responsibility now envisaged by the New Company Law and individuals

may therefore need to exercise caution when taking up such a position.

Supervisory organ

Under the previous Company Law, companies were required to establish a supervisory board (or, for small companies, either one to two supervisors in lieu of a supervisory board) to supervise the company's directors and senior management. In practice, such roles were non-active and the supervisors were not usually expected to be involved in company affairs.

The New Company Law includes the following amendments:

- For small companies, no supervisory organ needs to be established, subject to the unanimous consent of all shareholders – perhaps reflecting the enhanced independence of the board.
- Companies of whatever size may elect to establish an audit committee under the board to exercise the functions and duties of the supervisory board and, in such case, there is no need to establish a supervisory board or to appoint supervisor(s).
- In the absence of the above arrangements, a supervisory board will still be required.

It should be noted, however, that if a company with more than 300 employees elects not to establish a supervisory board that includes an employee representative, then the

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the new amendments
are arguably the
most significant since
China established its
company law regime
back in 1993
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board of such a company must have at least one employee representative. This would appear to be an important factor to consider when company structure options are being examined.

Small companies or companies with limited shareholders were allowed to have one to two supervisor(s) in lieu of a supervisory board, but under the New Company Law it is no longer possible to have two supervisors as the requirement is for a board of three or more supervisors or a single supervisor. Companies with two supervisors under the previous Company Law will need to restructure.

Audit committee

As mentioned above, companies may establish an audit committee composed of directors to exercise the functions and powers of the supervisory board. The New Company Law does not provide many details, thus giving investors considerable discretion in determining the function and structure of the audit committee (such details are to be specified in the company's articles of association).

Supervisors have traditionally been independent of the board, but the

audit committee seems to depart from this approach. It remains uncertain how an audit committee composed of directors should supervise the behaviour of the board (especially if a director sitting on the audit committee is involved in an incident under investigation).

Other matters

There are some other changes to note regarding the company's corporate governance structure.

Quorum and voting

- The New Company Law expressly requires that the quorum of a board meeting must be constituted by more than half of the directors – previously, variations were possible if provided for in a company's articles of association.
- All board resolutions can now only be passed by more than half of the directors – previously, this was subject to the company's articles of association.
- Shareholders' resolutions (except for those related to amendments to the company's articles of association, capital increase or decrease, or merger, split, dissolution or change of company form, which require approval from shareholders representing at least two-thirds of the voting rights) can now only be passed by shareholders representing more than 50% of the voting rights – previously, variations were possible if provided for in a company's articles of association.

- Resolutions of the supervisory board can only be passed by more than half of the supervisors.

These requirements are significant as they will need the consent of more than half of the shareholders (counted by voting rights), directors or supervisors to pass a resolution and, according to the New Company Law, it appears that such requirements cannot be varied or avoided through the company's articles of association. This raises questions about the impact on deadlock provisions in shareholders' agreements and the enforceability of language providing (for example) for lower quorums at reconvened meetings where some directors or shareholders fail to attend.

Further clarification may be needed to avoid disruption to business, as well as potential variation and interpretation between local registration authorities in different locations.

General manager

The New Company Law no longer sets out the powers and functions of the general manager – this will be completely subject to the company's articles of association or the authorisation of the board.

CPC organ in state-funded companies

In state-funded companies (including foreign invested companies in which the state holds a controlling share), the Chinese Communist Party (CPC) is required to play a leading role, which must include the right to study and discuss business management matters and to give or withhold 'support' for the company in the exercise of its functions in accordance with the law.

This new development follows less detailed amendments introduced in 2018 to the company law regime that required a CPC organ to be established in accordance with the requirements of the CPC's articles of association, which apply to all companies.

The New Company Law now goes one step further for state-funded companies, emphasising the need for the CPC to play a 'leading role', which is clearly significant and something that may need to be reviewed by foreign investors in the context of both established joint ventures and the establishment of new entities.

Timeline

In general, the New Company Law proposes a series of changes in terms of corporate governance structure and companies may need to review existing structures and documentation in the context of the amendments now being introduced.

However, the new law does not provide for a clear time period for adjustments to be made regarding the corporate governance structure. Further regulations are likely in terms of implementation and in order to add details where these are needed.

Ian K Lewis, Partner, Mayer Brown, with contributions from Elfie Wang of Shanghai Meng Bo Law Office

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I encourage everyone
to continue learning as
the scope of corporate
governance is vast

”

Jacob Wang, Deputy General
Manager, Business Management
Department, Chu Kong Shipping
Enterprises (Group) Co Ltd

Jacob Wang

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

'I majored in international shipping and transport logistics. After graduation, I joined a red chip listed company that mainly provides terminal logistics and waterway passenger transportation services in the Greater Bay Area. At first, I was responsible for business operations and management. I was later transferred to the Capital Operation Department, where I was responsible for capital operations, analysis of potential M&As, research on equity incentives and more. I also assisted my manager to conduct compliance research, write reports, maintain investor relations and arrange shareholder and director meetings. I have recently been transferred to the Business Management Department.'

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

'I first heard the term company secretary around three years ago when I moved to the Capital Operation department. My manager then was a company secretary. She was very professional and had high expectations for me. I soon realised company secretaries are part of senior management and require extensive professional knowledge and experience. As for corporate governance, I only began to understand it through work. To do a good job in corporate governance, we need to coordinate the relationships between different interested parties, which is not an easy task.'

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

'A successful governance professional needs to be an all-rounder. At the professional level, you may need knowledge of accounting, law or finance. You need to have good communication skills, as well as good coordination and management skills, and you also need to understand how capital operates. At the operational level, you should be a diplomat for a listed company and maintain a good

image of the company externally. You should also be a risk officer, participate in directors' meetings and make reasonable suggestions. At the same time, you need to understand investors from their perspective and to help solve their problems.'

What was 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'm not very good at taking exams, so I chose to take a part-time master's degree accredited by the Institute, where I could feel more supported. This does not take up a huge amount of my time, plus I have the opportunity to make friends with some like-minded people – we can motivate each other, make progress together and build up a network of connections. I encourage everyone to continue learning as the scope of corporate governance is vast. Explore different fields, expand your horizons and pursue knowledge in such relevant areas as anti-money laundering, sanctions compliance and valuation analysis. These may become useful in your daily work.'



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

'As global governance trends becomes increasingly stringent, there is an urgent need for companies to transform and there will be a greater demand for talent. I believe that in the future more companies will not only comply with regulators' governance standards, but will regard compliance regulations as the lowest limit and will view long-term development as the core focus of the company. Corporate governance is not simply about the compliance requirements of a company, but is a responsibility to society. Companies should not only focus on profit, but also pay attention to environmental protection and social responsibility. Good corporate governance can promote the healthy development of our entire society, which is a very important field of work.'

王嘉先生



“

我鼓励大家保持不断学习的心态，公司治理的范围广阔，要多方面去学习

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王嘉先生, 珠江船务企业(股份)有限公司
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面，你要做上市公司的外交官，对外保持公司的良好的形象；还要作为风险官，参加董事会，提出合理的建议；同时也能站在投资者的角度理解他们，帮助解决他们的问题。’

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

Speakers: Dr Sylvia Xiao, Senior Lecturer, Lee Shau Kee School of Business and Administration, Hong Kong Metropolitan University; and Ivor Cheung, General Manager – Capital Management, Link REIT

9 May

Mastering internal controls & whistleblowing policies: navigating regulatory regimes and best practices for corporate governance



Chair: David Fu FCG HKFCG(PE), Institute Council member and Mainland China Affairs Committee Vice-Chairman, and Senior Advisor, Hong Kong Exchanges and Clearing Limited

Speakers: Gareth Hughes, Partner and Head of Asia Litigation Team, and Emily Lam, International Counsel, Litigation, Debevoise & Plimpton

14 May

Leveraging technology for internal control and investigation



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

Speakers: Alex Wong, Forensic Director, Patrick Ma, Forensic Director, and Ian Cheung, Forensic Associate Director, Deloitte

16 May

Overview of taxation for doing business in China



Chair: Susan Lo FCG HKFCG

Speaker: Jane Hui, Partner, International Tax & Transaction Services, Hong Kong & China, EY

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For enquiries, please contact the Membership Section: (852) 2881 6177, or email: member@hkcg.org.hk.

Membership/graduateship renewal for the financial year 2024/2025

The renewal notice, together with the debit note for the financial year 2024/2025, was sent to all members and graduates by email in June 2024 to the email address registered with the Institute. Members and graduates should settle the payment as soon as possible, but no later than Monday 30 September 2024.

All members and graduates are highly encouraged to pay their annual subscription directly online. Please ensure that you settle your annual subscription by the deadline, as failure to do so will constitute grounds for membership or graduateship removal.

For enquiries, please contact the Membership Section: (852) 2881 6177, or email: member@hkcg.org.hk.

Membership (continued)

New Associates

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

Chan Chern Yean	Lai Wing Ki, Vicki	Lok Ka Lam	Wang Jiangqin
Chan Ching Bun	Lam Mei Fun	Mak Wing Yee, Queenie	Wong Chi Ching, Winse
Chan Hiu Laam	Lam Ming Chung	Shah Henisha Nipun	Wong Francis Chun-ho
Chan Ngan Loi, Naomi	Lam Pan Pan	So Hiu Lam	Wong Tsz Yim
Cheng Qi	Lam Yik Kwan	So Yuen Ting	Wu Cheung Yu
Chow Tsz Ho	Lam Yuen Wai	Sun Kuo	Xing Mengwei
Chung Yui Keung	Law Man Yu	Tang Cheuk Yiu	Ye Jiahong
Cui Junyan	Leung Shu Man	Tong Christine Wing Shan	Ye Ling
Fu Hoi Ki	Leung Sze Man	Tse Lai Ying	Yin Shaomei
Ip Chun Wai	Li Xiuhuan	Tsoi Wai Hang, Iris	Yip Pui Tsang
Lai Wai Chung	Liang Simin	Tsou Pei Wan	

New graduates

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

Chan Hiu Laam	He Yung-Huei	Leung Shu Man	Wong Francis Chun-ho
Chen Lishan	Huang Jiawen	Leung Sze Man	Wong Yiu Chung
Cheung Ka Ying	Hung Hau Ying	Li Jinhua, Jinny	Xu Leilei
Fu Siyu	Lau Wing Hei	Liu Shengyun	Yung Chui Mei
Fung Po Hei	Law Yuen Man	Mak Hoi Yan, Giselle	
Fung Tsz Wai	Leung Ho Ming, Alison	Qian Xiyue	

Membership activities: May 2024

25 May

Fun & Interest Group – handmade soap-making workshops (月亮手工皂) (morning and afternoon sessions)



30 May

Soft skills training series: session 1 – foundations for effective communication (free webinar)



Forthcoming membership activities

Date	Time	Event
10 August 2024	2.00pm–4.00pm	Summer sports series – indoor rock climbing (室內攀石)

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



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Location

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For enquiries, please contact HKCGI Secretariat at marketing@hkcg.org.hk, or (852) 2881 6177

Advocacy

CGI Global Council Meeting

The Spring 2024 CGI Global Council Meeting took place in London on 16 and 17 May 2024. The Institute was represented by the following participants:

- Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), Honorary Adviser to Council, Past International President and Institute Past President
- Gillian Meller FCG HKFCG(PE), Institute Past President and newly elected Vice President of the CGI Council
- Paul Stafford FCG HKFCG, Institute Audit Committee and Governance Professionals Panel member and CGI Council member, and
- Ellie Pang FCG HKFCG(PE), Institute Chief Executive.



Congratulations to Ms Meller for her election to the role of Vice President of the CGI Council.

Representatives of the China (Guangdong) Pilot Free Trade Zone, Nansha Area of Guangzhou, visit the Institute

On 30 May 2024, the Institute was honoured to welcome Peter Leung, Deputy Director, China (Guangdong) Pilot Free Trade Zone, Nansha Area of Guangzhou, along with his delegation of eight investigators and regulators based in Guangzhou.

The meeting was hosted by Institute representatives Ernest Lee FCG HKFCG(PE), Immediate Past President, Dr Maurice Ngai FCG HKFCG(PE), Past President, Edmond Chiu FCG HKFCG(PE), Council member, Wendy Ho FCG HKFCG(PE), Council member, and Ellie Pang FCG HKFCG(PE), Institute Chief Executive.



Meeting with the OECD Assessment Team

On 30 May 2024, a team from the Institute, led by Mohan Datwani FCG HKFCG(PE), Institute Deputy Chief Executive, along with (in alphabetical order of name) Chee Weng Lee FCG HKFCG, Global Head of Tax, Vistra, Edmond Lam, Tax Director, Deloitte, and Paul Ho, Partner, Asia-Pacific Financial Services, Tax, Ernst & Young Tax Services Ltd, met with the Organisation for Economic Co-operation and Development (OECD) Assessment Team to contribute to their assessment of the state of Hong Kong's automatic exchange of financial account information (AEOI) in terms of regulation, implementation and enforcement.

The meeting between the Institute and the OECD Assessment Team took place at the invitation of the Financial Services and Treasury Bureau.



HKCGI Foundation Scholarships and Subject Prizes

In fiscal 2023, The Hong Kong Chartered Governance Institute Foundation Ltd (the Foundation) sponsored 25 subject prizes for students of collaborative courses and relevant degree programmes, as well as 20 scholarships to local universities, listed below in alphabetical order.

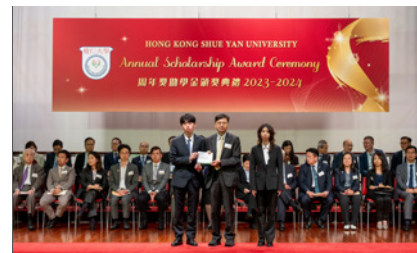
- City University of Hong Kong
- Hong Kong Baptist University
- Hong Kong Metropolitan University
- Hong Kong Shue Yan University
- Lingnan University
- Saint Francis University (formerly Caritas Institute of Higher Education)
- The Chinese University of Hong Kong



- The Hang Seng University of Hong Kong
- The Hong Kong Polytechnic University
- The Hong Kong University of Science and Technology
- The University of Hong Kong

Congratulations to all the awardees.

The Institute would like to thank all Institute representatives who attended the universities' appreciation receptions or scholarship ceremonies on behalf of the Foundation.



Advocacy (continued)

The 75th Governance Professionals ECPD seminars

The Institute held its 75th Governance Professionals ECPD seminars from 15 to 17 May 2024 in Qingdao, Shandong Province, under the theme of Transaction Control, Information Disclosure and Chinese Enterprises Going Global. This event attracted around 200 participants, mainly comprising board secretaries and equivalent personnel, directors, supervisors, CFOs and other senior management from companies listed or to-be-listed in Hong Kong and/or the Chinese mainland.

Dr Gao Wei FCG HKFCG(PE) and Kenneth Jiang FCG HKFCG(PE), the current and former Chief Representatives of the Institute's Beijing Representative Office, respectively, chaired the seminars and, together with other senior professionals, shared their insights on the following topics:

- regulatory updates on transaction valuation, compliance essentials and practices of fund structuring transactions
 - information disclosure and regulations of A+H companies
 - practical sharing – cross-border compliance and landing practices for Chinese enterprises going global
 - the perspective of Huatai Securities: financial empowerment for enterprises going global
 - trading controls and information disclosure for Hong Kong stocks
 - sustainable development – digitalisation enables high-quality ESG development of enterprises
 - practical sharing for Chinese enterprises' overseas M&As:
- general processes and challenges, overseas M&As financial due diligence concerns and pricing/delivery mechanisms
 - interpretation from the Chinese capital market perspective on the revision of the PRC's Company Law, and its impact on domestic and overseas listed companies
 - practical strategies and case study on buybacks by listed companies, and
 - practical sharing – the globalisation of Haier.

The Institute would like to express its sincere appreciation to all speakers and sponsors, as well as to all participants, for their generous support and participation.



Chartered Governance Qualifying Programme (CGQP)

June 2024 examination diet

Key dates	Description
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.hkcgj.org.hk.

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

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.hkcgj.org.hk.

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

HKU SPACE CGQP Examination Preparatory Programme – autumn 2024 intake

HKU SPACE has been endorsed by the Institute to organise the CGQP Examination Preparatory Programme, which helps students to prepare for the CGQP examinations. One

assignment and one take-home mock examination will be provided to students. There are 36 contact hours for each module, except for Hong Kong Company Law, which has 45 contact hours. The autumn 2024 intake will commence in September 2024.

For details, please contact HKU SPACE: (852) 2867 8485, or email: hkcgj@hkuspace.hku.hk.

Chartered Governance Qualifying Programme (CGQP) (continued)

Corporate Governance Paper Competition and Presentation Awards 2024

The annual Corporate Governance Paper Competition and Presentation Awards, organised by the Institute, is designed to foster appreciation of corporate governance among local undergraduates. The theme this year is 'Overcoming governance obstacles in NGO administration'.

Undergraduates of all disciplines in Hong Kong are eligible to enrol for the competition in teams of two to four members each. We are delighted to announce that, this year, 54 teams from the following 10 universities (in alphabetical order) have registered.

- City University of Hong Kong
- Hong Kong Baptist University
- Hong Kong Metropolitan University
- Hong Kong Shue Yan University
- Lingnan University
- The Chinese University of Hong Kong



- The Hang Seng University of Hong Kong
- The Hong Kong Polytechnic University
- The Hong Kong University of Science and Technology
- The University of Hong Kong

The six finalist teams, as determined by the reviewers, will present their papers on Saturday 7 September 2024 to compete for the Best Presentation Award and the Audience's Favourite Team Award.

For details of the competition, please visit the Corporate Governance Paper Competition and Presentation Awards page under the Student Promotion & Activities subpage of the News & Events section of the Institute's website: www.hkcg.org.hk.

Studentship renewal for the financial year 2024/2025

The renewal notice for the financial year 2024/2025 was sent to all students to the email address registered with the Institute after in June 2024. Students should settle the payment as soon as possible, but no later than Monday 30 September 2024.

All students are highly encouraged to pay their renewal fee directly online. Please ensure that you settle your renewal fee by the deadline, as failure to do so will result in the removal of studentship from the student register.

For enquiries, please contact the Studentship Registration Section: (852) 2881 6177, or email: student_reg@hkcg.org.hk.

Studentship activities: May 2024

22 May
NGO governance



Forthcoming studentship activities

Date	Time	Event
7 September 2024	10.00am–1.00pm	Corporate Governance Paper Competition and Presentation Awards 2024

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.hkcgj.org.hk.

Featured job openings

Company name	Position
The Education University of Hong Kong	Council Secretarial and Administration Manager – Office of the Vice President (Administration) and Council Secretariat
The Hong Kong Chartered Governance Institute	Senior Officer/Officer, Marketing and Communications (Ref: MKT 2024-06)
The Hong Kong University of Science and Technology	Senior Manager (Job ID: 9995)

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

HKEX consults on Corporate Governance Code enhancements

On 14 June 2024, The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), published a consultation paper outlining proposed enhancements to Hong Kong's Corporate Governance Code (Code) and related Listing Rules.

The Code was last amended two years ago. Those amendments, introduced on 1 January 2022, focused on issues such as corporate culture, board independence and refreshment, diversity and communications with shareholders. They also included a requirement for listed companies to align the publication timing of their ESG reports and annual reports.

The latest amendments would introduce new Listing Rules (LRs), Mandatory Disclosure Requirements (MDRs) and Code Provisions (CPs) under the Code. The key proposals are outlined below.

Board effectiveness proposals

- New CP 2 would require the designation of a lead independent non-executive director (INED) where the board chair is not independent.
- A new LR would require annual director training on specific topics, with a minimum of 24 hours of training for first-time directors within the first 18 months of appointment. First-time directors are (a) directors who are appointed as a director

of an issuer listed on the Exchange for the first time (that is, having no prior experience as a director of an issuer listed on the Exchange), or (b) have not served as a director of an issuer listed on the Exchange for a period of three years or more prior to their appointment.

- New CPs would require regular board performance reviews and the disclosure of a board skills matrix.
- A new LR and MDR 4 would require issuers to cap 'overboarding' INEDs so they don't hold more than six Hong Kong-listed issuer directorships simultaneously.

Other key proposals

- A new LR would state that INEDs serving more than nine years (long-serving INEDs) will not be considered independent.
- A new CP would require the nomination committee to comprise directors of different genders.
- The requirement for annual reviews of the issuers' board diversity policy would be upgraded to an MDR and a new LR would require a workforce diversity policy.
- The requirement for regular reviews (at least annually) of an issuer's risk management and internal control systems and

enhanced disclosures of the reviews and findings would be upgraded to an MDR.

- A new MDR would require enhanced disclosures of an issuer's dividend policy and its board's dividend decisions.

The proposed amendments would apply to corporate governance reports for financial years commencing on or after 1 January 2025, with a three-year transition period for the proposals on overboarding and long-serving INEDs.

Two new sections of the HKEX website are designed to help issuers and their boards implement the enhanced corporate governance and sustainability measures:

1. the INED Corner section is specifically designed for INEDs, providing focused guidance, with case studies, on an INED's roles and responsibilities and how they can best discharge their duties, and
2. the Board Diversity Hub is designed to better promote diverse representation on boards through diversity data, a video series, thought leadership articles, podcasts, and practical tips for issuers and potential board candidates.

The consultation closes on 16 August 2024. More information is available on the HKEX website: www.hkexgroup.com.



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

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

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


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.

CONTACT INFORMATION
Programme Enquiries (HKU SPACE)

 (852) 2867 8485

 hkcgi@hkuspace.hku.hk



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