

CSj

May 2020

Chartered Secretaries.
More than meets the eye.
特許秘書.潛能.超越所見.
The journal of The Hong Kong
Institute of Chartered Secretaries
香港特許秘書公會會刊

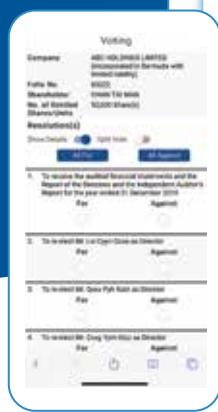


Thought leadership review

Governance trends
Integrated reporting
COVID-19 and AGMs

ezMeeting

THE ULTIMATE SOLUTION FOR HYBRID MEETINGS



Voting and Attendance Made Easy

- Secured on-line login as registration for attendance
- Live streaming in high resolution
- Real-time online voting
- Interactive Q&A platform
- Allow for split votes



Robust and Secure Systems

- Robust data privacy
- Encrypted data storage & transmission
- Multi-layered security
- High-performance scalable architecture
- Enterprise-grade certified cloud computing
- Auto-failover mechanism

ezMeeting is designed for listed companies, NGOs and other corporate bodies to hold General Meetings (AGMs / EGMs) physically and virtually. As one-stop service provider and market leader for meeting management and poll scrutineer services, Tricor is capable to provide you the best hybrid meeting experience. Contact us now!

Please feel free to contact your designated Tricor contact for more practical advice.

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ezMeeting

THE ULTIMATE SOLUTION FOR HYBRID MEETINGS

The COVID-19 pandemic and the resulting Prevention and Control of Disease (Prohibition on Group gathering) Regulation (Chapter 599G) introduced by the HK Government have posed unprecedented challenges to many listed issuers in planning their general meetings. According to the joint statement published by the Hong Kong Securities and Futures Commission and The Stock Exchange of Hong Kong Limited on 1 April 2020, listed issuers are encouraged to explore and assess measures permissible under the laws of their jurisdictions of incorporation and their constitutional documents to reduce the need for physical attendance, including the use of technology such as hybrid meeting and webcasts to enable non-physical attendance and voting in relation to general meetings.

The Hong Kong Institute of Chartered Secretaries has been promoting hybrid meeting for a number of years. Hong Kong Companies Ordinance also allows companies to hold hybrid meetings, unless otherwise prohibited by the company's articles of association (AoA).

ezMeeting Hybrid Meeting Solution

Leveraging on advanced technologies, a hybrid meeting is a combination of physical meeting and virtual meeting. Shareholders can choose to attend meeting in person, or they can choose to attend online via viewing a live webcast and voting online in real time. Hybrid meeting solution offers good option for companies to support and enable meetings to proceed as planned at the time of crisis.

Hybrid Meeting takes the best of both physical meeting and virtual meeting, bridging them together with the latest technology. Not only it creates a more efficient and effective way for members to attend meetings, but also helps the Board of directors to manage better communications with shareholders.

Tricor's ezMeeting is an advanced and seamless eMeeting solution that helps the Board of directors and senior management to conduct hybrid meeting(s) in an easy and digital manner.

Key Functions of ezMeeting

Voting and Attendance Made Easy

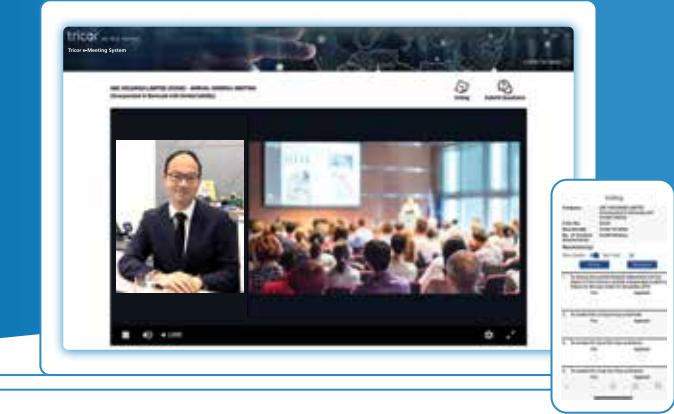


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Robust and Secure Systems



- Robust data privacy
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- Multi-layered security
- High-performance scalable architecture
- Enterprise-grade certified cloud computing
- Auto-failover mechanism



Increase Shareholder Participation with ezMeeting

The benefits of running a hybrid meeting are twofold: i) encourage social distancing in fight of the COVID-19 and ii) long term encourage shareholder's participation and engagement.

Shareholders who are not able to attend physically can participate from the comfort of their own home or office via electronic devices such as smartphones, tablets or computers. They can view live streaming of the meeting process and raise questions instantly through the e-meeting platform. Overseas investors are also able to participate from different time zones and locations.

The solution enables both cost and time savings, allowing listed issuers to reduce hosting requirements at a physical location with reduced human effort in counting votes. In addition, by adopting a digital solution the company can position itself as digital first and environmentally friendly pioneer, thereby conforming to global best practices.

The Tricor Advantage

Tricor's ezMeeting is our newly developed e-Meeting system that seamlessly integrates the e-voting, e-proxy, online attendance and live streaming functions with our shareholder voting system. This can greatly enhance data integrity and avoid any unnecessary interfacing and data sharing risks between multi-layers of service vendors. Tricor provides 24/7 technical support to our services. ezMeeting can accommodate 10,000 simultaneous users for any meeting and we can provide a recording for further download or viewing. Leveraging from over 20 years of experience servicing thousands of clients' AGMs, our team will assist companies in attending to the formalities of amendment of AoA, preparing and reviewing meeting documents, as well as supporting the hybrid meetings.

Please feel free to contact your designated Tricor contact for more practical advice.

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Good governance comes with membership

About The Hong Kong Institute of Chartered Secretaries

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

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statistics update

As of 31 March 2020 the statistics were as follows:

Students: 3,272 **Associates:** 5,681
Graduates: 436 **Fellows:** 717

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May 2020

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Careers in Governance

Gillian Meller 36

This month we launch a new column in the journal featuring the career paths, as well as insights on governance and personal interests, of individuals in our professional community. First up is the Institute's current President, Gillian Meller FCIS FCS.



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AGM season 2020

I would like to focus my message this month on an issue I know will be of concern to many readers as the annual general meeting (AGM) season gets underway in the midst of the COVID-19 pandemic.

The AGM serves an important governance purpose. It is a vital part of the dialogue with shareholders and gives them an opportunity to participate in the governance of the organisation. The unenviable task our members are set this year, however, is to ensure that the AGM serves these purposes – and for most organisations in Hong Kong a physical meeting is an integral part of that – in the midst of a global pandemic. If you are wondering how to square this circle, then I hope my message this month will be of some use.

For most organisations in Hong Kong, dispensing altogether with a physical meeting is unlikely to be an option. Holding a hybrid meeting is permitted under Sections 584 and 576(1)(b) of the Companies Ordinance in the absence of restrictive provisions under a company's articles of association. Holding a virtual-only AGM requires tailor-made articles, which not many companies have. While it is possible to hold an AGM by paper circulation of the resolutions under Sections 548 and 556 of the Companies Ordinance, this would in most cases be

impracticable for larger organisations and would also require the consent of all members in writing beforehand.

In the context of the above, arranging this year's AGM is not going to be an easy task, but fortunately there are many recommended best practices for your consideration. An excellent summary of these can be found in the latest guidance note issued by our Public Governance Interest Group (PGIG) – see PGIG Guidance Note Issue 6 available from the Publications section of our website: www.hkics.org.hk. The guidance note is reviewed in the In Focus column of this month's CSj. While it is primarily targeted at not-for-profits, its many practical suggestions for AGM arrangements in the context of the COVID-19 pandemic are applicable to all organisations. I would also recommend you regularly check our Institute's website for updates on this and other COVID-19 related issues.

While COVID-19 has certainly presented businesses and members of our profession with many challenges, learning to adapt to the pandemic has prepared us for similar circumstances in the future. Corporates have had to consider alternative ways of conducting business and customers' behaviour has changed too. As governance professionals, we can use our professional knowledge and personal skills to help boards handle these challenges. In the interests of keeping up our knowledge and skills, I urge all of you to join our first online Annual Corporate and Regulatory Update (ACRU) on 5 June 2020. Book now to join this important event.

Before I go, I would like to highlight the 'Careers in Governance' campaign we are launching this month. We have engaged a professional photographer to take photographs of our members, graduates, students and Affiliated Members, who are or are to-be governance professionals to showcase the individuals in our professional community. These 'captains of governance' will also share insights into their career path, their views on governance and their personal interests.

The campaign will run as a new 'Careers in Governance' column in this journal starting this month, but it will also provide us with marketing assets to be posted on our website, social media platforms and at our events. This will be a good way to showcase the attractions of a career as a governance professional.

I had the honour of being first off the blocks for this new campaign and you can see the results on pages 36–37 of this month's journal. But stay posted; over the next few months our 'Careers in Governance' column will feature professionals working in a wide variety of sectors and holding a wide variety of roles, highlighting the impressive diversity of backgrounds and career paths possible within our profession.

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

Gillian Meller FCIS FCS

2020年周年股东大会高峰期

新冠疫情之下，周年股东大会(周年大会)高峰期亦已来临，这是本刊许多读者关注的重点。本期的会长致辞籍以此为主题。

周年大会发挥重要的治理作用。它是公司与股东对话的重要部分，让股东有机会参与机构的治理。公会会员今年肩负的艰巨任务之一，就是要在全球疫情蔓延的情况下，确保周年大会能达到以上目的；然而在香港，大部分机构的周年大会都以实体会议的形式进行。如何处理这难题？希望下文能有所帮助。

香港大部分机构不太可能完全摒弃实体会议。如果公司的章程细则没有条文限制，根据《公司条例》第584及576(1)(b)条，机构可以举办混合模式的股东大会。以完全虚拟的形式举行周年股东大会，则需要特定的章程细则配合，而有这种章程细则的公司或机构并不多见。根据《公司条例》第548及556条，公司可藉书面传阅决议的形式举行周年大会，但对规模较大的机构来说，这种做法并不可行，而且须事先经所有股东书面同意。

在此情况下，要安排今年的周年大会并非易事；幸好有许多最佳实践建议可供参考。公会的公共治理专题小组最近发布的指引（见公会网站www.hkics.org.hk「公会出版物」栏目下的公共治理指引第6期），便概括地列出了这些建

议，本期CSj月刊「焦点」一栏有专文介绍。指引集中讨论了非营利机构的情况，给出了有关在新冠疫情期间安排周年大会的许多实用建议，这对所有机构或公司均适用。建议大家经常浏览公会网站，留意这方面及与新冠疫情相关的最新消息。

新冠疫情肯定为各行各业和治理专才带来许多挑战；但学习如何应对疫情，可让我们为日后的类似情况作好准备。公司须考虑处理业务的不同方法以及顾客行为已经发生的改变；作为治理专业人员，我们可运用自己的专业知识和个人技巧，协助董事会处理这些挑战。为掌握最新的知识和技能，请大家参加2020年6月5日公会首期网上举行的企业规管最新发展研讨会(ACRU)。请尽早报名，参与这项重要的活动。

最后需要提及的是公会本月的「以治理为事业」推广活动。我们聘请了专业摄影师，为公会会员、毕业学员、学员和联席成员拍照，在公会的专业平台上展示。他们都是治理专才，或即将成为专业治理人员；这些「治理领导者」，将分享他们对事业前景的展望、对治理的看法，并畅谈个人兴趣。

由本月开始，本刊新设「以治理为事业」专栏，作为推广活动的一部分。专栏所载的资料，亦将在公会网站、社交媒体平台和公会活动中使用，藉

此展示以治理为事业的公司治理专才之吸引之处。

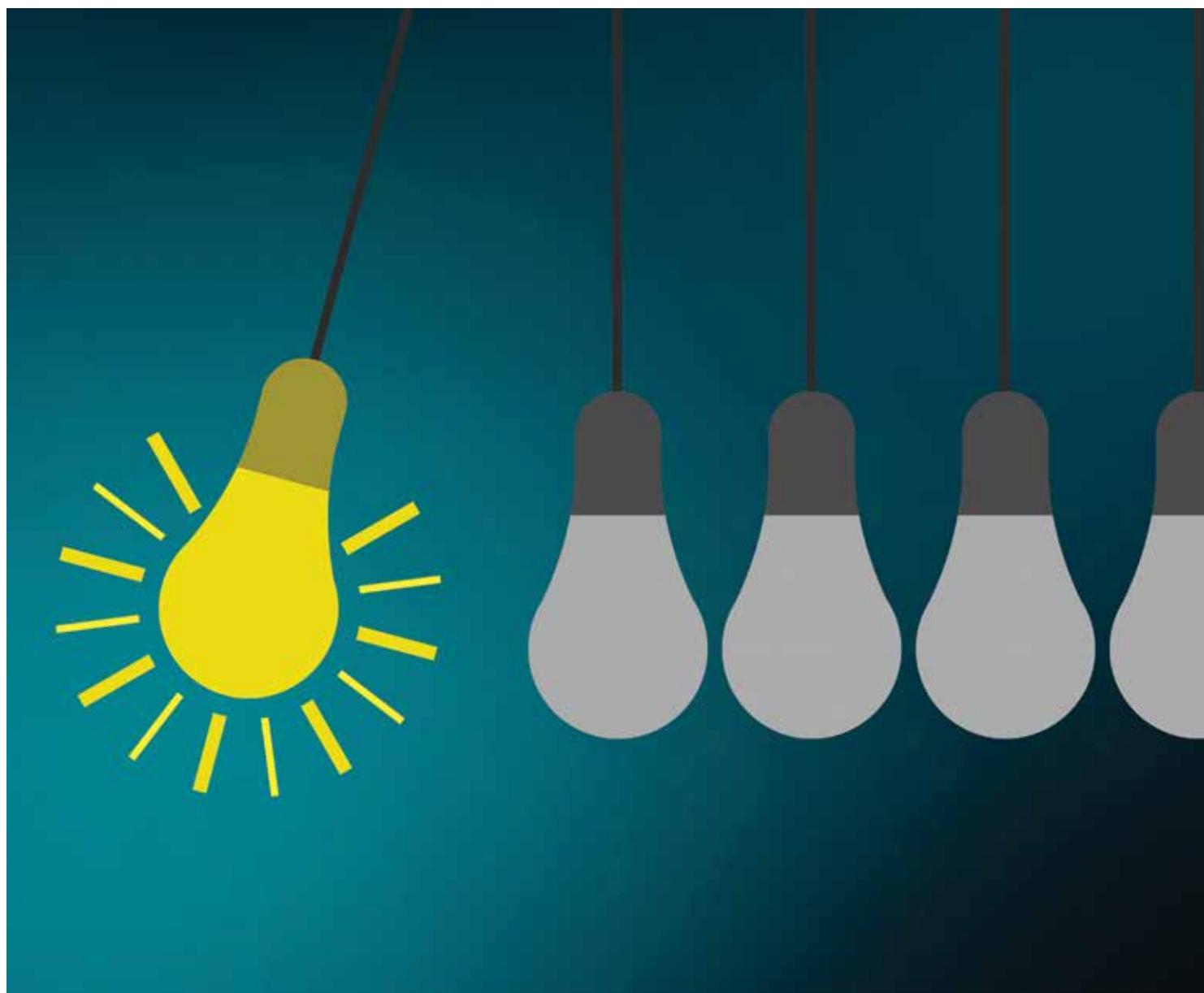
我有幸成为这项新活动的首位参与者，大家可在本期月刊第36-37页看到活动成果。请继续留意，随后数月的「以治理为事业」一栏，将介绍多位在不同领域工作、担任不同职务的公司治理专才，彰显专业治理人才之令人敬佩的多元化背景以及事业发展路径。



马琳 FCIS FCS

Thought leadership review

Helping Chartered Secretaries and Chartered Governance Professionals keep up with frontier issues in governance is part of the remit of The Chartered Governance Institute (CGI). This article reviews two new papers from CGI's Thought Leadership Committee that raise important questions for the profession going forward.



CGI's Thought Leadership Committee (TLC) was established in 2016 to help governance professionals stay up to date with technical best practice and the wider debates relevant to the profession. Two new papers from the TLC, now available from the International Insights section of the CGI website: www.cgiglobal.org, are essential reading for anyone involved in governance.

1. Governance beyond the listed company

In January 2020, the TLC published 'Corporate Governance – Beyond the Listed Company'. This discussion paper, authored by the current TLC Chairman Peter Greenwood FCIS FCS, looks at the governance implications of the declining popularity of the listed public company as a structure for business entities and the corresponding growth in alternative fundraising structures, such as private equity, venture capital and crowdfunding.

The growth in alternative fundraising structures has been worldwide in scope and on a spectacular scale. The paper indicates a sevenfold rise in private equity net asset value since 2002, and a threefold rise in the size of the venture capital industry between 2008 and 2017. The decline in the number of public companies has been similarly large scale – in the US their number has halved since 1997 – but so far this trend has not been seen in Asia. In Hong Kong and the Mainland the number of listed companies is still growing. However, these related trends raise questions about the orientation and future of governance that are relevant to practitioners globally.

Rebalancing governance

Since the publication of the Cadbury Report in the UK in 1992, the governance

“ just looking at the issue of transparency alone, the decline in the number of listed companies has already resulted in a worrying decline in the public disclosure of business information ”

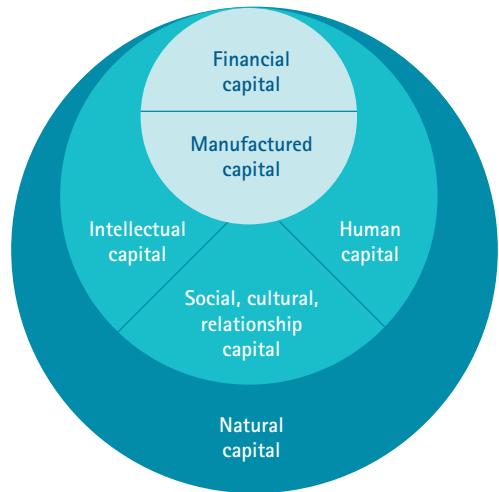
regimes applicable to listed companies worldwide have been growing in scale and sophistication. Has this had the unintended consequence of turning increasing numbers of organisations away from the traditional public company model?

In a webinar held on 16 April 2020, Mr Greenwood pointed out that the many potential drivers of this trend, including unusually low interest rates, changes to tax regimes and overall trading conditions, make it difficult to identify any one single factor as its cause. Nevertheless, the requirements imposed on listed companies via legislation and corporate

Highlights

- good governance has always been seen as a prerequisite for access to public capital – should it also be seen as a prerequisite for limited liability?
- there needs to be a rebalancing of the respective governance requirements applied to listed and non-listed companies
- Chartered Secretaries and Chartered Governance Professionals are in a unique position to facilitate the transition to integrated reporting

The six capitals



governance codes risk putting them at a competitive disadvantage in comparison with non-listed companies. In addition to the need to level the playing field between private and listed companies, there is also the question of whether corporate governance is increasingly looking in the wrong direction.

Reorienting governance

Over the last three decades, corporate governance has been focused on the governance of listed companies. This was largely based on the notion that high governance standards should be a prerequisite for access to public capital. In the context of the shift away from the 'shareholder primacy' approach to governance, however, this narrow focus on listed company governance is looking increasingly myopic.

Businesses, listed and non-listed, have to take into account the interests of wider stakeholder groups and the communities they operate in. Non-public companies provide goods and services of similar

importance and value to societies, and have responsibilities to stakeholders of equal importance to those of listed companies, so would it not be logical for them to be under similar corporate governance expectations as their listed counterparts? Good governance has always been seen as a prerequisite for access to public capital – should it also be seen as a prerequisite for limited liability?

Just looking at the issue of transparency alone, the decline in the number of listed companies has already resulted in a worrying decline in the public disclosure of business information. The paper cites the deal in 2019 that resulted in Axel Springer being taken private by the US private equity giant KKR. At a stroke, this meant that some of Germany's biggest newspapers, as well as a major German publisher, were no longer subject to the higher standards of transparency and accountability which come with listed status.

Similarly, Sotheby's, the leading auctioneer that had been a listed company for 30 years, was taken into private ownership in June 2019. At the time, Hong Kong's *South China Morning Post* quoted one leading art dealer as saying: 'The deal to take Sotheby's private will throw a handy cloak of secrecy over sales earnings.'

The journey ahead

The decline in stock exchange listings may not yet be a trend we are seeing here in Hong Kong, but it raises important questions for governance going forward. At the top of the agenda is the need to rebalance the respective governance requirements applied to listed and non-listed companies. The paper points to developments in the UK that may indicate a way forward. The Companies (Miscellaneous Reporting) Regulations

2018 (the Regulations) implemented in 2018, for example, require all companies of a significant size to make disclosures regarding their corporate governance arrangements.

The Regulations apply to companies with more than 2,000 employees, and/or a turnover of more than £200 million and a balance sheet of more than £2 billion. Under the Regulations, such companies must disclose which corporate governance code, if any, they applied during the financial year, how they applied the code and any deviations from the code. If companies did not apply any corporate governance code, they need to explain their reasons for that decision and disclose their corporate governance arrangements.

The Regulations were followed, in December 2018, by 'The Wates Corporate Governance Principles for Large Private Companies'. The paper suggests that these principles, available on the UK Financial Reporting Council website: www.frc.org.uk, may be capable of application to other jurisdictions eager to extend governance disclosure requirements to large private companies.

The Code of Best Practice issued by Sir Adrian Cadbury in the UK back in 1992 targeted the boards of listed companies, but Sir Adrian encouraged as many other companies as possible to aim to meet its requirements. Three decades later, however, that convergence of best practice in governance has not occurred. 'If anything,' the TLC paper points out, 'public and private companies have followed diverging paths. The evolution of business models, the links between capital providers and business, the scale of economic activity in the hands of non-public companies and the substantial benefits of limited liability

all suggest that the time has come for a more vigorous implementation of Sir Adrian's initial hopes'.

2. Integrated reporting – a governance perspective

Since 2002, when Danish biotechnology company Novozymes produced the world's first integrated report, the integrated reporting (IR) movement has had a major impact on corporate reporting globally. The International Integrated Reporting Council (IIRC) was formed in London in 2009 and released its Framework, explaining the fundamental concepts that underpin IR and setting out guiding principles that govern the overall content of an integrated report, at

the end of 2013. The first revision of the Framework is now underway.

A core concept of the IR movement is that of the six capitals (see 'The six capitals'). Moving away from the focus on historical financial data in corporate reporting, the IR process requires organisations to report on the many different resources and relationships, financial and other, used in the value creation process.

The IIRC does not certify 'integrated reports' and its Framework does not prescribe key performance indicators, measurement methods or specific disclosures that must be made. The IIRC calculates, however, that in 2019

around 2,000 listed companies in over 70 countries were using the IR approach for their reporting. In many ways, 'integrated thinking' – the active consideration by an organisation of the relationships between its various operating and functional units and the capitals it uses and affects – has been more influential on the corporate reporting process than the number of reports that can be deemed 'integrated reports' under the Framework would indicate.

The relevance of IR for governance professionals

In March 2020, the TLC published 'An overview of integrated reporting for Chartered Secretaries and Chartered

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integrated reporting and governance share common goals – including improved transparency, an ethical culture, effective leadership, effective internal controls and board oversight, and ultimately a sustainable value creation process

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Governance Professionals' The paper, a collaboration between CGI and the IIRC, is designed to promote a better understanding of the benefits of IR and the roles that governance professionals can play in transitioning to IR.

The paper highlights how IR fits into the governance framework of organisations. Integrated reporting and governance share common goals – including improved transparency, an ethical culture, effective leadership, effective internal controls and board oversight, and ultimately a sustainable value creation process.

'Good governance is the foundation of the value creation process. It informs the application of integrated thinking around how the organisation contributes to creating positive outcomes for stakeholders and society. This forms an invaluable part of assessing the prospects and longer-term viability of the organisation for investors and other stakeholders,' the paper states.

The latest iteration of South Africa's corporate governance code – King IV – recognises IR as a key principle of corporate governance.

Transitioning to IR

The TLC paper also provides practical insights into how governance professionals can facilitate implementation of IR. It makes it clear that transitioning to IR is an incremental process that will take time, and recommends that organisations should set multi-year plans to move to IR and should set up a cross-functional project team to drive the process.

'Integrated thinking is not something that is done just at year end. For an integrated reporting approach to be holistic and effective, integrated thinking needs to be entrenched within the organisation. This cannot be achieved overnight and will require a fundamental mind shift, led by the board, and starting with the strategy team and then all those who contribute to implementing the strategy,' the paper states.

As the board has the ultimate responsibility for governing an organisation, a commitment to IR from the board is vital. Nevertheless, the paper emphasises that everyone has a role to play. As you might expect from a paper designed to promote IR among Chartered Secretaries and Chartered Governance

Professionals (CS/CGPs), the paper highlights the unique position of CS/CGPs to facilitate the transition to IR. They are a key link between the board and management, between the company and external stakeholders, and between the various different functions within organisations. Moreover, they are already closely involved in the corporate reporting process.

The governance professional/company secretary can play a significant role in embedding an integrated thinking culture to help break down the silos between teams and departments by providing dashboards and other communication tools for improved alignment across the organisation, leading to efficiencies in both external and internal reporting. This includes being part of the multidisciplinary project team within the organisation, which guides the organisation around the right data and information required,' the paper states. ■

The papers reviewed in this article, together with the latest paper from The Chartered Governance Institute's Thought Leadership Committee, 'Enhancing Individual Director Accountability', published as this edition went to print, are available from: www.cgilglobal.org.

ACRU 2020

Date: Friday 5 June 2020

Time: 9.25am–5.45pm

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Independent directorship: have you got what it takes?



Since retiring two years ago, Richard Ho FCIS FCS, has embarked on a second career as an independent non-executive director (INED). He shares with *CSj* some essential lessons in how to make a success of the INED calling.

Can you tell us about your personal background and career path?

'I studied for the examinations of The Institute of Chartered Secretaries and Administrators (ICSA – now The Chartered Governance Institute) full time at Hong Kong Polytechnic (now The Hong Kong Polytechnic University) in the 1980s. After I graduated, I found a job in a bank and I stayed in banking until I retired.'

Was the ICSA training useful to you in your career?

'Yes, I haven't worked specifically as a Chartered Secretary, but the training provided me with a good foundation for my career. The training covers everything from accountancy and business law to administration. Accountancy was obviously useful, as a banker you need to be able to analyse balance sheets, but the business law aspects were just as useful since that background gave me confidence to advise customers on regulatory issues. There are courses specifically designed to give formal training to bankers, but I think the ICSA training was equally good, because it gave me an across-the-board awareness of many different aspects of business.'

Can we turn to your second career as an INED since your retirement two years ago?

'I was 60 years old when I retired, so I was looking for something I could do. I was approached by some of my business friends to join a board as an INED. That was an interesting option for me. It's not a full-time job, but I felt that it would be a way for me to maintain my connections with the business world.'

I can't claim to be an experienced INED. I started this work only one-and-a-half years ago, but I have had the benefit of being a committee member of The Hong Kong Institute of Directors (HKIoD) Directors of the Year Awards. I joined HKIoD to learn more about how to be a director and I was asked to join the committee running the award. The award celebrates directors who excel in corporate governance, those who serve as role models for what directorship is really about, so this has been an interesting and eye-opening experience.'

You mention that working as an INED is not a full-time job – have you been surprised by the amount of time it takes?

'People used to think that being invited to join a board as an INED was an honorary position. They assumed it wouldn't occupy much

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if you take on the independent
non-executive director role
without really understanding your
responsibilities you might be in for
an unpleasant surprise
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of their time and that they could be very passive. Over the last decade, expectations have changed a lot. The requirements of the listing rules and the Companies Ordinance are much more explicit about the need for directors to maintain an active interest in the affairs of the company.

The fact is, to be effective in the INED role, you need to understand every aspect of the company and the wider business environment. You cannot be passive, you have to be proactive and diligent in doing your duty as a director. This does not only mean spending the time needed to understand the business and attend meetings; it is also about having the courage to speak up if something doesn't seem right.

Highlights

- signing up for a directorship is not a decision to be taken lightly – you are signing up to be a watchdog on behalf of all the stakeholders
- asking difficult questions should not be regarded as disloyalty to the company; directors are supposed to be the loyal opposition party to management
- the extent to which independent non-executive directors can do their jobs well depends on how well company secretaries do their jobs

Board and board committee meetings should not be regarded as a formality, held in the interests of conformance with the listing rule requirements. Compliance is essential of course, but directors are not there just to ensure conformance but to improve performance. That means effectively developing the company's business strategy and effectively monitoring the performance of management. So signing up for a director's role is not a decision to be taken lightly. You may have to be controversial because you are the watchdog on behalf of all the stakeholders.'

You mention that expectations have changed – have attitudes among independent directors also changed in line with these expectations?

'I think awareness is improving. Part of the credit for this should go to the many bodies in Hong Kong that are promoting better professionalism among directors. The Securities and Futures Commission (SFC), Hong Kong Exchanges and Clearing Ltd (HKEX), the HKIoD and The Hong Kong Institute of Chartered Secretaries have focused on the importance of directors understanding their duties and responsibilities.'

What advice would you give to someone thinking of joining a board as an independent director?

'The first thing I would emphasise is that the Companies Ordinance doesn't differentiate between executive and non-executive directors – all directors share the same legal responsibilities and liabilities, and they share the same fiduciary duties towards the company and its stakeholders.'

Management's job is to run the company and your job as a director is to oversee management, so when you accept a seat on a board, you are accepting this challenge. If you take on the INED role without really understanding your responsibilities you might be in for an unpleasant surprise. There are cases of serious malpractice in companies and, when it comes to light, you often hear the directors complain that they were not properly informed, or that they were deceived by management. Alternatively, they may say that they weren't given sufficient time to go through the board papers before meetings, or that they were too busy to go through all of the documents thoroughly. Another common complaint is that there wasn't enough time in the meeting to ask questions.

These are not valid excuses. The Companies Ordinance makes it very clear that directors' duties will be interpreted according to

both objective and subjective tests. This means that directors will be held accountable, not only for the knowledge they are known to possess due to their professional expertise and background, but also the general knowledge, skill and experience that may be expected for a reasonably diligent person having taken on the role of the director.

There is an expectation that directors will exercise professional scepticism with regard to the information supplied by management and will request the information they need to exercise good judgement. If board meetings are too rushed, or you don't have enough time to review the board papers, you should ask the company secretary for more time. Asking for the board papers to be circulated at least five days before the meeting, for example, is very reasonable. It does take time to review all the agenda topics before coming to a meeting so that you will be in a position to have a meaningful discussion.

Directors need to ensure that they are in a position to constructively challenge management. That's why they are on the board. So my advice would be for new directors to always apply a reality check to what they are being told. That is not disloyal – directors are supposed to be a check and balance as the loyal opposition party to management.'

You mention the company secretary – what's your view of the importance of the relationship between the company secretary and independent directors?

'INEDs, not being employees of the company, rely a lot on the company secretary for the information they need. The company secretary is a bridge between INEDs and the management of the company. So the extent to which INEDs can do their job well depends on how well the company secretaries do their jobs.'

I know the companies I work for as an INED quite well – they were clients of mine as a banker. Other INEDs may not be in that position and they may not know much about the business or the industry. In that case, the company secretary is a kind of mentor. They can coach inexperienced directors to ensure that they understand their roles and responsibilities, as well as the latest trends and developments in the market. With this in mind, the quality of the corporate governance in a company depends on how good its company secretary is. They are key players in keeping directors informed about new corporate governance requirements and what's happening in the market.'

**“
the quality of the corporate governance in a company depends on how good its company secretary is
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Do you think that the existing measures to boost the independence of INEDs in Hong Kong are effective?

'There are rules saying for example that the previous auditors of a company cannot be an INED for two years after they retire. In my case, as the previous banker of the company inviting me onto their board, I was not able to join for one year after my retirement.

Nevertheless, generally in Hong Kong the chairman, CEO or CFO recruit board members who they know. I don't have figures to hand, but it is still not common for listed companies to use an outside agency to recruit their INEDs. There will be a question mark over the independence of INEDs who are recruited because they are friends of the top management or chair – will they be in a position to be a check and balance? Will they be reluctant to ask difficult questions with a view to being asked to stay on when the next rotation comes around?

These questions are particularly relevant in companies that are still under family control. That is not to say that family run companies are not good companies – some of Hong Kong's most successful companies fall into this category and, as a banker, I would be very comfortable lending them money. Where a family-owned business has been handed down through several generations, the owners are often very good caretakers, reluctant to take on speculative risks just to push up the share price. Family-owned businesses tend to be run by conservative owners whose main priority is to make sure that the company prospers in the long term for future generations of the family.

But where the directors are all close friends of the chairman or the CEO, and where the culture is not conducive to directors challenging the chair or CEO in the boardroom, it is even more vital that INEDs understand their roles and responsibilities and the need to exercise independent judgement.'

David Webb has suggested that independent directors should be elected by minority shareholders. Do you think that would be a good way boost their independence?

'That would be a way to boost their independence, but we have to strike a balance between the need for independence and the need to run an efficient board. In the interests of "perfect" corporate governance, you could insist that all listed companies should have an entirely independent board, but would the directors be able to fit in and work efficiently with the chairman and CEO? Such a rule would likely be a disincentive for companies to get listed.'

What's your view of the impact on directors of the recent shift to a multi-stakeholder model of corporate governance?

'Directors should not be focused on the interests of one particular group or individual – whether that is the shareholders, the directors themselves, the CEO or the chairman – they need to make their decisions based on what is good for the company as a whole. The interests of the shareholders and the company are not always aligned – dividend payments are a good example of this. Shareholders are generally keen on increased dividend payments but this year, in the context of

“ times of crisis and major change are a test of our levels of transparency and accountability ”

the crisis we are facing, I've seen some companies taking the decision not to pay a dividend to shareholders, or to reduce the dividend and reduce the bonus shares issued. This makes sense at a time when companies need to retain funds to prepare for the difficult times ahead.'

Do you have advice for company secretaries regarding their board support role?

'I would recommend company secretaries remind the chairman or the CEO to allocate more time for the discussion of strategic issues at board meetings. There is often a pressure in board and board committee meetings to reach a decision on the agenda items on time. This is a compliance issue – the company may have a tight deadline to decide on its resolutions for the AGM for example, but that sometimes means that strategic issues don't get addressed.

I would recommend that the company secretary set aside time for the board to discuss the company's long-term business plan in the yearly board agenda. The COVID-19 pandemic and the social unrest in Hong Kong should, for example, have prompted discussions at the board level about whether the company's crisis management plans and strategies are effective. If not, the company needs to think about how to revamp these plans for the future. This might not be regarded as urgent, but it will be important in the long run. The company secretary should try to draw up a master schedule for these kinds of strategic issues.

Company secretaries might try to line up all the agenda items to be decided on in one meeting. They might try to organise board committee meetings one after another so that the agenda can be discussed in one day, or even half a day. That often leads to a scenario where the board discusses the urgent issues on the agenda but important aspects of strategy get crowded out because time is so limited.

Another recommendation I would have for company secretaries is for them to arrange whole board training sessions at least once

a year. This ensures that all directors receive the same message and everyone is on the same page. It is particularly useful where directors need to be updated on important changes in the governance or regulatory environment. I would also recommend company secretaries record any dissenting opinions among directors in the minutes of board meetings. The board takes collective responsibility for decisions made, but individual directors may have dissenting views and that should be noted down.'

Do you have advice for INEDs at this difficult time for businesses in Hong Kong?

'I would encourage boards to focus on maintaining high standards of corporate governance, in particular ensuring that their companies remain transparent and accountable to all stakeholders. Times of crisis and major change are a test of our levels of transparency and accountability, but they are also the time when these things become most important.

COVID-19 is affecting the operations of most companies in Hong Kong, not only companies like restaurants and hotels which are in the front line when it comes to the pandemic. The SFC and HKEX recently issued a joint statement, giving advice on how companies should maintain proper disclosure during the COVID-19 crisis. They suggest companies should be making voluntary announcements and I would strongly urge companies to use this route to ensure stakeholders are informed about how COVID-19 is impacting them. They may not be able to quantify too much because no one knows how long this situation will last, but they can discuss their crisis management plans, and what measures are in place to try to safeguard employees' safety and to resume operations.

Some companies may opt to take a wait-and-see approach, but this is not really an option. Stakeholders know that there will be some impact, so if you don't give them any information there will be a loss of trust. Many stakeholders are directly affected by the changes to companies' operations. After Chinese New Year, many factories in the Mainland were shut down, so customers may be worried that companies might not be able to deliver their goods on time. Suppliers may be concerned about the disruption to distribution networks. If companies issue regular updates about the situation, stakeholders will be reassured that the company recognises and is managing the risks involved.'

Richard Ho was interviewed by CSj Editor Kieran Colvert.



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AGMs and social distancing

CSj highlights the recommendations of the latest guidance note issued by the Institute's Public Governance Interest Group on how to arrange your AGM while complying with the social distancing regime now in place in Hong Kong.



As the 2020 AGM season gets underway, high on the list of operational challenges resulting from the COVID-19 pandemic will be how to arrange an AGM while complying with the social distancing regime in place in Hong Kong to minimise the spread of the virus. Fortunately, a new guidance note issued by the Institute's Public Governance Interest Group (PGIG), provides a useful summary of best practice recommendations for arranging AGMs in this context. The recommendations are primarily for non-governmental organisations (NGOs), but have relevance more widely in the market.

Complying with Hong Kong's social distancing regime

In March this year, the government brought in the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap 599G) (the Regulation). The Regulation limits group gatherings in public places to no more than four persons. The guidance note addresses the implications of the Regulation for AGM arrangements. It makes it clear that Exemption 11 to the Regulation exempts 'group gathering at a meeting of a body that must be held within a specified period in order to comply with any

Ordinance or other regulatory instrument that governs the operation of the body or its business'.

This exemption means that NGOs that are companies limited by guarantee established under the Companies Ordinance – this is the most common structure for NGOs in Hong Kong – are exempted from complying with the social distancing requirements under the Regulation in relation to their AGMs. The guidance note recommends that NGOs monitor the situation, however, since the Regulation is required to be renewed every 14 days and changes may be made. NGOs should therefore regularly check the latest wordings of the Regulation and related exemptions.

It also points out that external venue providers may be required to comply with other regulations relating to social distancing. NGOs should therefore also monitor these risks relating to their upcoming AGMs.

NGOs that are not structured as companies under the Companies Ordinance may not be covered under Exemption 11. The guidance note recommends that they need to take legal

Highlights

- the current COVID-19 outbreak has highlighted the advantages of the hybrid format since it enables shareholders to continue to attend AGMs at a time when physical meetings are severely constrained
- physical attendance at the AGM is not necessary for shareholders to exercise their voting rights – they can appoint the chair, or other eligible person, as proxy to vote in accordance with their instructions
- the guidance note recommends choosing a venue that will enable you to expand the seating arrangements for social distancing purposes

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this year's AGM season brings unprecedented challenges to organisations in Hong Kong and around the world
”

advice as to whether they are exempted from complying with the social distancing requirements of the Regulation.

Technology to the rescue?

COVID-19 has highlighted for many organisations the benefits of adopting AGM-facilitating technologies. Most relevant for organisations in Hong Kong are the technologies enabling organisations to hold their AGM in the 'hybrid' format – this refers to meetings combining both in-room and remote attendance.

The Institute has been at the forefront of promoting hybrid meetings for many years.

This format has a number of governance advantages. First and foremost it broadens the accessibility of the AGM as it permits both those unable to make the physical meeting and also those who prefer the in-room experience to attend.

The current COVID-19 outbreak has certainly highlighted the advantages of the hybrid format since it enables shareholders to continue to attend AGMs at a time when physical meetings are severely constrained.

Currently the number of organisations using the hybrid format is relatively low in Hong Kong, but this number is expected

to rise as more organisations embrace digitalisation. Holding a hybrid meeting is permitted under Section 584 of the Companies Ordinance, which states that 'a company may hold a general meeting at two or more places using any technology that enables the members of the company who are not together at the same place to listen, speak and vote at the meeting'.

Section 584, however, only has effect subject to any provision of the company's articles of association. The guidance note therefore reminds NGOs to check that they do not have restrictive provisions in their constitutional documents. If this is the case, organisations should consider amending their articles to allow for electronic meetings and voting for the future. Article 38 of the Model Articles for a company limited by guarantee is commonly regarded as being not restrictive of the holding of hybrid meetings under Section 584 of the Companies Ordinance (see 'Article 38 of the Model Articles').

Article 38 of the Model Articles – attendance and speaking at general meetings

- 1. A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions that the person has on the business of the meeting.
- 2. A person is able to exercise the right to vote at a general meeting when:
 - a. the person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - b. the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 3. The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak and/or vote at it.
- 4. In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- 5. Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, and they are able to exercise them.

The guidance note also points out that it is possible to hold an AGM by paper circulation of the resolutions under Sections 548 and 556 of the Companies Ordinance. This would, however, in most cases be impracticable for larger organisations and would also require the consent of all members in writing beforehand.

Physical meetings

Most organisations in Hong Kong, including those able to take advantage of the hybrid format, will need to arrange a physical meeting for their AGM and this will inevitably involve risks of contributing to the spread of COVID-19. The guidance note makes recommendations on ways to minimise this risk. Some of the recommendations are highlighted below.

Proxy voting

Physical attendance at the AGM is not necessary for shareholders to exercise their voting rights. The guidance note points out that organisations can appoint the chair, or other eligible person, as proxy to vote in accordance with their instructions. Shareholders should be encouraged to do so, albeit this should not be the case under normal circumstances.

Delaying the meeting

An NGO that is limited by guarantee under the Companies Ordinance can hold its AGM up to nine months from the end of its financial year. The guidance note recommends that organisations take advantage of this while monitoring further developments to better plan their AGM.

Choosing a venue

The guidance note recommends choosing a venue that will enable you to expand the seating arrangements for social distancing purposes. Also, organisations may want to select a venue that allows them to

house attendees in different rooms. This would, however, require them to make the appropriate audio and visual arrangements.

Other measures

- The guidance note recommends considering requesting shareholders to preregister their proposed attendance at the AGM.
- Electronic voting as a means of voting at a physical AGM should be considered with a view to reducing physical interactions during the voting process.
- Where electronic voting is not possible, organisations may consider encouraging members to place their voting forms in prearranged voting boxes to reduce physical interactions when collecting them.
- The AGM circular should make it clear that attendees will need to be screened for body temperature and those with a high temperature or other signs of a COVID-19 infection will not be admitted to the meeting.
- The AGM circular can also provide a health declaration form which members will need to submit at the AGM.
- Organisations may also want to make it clear that there will not be any refreshments or souvenirs at the meeting and that attendees will need to wear masks at all times.
- Alcohol rubs and/or hand sanitisers should be provided at the venue.
- Microphones should be disinfected after each use.

COVID-19 has highlighted for many organisations the benefits of adopting AGM-facilitating technologies

Fulfilling the purpose of the AGM

Two months since COVID-19 was declared a global pandemic by the World Health Organization, there still seems to be no end in sight of the major operational challenges facing organisations trying to adapt to the exceptional conditions resulting from the pandemic. In this context, this year's AGM season brings unprecedented challenges to organisations in Hong Kong and around the world. The latest PGIG guidance note will be a useful resource for organisations seeking to ensure that this year's AGM serves its purpose of permitting shareholders to participate in the governance of the organisation, without contravening the social distancing regime in place in Hong Kong to minimise the spread of COVID-19. 

The guidance note reviewed in this article is the sixth in the series of guidance notes issued by the Institute's Public Governance Interest Group. It is available, along with all of the guidance notes issued by the Institute's seven Interest Groups set up under the Technical Consultation Panel in June 2016, from the Publications section of the Institute's website: www.hkics.org.hk.

PRC Individual Income Tax reforms

In this first part of a two-part series, Henry Kwong, Tax Partner, and Matthew Cheung, Tax Manager, Cheng & Cheng Taxation Services Ltd, examine the implications of recent amendments to the PRC Individual Income Tax law and regulations, focusing on the definition of a PRC tax resident and its implications for Hong Kong individuals.

On 31 August 2018, the National People's Congress of the People's Republic of China (PRC) approved a number of reforms to the PRC Individual Income Tax (IIT) law, which came into effect on 1 January 2019. The definition of a 'PRC individual tax resident' attracted market attention due to its apparent stringency, while the introduction of anti-avoidance tax provisions has a significant impact on Mainland Chinese nationals. In this article, we will study the definition of a PRC tax resident and its impact on Hong Kong citizens and expatriates. The contents of the anti-avoidance tax provisions will be covered in the next article.

PRC tax resident

The Mainland adopts a worldwide taxation concept. As such, individuals who are PRC tax residents are subject to IIT on their worldwide income (that is, both PRC sourced and non-PRC sourced income), while non-PRC tax residents are subject to IIT on PRC sourced income only. As such, the taxing rights on non-PRC sourced income (for example, income arising from Hong Kong) differentiates between PRC tax residents and non-PRC tax residents.

According to the IIT law, an individual is considered a PRC tax resident if one of the following conditions is fulfilled:

- the individual is domiciled in the Mainland (domicile factor), or
- the individual has resided in the Mainland for 183 days or more in a calendar year (time factor).

An individual is domiciled in the Mainland if he/she habitually resides in the Mainland by reason of permanent registered address, family ties or economic interests. An individual with a household registration in the Mainland or a Mainland Chinese passport is generally regarded as domiciled in the Mainland and is thus considered a PRC tax resident.

Two relaxations to the worldwide taxation system for IIT were subsequently introduced in relation to the time factor. Please note that these are only applicable to a non-Mainland domiciled individual. In contrast, a Mainland domiciled individual is subject to IIT on his/her worldwide income no matter the length of his/her stay in the Mainland.

1. IIT implementation rules

Article 4 of the amended IIT implementation rules points out that non-PRC sourced income that is paid or borne by a non-PRC enterprise(s) or individual(s) is only subject to IIT if that individual, who is not domiciled in the Mainland:

- has resided in the Mainland for 183 days or more during each year of the preceding six consecutive calendar years, and
- did not stay outside the Mainland for more than 30 days in one single trip during any one of the preceding six consecutive years.

In this case, the individual would be subject to IIT on his/her worldwide income starting from the seventh year onward.

The Public Notice [2019] No 34 (Notice No 34) jointly issued by the Ministry of Finance and the State Administration of Taxation has further provided that the abovementioned 'six consecutive years' will be counted retroactively, starting from 1 January 2019. In this connection, 2025 would be the earliest year that a non-





Mainland domiciled individual may be subject to IIT on his/her worldwide income.

It has been common practice for Hong Kong citizens who require frequent travel to the Mainland to stay in Hong Kong for more than 30 consecutive days once every few years in order to avoid being subject to IIT on his/her worldwide income. This practice is commonly referred to as a 'tax break'.

2. Day-counting rule

In the past, an individual was considered to reside in the Mainland for one whole day even if he/she was only there for part of the day. As such, for a Hong Kong individual who travelled to the Mainland to work from Monday to Friday, he/she would have been counted as residing in the Mainland for more than 183 days in the year, even if he/she travelled back to Hong Kong every day. It is also interesting to note that an individual could have been considered to reside in Hong Kong for more than 180 days and in the Mainland for more than 183 days during the same year, and thus could have been simultaneously regarded as both a Hong Kong and a PRC tax resident.

Notice No 34 revised the above day-counting rule. In particular, an individual is now only considered to be residing in the Mainland for one day if he/she stays there for the 'whole day' (that is, a consecutive period of 24 hours in the same day, or from 12am to the following 12am). This relaxation is significant to Hong Kong citizens who frequently travel to the Mainland to work, but who come back to Hong Kong regularly after their working week. For instance, a Hong Kong citizen who works in the Mainland during the week, arriving on Monday and leaving on Friday, would now be considered as

residing in the Mainland for three days per week under the new rule (instead of five days under the old rule), because they are only there for part of the day on both Monday and Friday. This revision makes a huge difference as that individual would now be counted as residing in the Mainland for less than 183 days in a year under the new rule, as opposed to more than 183 days under the old rule.

On the other hand, for Hong Kong citizens working in the Greater Bay Area, it is common for them to travel back to Hong Kong every day after their work. Under the

Highlights

- recent amendments to the PRC Individual Income Tax (IIT) law and regulations have significantly lowered the risk of a Hong Kong citizen being subject to IIT on his/her worldwide income
- employment income is considered as PRC sourced income if the work is performed in the Mainland
- office income for directors and senior management personnel derived from a Mainland entity or the Mainland permanent establishment of a foreign entity – even when duties are performed outside the Mainland – is still considered as PRC sourced income

Table 1: Ordinary employees

		Duties outside the Mainland		Duties in the Mainland	
	Number of days residing in the Mainland	Paid/borne by non-Mainland resident entity	Paid/borne by Mainland resident entity	Paid/borne by non-Mainland resident entity	Paid/borne by Mainland resident entity
1)	> 183 days in each of the preceding six consecutive years, and has not stayed outside the Mainland for more than 30 days in one single trip in any of the preceding six consecutive years	✓	✓	✓	✓
2)	> 183 days in one year, but not > 183 days per year for each of the preceding six consecutive years, or has stayed outside the Mainland for more than 30 days in one single trip in any of the preceding six consecutive years	✗	✓	✓	✓
3)	> 90 days but ≤ 183 days	✗	✗	✓	✓
4)	≤ 90 days	✗	✗	✗	✓

✓ Subject to IIT

✗ Not subject to IIT

Table 2: Directors and/or senior management personnel

		Duties outside the Mainland		Duties in the Mainland	
	Number of days residing in the Mainland	Paid/borne by non-Mainland resident entity	Paid/borne by Mainland resident entity	Paid/borne by non-Mainland resident entity	Paid/borne by Mainland resident entity
1)	> 183 days in each of the preceding six consecutive years, and has not stayed outside the Mainland for more than 30 days in one single trip in any of the preceding six consecutive years	✓	✓	✓	✓
2)	> 183 days in one year, but not > 183 days per year for each of the preceding six consecutive years, or has stayed outside the Mainland for more than 30 days in one single trip in any of the preceding six consecutive years	✗	✓	✓	✓
3)	> 90 days but ≤ 183 days	✗	✓	✓	✓
4)	≤ 90 days	✗	✓	✗	✓

✓ Subject to IIT

✗ Not subject to IIT

“

individuals who are PRC tax residents are subject to Individual Income Tax (IIT) on their worldwide income (that is, both PRC sourced and non-PRC sourced income), while non-PRC tax residents are subject to IIT on PRC sourced income only

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new rule, it is quite certain that he/she will be counted as residing in the Mainland for less than 183 days every year.

To conclude, with the above two relaxations, the risk of being subject to IIT on worldwide income has been lowered significantly.

PRC sourced income

After examining the definition of a tax resident, you may be interested to know that any income which is specifically defined as 'PRC sourced income' is still subject to IIT even when an individual is not a PRC tax resident. In this article, we will focus on employment and office income.

There is a common misconception that the source of remuneration received by an employee depends on the location of the employer – in other words that remuneration received, for example from a Hong Kong company, would only be subject to Hong Kong salaries tax.

In fact, the source of employment income is generally defined as the location in which the employee provides the services. As such, if an individual receives employment income from a Hong Kong company but travels to the Mainland to work, his/her income is considered to be PRC sourced income.

Having said that, for directors and senior management personnel – even when he/she performs duties outside the Mainland – if their employment or office income is derived from a Mainland entity or the Mainland permanent establishment of a foreign entity, his/her income is still considered as PRC sourced income.

Tables 1 and 2 summarise the respective IIT implications for non-Mainland domiciled individuals who are (i) ordinary employees or (ii) directors and/or senior management personnel, under different scenarios.

IIT tax calculation

For individuals who work both in the Mainland and outside the Mainland (such as in Hong Kong) during the year, their IIT liabilities involve complex calculations which cannot be easily addressed in this article. However, we list below a number of factors that will affect their IIT liabilities:

- whether the individual is a director or senior management personnel or not
- whether the remuneration was paid borne by a Mainland entity, a non-



Mainland entity or co-paid/borne by Mainland and non-Mainland entities, and

- the number of working days in the Mainland.

In this regard, we would like to highlight that the definitions of 'working day' and 'day of residence' are different. As explained above, the definition of days of residence has been changed such that only a whole day (that is, a 24-hour period on the same day) is calculated as one day. As for the working day, staying less than 24 hours in the Mainland during a day is still counted as half a working day.

Last piece of advice

Last but not least, in the case of a Hong Kong individual resident, a tax credit is available if the same income is subject to both IIT and Hong Kong salaries tax under the Double Taxation Arrangement between Hong Kong and the Mainland. As such, the overall tax liabilities in Hong Kong and the Mainland should be considered when you plan ahead.

**Henry Kwong, Tax Partner, and
Matthew Cheung, Tax Manager**

*Cheng & Cheng Taxation
Services Ltd*

Economic substance requirements: updates

Latest developments in the legislation and regulations in Bermuda, the British Virgin Islands and the Cayman Islands



Vincent Chan, Counsel of Appleby (Hong Kong office), provides an overview of the recent updates on economic substance requirements and reporting obligations in Bermuda, the British Virgin Islands and the Cayman Islands.

Since October 2019, the date of my last article in *CSj* summarising the economic substance (ES) requirements in Bermuda, the British Virgin Islands (BVI) and the Cayman Islands (Cayman), the governments of these jurisdictions have introduced amendments to their ES legislation or rules, or have issued updated versions of their guidance notes. This article outlines some of these amendments up to 13 April 2020.

Bermuda

Bermuda has introduced key amendments to its ES Act and ES Regulations, which came into force on 24 December 2019, including the change of definition of 'holding entity', 'shipping' and 'finance and leasing', which impact the scope and applicability of the ES regime to Bermuda entities.

In addition to such amendments, Bermuda has also released the Guidance Note – General Principles (previously in draft form) to give guidance on the application of the ES Act and ES Regulations.

1. Holding entity

One important amendment is to the definition of 'holding entity', which has been narrowed in line with other jurisdictions to mean a 'pure equity holding entity' (PEHE), being 'an entity which as its primary function acquires and holds shares or an equitable interest in other entities, performs no commercial activity and which (Majority Test):

- (a) holds the majority of the voting rights in another entity

- (b) is a shareholder, member or partner in another entity and has the right to appoint or remove a majority of the board of directors, managers or equivalent of that other entity, or
- (c) is a shareholder, member or partner in another entity and controls alone, under an agreement with others, a majority of the voting rights in that other entity.

Thus, in order to fall within this new definition, a Bermuda entity must acquire and hold shares or equitable interests as its primary function, hold a majority or controlling stake in another entity and not carry out any other commercial activity. As a result of this change, Bermuda entities that do not carry out any other relevant activity under the ES regime and either (i) carry out any commercial activity other than being a PEHE, or (ii) do not satisfy the Majority Test, will be out of scope of the ES legislation.

The Guidance Note also clarifies that placing dividend monies received on deposit or using them to acquire and passively hold other securities will not constitute a 'commercial activity'. Such entity will still be regarded as a PEHE.

A holding entity is subject to reduced ES requirements.

2. Shipping

Another significant change is to the definition of 'shipping' – now defined to mean engaging 'in any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of Bermuda:

- (a) transporting, by sea, passengers or animals, goods or mail for a charge
- (b) renting or chartering of ships for the purpose described in paragraph (a)

Highlights

- the jurisdictions of Bermuda, the British Virgin Islands (BVI) and the Cayman Islands (Cayman) have recently introduced amendments to their respective latest economic substance (ES) legislation, and have each responded to the implications of the global COVID-19 pandemic for their particular ES requirements
- key amendments in Bermuda include changing the definitions of 'holding entity', 'shipping' and 'finance and leasing', as well as what is classified as 'insurance'
- BVI has made only minor changes to its ES Rules, while Cayman has released a draft updated guidance note with sector-specific information and made changes requiring notification by all 'entities', rather than just 'relevant entities'

- (c) sale of travel tickets and ancillary ticket-related services connected with the operation of a ship
- (d) use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea, or
- (e) functioning as a private seafarer recruitment and placement service.'

This now excludes those entities that own a vessel but do not otherwise take part in its operation. The defining characteristics for this relevant activity are now the operation and management of a ship, which better reflects the commercial reality of the industry. However, the new definition has been expanded to include all ships (other than a pleasure vessel), rather than just a 'ship that is used to transport goods', as defined in the previous ES Act and ES Regulations.

3. Financing and leasing

Amendments have also been made to the definitions of 'financing' and 'leasing' so that they are no longer separate relevant activities, but have been condensed into a single relevant activity of 'financing and leasing', meaning providing credit facilities of any kind for consideration (including by way of interest) to any person. The provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with the supply of goods by hire purchase, financial leasing (excluding land and interests in land), or conditional sale or credit sale. Also, where any credit repayable is assigned to another person, such other person shall also be considered to be the person providing the credit facility. The amended definition

Bermuda has introduced key amendments to its ES Act and ES Regulations... which impact the scope and applicability of the ES regime to Bermuda entities

excludes any relevant activities of banking, insurance or fund management, which avoids any potential double reporting.

4. Insurance

Important changes have also been made to the definition of 'insurance' – now defined to mean engaging 'in insurance business in accordance with the Insurance Act 1978', instead of engaging 'in business for which registration is required in accordance with the Insurance Act 1978', as defined in the previous ES Regulations. 'Insurance business' is defined in the Insurance Act 1978 to mean 'the business of effecting and carrying out contracts protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed, or to pay a sum of money or render money's worth upon the happening of an event, and includes reinsurance business'.

This in effect has been narrowed in scope so that insurance intermediaries (being managers, agents and brokers), which



require registration under the Insurance Act 1978 but do not necessarily engage in any insurance business, are no longer within scope of this relevant activity which now only captures insurers/reinsurers.

5. Local entities

The revisions simplify the ES requirements for 'local entities', which are subject to the requirement of being at least 60% beneficially owned and controlled by Bermudian persons. A local entity will no longer have to complete and file an ES declaration form provided that it is not carrying out 'insurance' or 'banking' activities and it is not part of a multinational enterprise group.

BVI

On 10 February 2020, BVI made what are considered to be minor changes to its ES Rules (originally released on 9 October 2019). Below is a summary of the changes.

- the anticipated duration of compliance plans has been clarified



- the procedure to file tax residency claims has been clarified
- the reference to 'general partner' has been corrected
- clarification and examples of intellectual property holding businesses were added
- clarification and an example of distribution and service centre businesses were added
- clarification on where strategic decisions are to be taken has been provided
- clarification on where core income generating activities (CIGAs) are to be performed has been given
- clarification on outsourcing has been added, and
- the summary on the applicability of

the ES Rules has been set out more clearly.

Cayman

On 19 November 2019, the Cayman government released a draft updated guidance note (version 3.0) on ES requirements for industry consultation, which includes sector-specific guidance for each relevant activity, setting out the scope and CIGAs, as well as examples for each of the relevant activities.

The International Tax Co-operation (ES) Law (2020 Revision) reflected a revision and consolidation, as at 31 December 2019, of the 2018 ES Law with subsequent amendments. The 2020 Revision was later amended by the International Tax Co-operation (ES) (Amendment) Law 2020, on 12 February 2020, which made changes to the notification requirements and the requirements to provide and share information under the ES Law. One of the principal amendments is that the notification requirements now

apply not only to the 'relevant entities' (which exclude domestic companies, investment funds and entities that are tax resident outside Cayman), but to all 'entities', which include, among others, all companies and limited liability companies incorporated in Cayman.

Each entity shall now annually notify the Cayman Tax Information Authority of whether or not it is carrying out a relevant activity and, if so, whether or not it is a relevant entity. In the case of an entity that is carrying out a relevant activity but which is tax resident in a jurisdiction outside Cayman, the following information must be provided: (i) the name and address of its immediate parent, ultimate parent and ultimate beneficial owner, along with any other information reasonably required to identify its immediate parent, ultimate parent and ultimate beneficial owner, (ii) the date of the end of its financial year, and (iii) the jurisdiction in which the entity is claiming to be tax resident, along with any other information as may reasonably be required to support that claim. In the case of a relevant entity that is carrying out a relevant activity, such relevant entity not only needs to notify the Authority of the date of the end of its financial year, but also the name and address of the officer who is responsible for providing information to the Authority and shall provide appropriate supporting evidence, as may reasonably be required by the Authority.

This expanded notification requirement is an important change and many Cayman entities that are not relevant entities would have earlier this year been receiving questionnaires from their Cayman registered office service providers to complete for the purpose of notification, stating whether they are carrying out a

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relevant entity
”**

relevant activity and, if so, whether they are a relevant entity.

With the exception of an extension of time for ES notification filings this year as summarised in the section below, the annual ES notification will need to be completed no later than 31 March each year as a prerequisite for an entity's filing of its annual return.

Implications of COVID-19 for compliance and filing

Due to the evolving global COVID-19 pandemic, authorities in Bermuda, BVI and Cayman have each responded to its implications for, or have implemented measures that relate to compliance with, their respective ES requirements.

Bermuda

The Registrar of Companies in Bermuda has advised that it will take circumstances surrounding COVID-19 into account when assessing compliance, such as in the case where meetings or other similar compliance measures have not been possible due to necessary travel or

quarantine restrictions. Entities should keep careful records of all such circumstances and should continue in good faith to ensure their ongoing compliance with the ES requirements.

BVI

On 18 March 2020, the BVI International Tax Authority (BVI ITA) issued a press release to the effect that while there is no current proposal to change the ES filing deadlines, a reasonable and practical approach will be adopted for legal entities being required to make adjustments to their operating practices to mitigate COVID-19 threats. Such arrangements should be temporary and every effort should still be made to ensure compliance with the ES requirements (including filing deadlines), except where the practical and reasonable approach is necessary to manage the threats.

On 27 March 2020, the BVI ITA issued a follow-up press release with the following points:

- where possible, recourse should be made for the appointment of alternate directors in the BVI to meet ES requirements
- all directors do not have to attend board meetings in the BVI – only as many as required to make the meeting quorate (given social distancing protocols, virtual meetings may be preferred)
- not all board meetings need to be held in the BVI – only those related to CIGAs
- where it is still not possible to hold a board meeting in the BVI or to meet some other ES requirement due to restrictions (whether in the BVI or otherwise) brought about by the

COVID-19 outbreak, entities are urged to retain documentation that will enable them to support such claims for the applicable periods of time affected, and

- individual requests, along with any supporting evidence, should be made to the BVI ITA for any extension of time.

Cayman

As a result of an extension of time for the annual fee payment and filing of annual returns for Cayman companies from 31 March 2020 to 30 June 2020 due to the COVID-19 pandemic, the deadline for ES notification filings has now also been extended to 30 June 2020, but such notification filings remain a prerequisite for the successful filing of a Cayman company's annual return.

Cayman's Department for International Tax Cooperation has acknowledged that COVID-19 may impact travel in 2020, which may in turn affect the ability of some entities to hold their board meetings in Cayman, and will therefore take this into consideration on a case-by-case basis when determining whether an entity has passed or failed the ES test.

Recommendations

Entities incorporated or registered in Bermuda, BVI or Cayman should consider whether and how the above amendments or changes to the respective ES legislation and rules will impact them, and consider whether any operational or structural changes are required. It is also recommended that such entities continue to seek advice on which steps should be taken to comply with the relevant jurisdiction's ES requirements.

Vincent Chan, Counsel

Appleby (Hong Kong office)



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High Court confirms the scope of the SFC's investigative powers

Debevoise & Plimpton looks at a recent High Court judgment that dismissed applications for judicial review of search warrants obtained by the Securities and Futures Commission (SFC) and of the SFC's seizure and retention of digital devices pursuant to the search warrants.



In support of two ongoing investigations into possible breaches of the Securities and Futures Ordinance (SFO), the SFC obtained from the Magistrates' Court search warrants to 'search for, seize and remove records and documents' at five premises. In July 2018, the SFC conducted search operations based on the search warrants and seized various digital devices. Subsequently, the SFC issued notices under Section 183(1) of the SFO requiring that login names and passwords to email accounts and digital devices be provided.

The applicants applied for judicial review to challenge the lawfulness of the search warrants, the SFC's decisions to seize and retain their digital devices and the request for login names and passwords. In *Cheung Ka Ho Cyril & Ors v SFC [2020] HKCFI 270*, the Court dismissed the applications upon consideration of the merits.

The 'lack of specificity' challenge

The applicants' challenged the lawfulness and validity of the search warrants due to lack of specificity. The Court considered that there was 'no overriding or overarching requirement for specificity' in a search warrant outside the relevant statutory provisions and it was satisfied that the search warrants in this case stated matters that were required under Section 191(1) of the SFO. That is:

- the magistrate's satisfaction that there is or is likely to be on certain specified premises any record or document that may be required to be produced under Part VIII of the SFO
- the persons authorised to execute the warrant and the premises authorised to be entered and searched

- the authorisation given to search for, seize and remove any record or document which the authorised persons had reasonable cause to believe may be required to be produced under Part VIII of the SFO, and
- the validity period of the search warrant.

Even if, contrary to the Court's view, there was a requirement for a search warrant to specify the offence or misconduct in respect of which it was applied for, the Court was satisfied that the search warrants in question had sufficiently specified the grounds on which records and documents might be required to be produced. It would be impracticable to be more specific about the offences or misconduct at an investigative stage and those details might in any event be subject to secrecy obligations.

The Court also considered that Section 191 of the SFO did not require the search warrants to set out a protocol on how the examination of digital devices should be carried out by the SFC's officers.

“the decision is a reminder that regulated firms and listed companies should establish a response plan in the event that the SFC executes a search warrant at their premises”

The challenge against the SFC's decision to seize and retain digital devices

Upon examination of the definitions of 'document' and 'record' under the SFO, the Court considered that those words should not be narrowly construed as to 'cripple' the SFC's investigative powers, and instead the wide definitions of those words clearly and amply empowered the SFC to seize the digital devices. This is particularly so when taking into account how most information and data are now created, transmitted, kept and stored.

Highlights

- the High Court of Hong Kong has confirmed the Securities and Futures Commission's ability to request access to email accounts and digital devices belonging to persons under investigation
- the search and seizure of 'documents' and 'records' are not restricted to paper documents but also encompass digital records
- a search warrant issued pursuant to Section 191 of the Securities and Futures Ordinance does not need to specify the offence in respect of which it is applied for

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upon examination of the definitions of ‘document’ and ‘record’ under the SFO, the Court considered that those words should not be narrowly construed as to ‘cripple’ the SFC’s investigative powers

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The Court also considered each of the elements in the four-step proportionality test in assessing the lawfulness of the restriction to the applicants' right to privacy (legitimate aim, rational connection, no more than reasonably

necessary, fair balance) was satisfied. In particular, during the search operation the SFC's officers returned to the applicants the devices that did not appear to contain relevant materials and the SFC applied keyword searches and

reviewed the contents of the devices together with the applicants in order to minimise the chance of personal or irrelevant information being viewed.

The Court further noted that the digital devices were sanctioned by warrants issued by judicial officers, who could be expected to 'carefully scrutinise the sufficiency of the bases of the applications for the warrants, as well as the scope or width of the warrants prior to their issue with an independent mind balancing all relevant conflicting interests'. Since the seizure of the digital devices was considered to be lawful, the SFC was also entitled to retain the records for at

Response plan essentials

Advance planning

- Set up a dedicated response team, which should include a member of the senior management team, a secretarial/administrative officer, an IT officer and a legal adviser.
- Provide sufficient training to employees and ensure they know who to call when a search is requested.
- Ensure that the IT system backs up data in hard disk drives, email servers and files.
- Maintain a proper record retention policy, including practices of marking potentially confidential and/or privileged documents.

Initial response and good practices during a search operation

- Seek legal advice immediately and request legal advisers to come to the premises as soon as possible.
- Prepare one or more meeting rooms for the investigators.
- Verify the identities and authority of the investigators and the location specified on the warrant.
- Take photocopies of the warrant and identifications of the attending investigators.
- Arrange for each investigator to be accompanied by either a member of staff or a legal adviser during the search operation.
- Keep a record of the search, including the areas visited, the

people spoken to, what was said and what records and documents were requested, inspected, copied and/or seized.

- Ensure that no privileged documents are handed over until they have been reviewed by legal advisers.
- Photocopy all seized documents and compare them against the inventory list prepared by the investigators.
- Answer any questions raised by investigators during the search operation in writing after taking legal advice. If that is not possible, answers provided should not be misleading.
- Ensure that employees are aware of their secrecy obligations.

least six months under Section 193(3) of the SFO.

The challenge against the SFC's request to provide login names and passwords

For the same reasons concerning the validity of the search warrants, the Court considered that the SFC was empowered, under Section 183(1) of the SFO, to require the applicants to provide means of access to email accounts and digital devices which contained or were likely to contain relevant information.

The Court noted that the SFC's approach to use keyword searches was a safeguard

to protect the privacy of the applicants as the email accounts and digital devices would likely also contain other personal or private materials irrelevant to the investigations.

Significance

In view of the Court's confirmation of the scope of the SFC's investigative powers, it is expected that more investigations conducted by the SFC will involve search warrants for 'records and documents' and requests to access the data contained in the seized devices. The decision also highlights the importance of the regulator providing sufficient safeguards

to protect the individuals' privacy in the investigations.

The decision is a reminder that regulated firms and listed companies should establish a response plan (see 'Response plan essentials') in the event that the SFC executes a search warrant at their premises.

Gareth Hughes, Partner; Mark Johnson, Partner; Emily Lam, International Counsel; Tiffany Chan, Associate; Ralph Sellar, Associate; Elly Tso, Associate

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Careers in Governance

Gillian Meller FCIS FCS

What is your role as a governance professional?

'In my day job, I am MTR Corporation's Legal & European Business Director with responsibility, on the governance side, for our legal, company secretarial and risk management functions. I am also currently President of The Hong Kong Institute of Chartered Secretaries (HKICS) and so have a role to play in leading our profession in Hong Kong and the Mainland, and helping to ensure that we remain relevant and fit for purpose and that our members are prepared for the challenges ahead.'

What was your career path to your current role?

'I started my career as a corporate lawyer in the UK and then joined the MTR legal team 16 years ago, since when I have been very fortunate to take on different roles at MTR and to focus on different aspects of governance.'

What value does governance bring to organisations and to the wider society?

'Huge value! Stakeholder and societal demands on businesses and other organisations are only increasing. In this context, good governance has never been more important as it allows organisations to engage with and understand the views of their different stakeholders; to balance these views in their decision-making processes; to effectively manage their key risks; and to communicate and disclose information in a transparent way.'

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

'Governance needs to be agile and able to respond to the changing nature of a business or an organisation, the changing regulatory environment and changing stakeholder and societal expectations, and so governance professionals need to be agile too. They have to be able to add value to their organisations beyond just compliance and they need to be able to work with hard internal controls, such as an effective three lines of defence, but also softer aspects of internal controls such as culture.'

How do you think governance will evolve in the future?

'I see governance evolving in two ways, both of which will bring new opportunities for governance professionals. Firstly, governance will increasingly be seen to be important for all organisations, not just companies. And secondly, I believe the shift to stakeholder-led governance, in which all stakeholder

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governance professionals...
have to be able to add
value to their organisations
beyond just compliance

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*Gillian Meller FCIS FCS, Legal & European Business Director,
MTR Corporation Ltd, and the Institute's current President*

groups (shareholders, of course, but also employees, customers, suppliers, the environment and the local community) are seen to be important, is only going to continue.'

What inspires you in your life and work?

'I think the quote that best encapsulates that would be one from Maya Angelou, American author and civil rights activist: "My mission in life is not merely to survive, but to thrive, and to do so with some passion, some compassion, some humour, and some style".

How do you fill your time outside work?

'Keeping fit – I captain my hockey team and hike, and take yoga, pilates and boxing lessons – and travelling. My favourite recent trips were to Azerbaijan and Georgia, to Shangri-La (Yunnan Province, the Mainland) and to Canada to see polar bears.'



Professional Development

Seminars: March 2020

11 March

Employer's and employee's rights, duties and obligations – COVID-19



*Chair: Kitty Liu FCIS FCS, Institute Education Committee member, and Company Secretarial Consultant, Law Department of the Hong Kong office, AIA International Ltd
Speaker: Michael Szeto, Partner, ONC Lawyers*

17 March

Updates to Cayman SIBL and economic substance



*Chair: Richard Leung FCIS FCS JP, Institute Past President, and Barrister-at-law, Des Voeux Chambers
Speaker: Alice Molan, Partner, Walkers*

18 March

Directors' duties on corporate transactions and intervention by the SFC



*Chair: Daniel Chow FCIS FCS(PE), Institute Council member and Professional Development Committee member, and Senior Managing Director, Corporate Finance and Restructuring, FTI Consulting (Hong Kong) Ltd
Speakers: Eve Chan, Partner; and Nic Yau, Partner; YC Solicitors*

20 March

Employee management while working remotely



*Chair: Samantha Suen FCIS FCS(PE), Institute Chief Executive
Speakers: Peter Outridge, Partner, Head of People & Change Advisory, Hong Kong and China; and Murray Sarelius, Partner, National Head of People Services; KPMG China; and Alex Ma, Senior Associate, SFLawyers (in association with KPMG Law)*

26 March

China's Foreign Investment Law 3.0 – the new world and its opportunities



*Chair: Desmond Lau ACIS ACS, Institute Professional Development Director
Speakers: Alan Xu, Partner; and Youran (Gloria) Wu, Associate; Zhong Lun Law Firm*

30 March

Tax planning and marketing opportunities in the Greater Bay Area



*Chair: Desmond Lau ACIS ACS, Institute Professional Development Director
Speaker: Peter Kung, Adjunct Professor, The Chinese University of Hong Kong*

31 March

AML/CFT best practices series: the AML/CFT landscape, controls and challenges – practical knowledge sharing

Chair: Natalia Seng FCIS FCS(PE), Institute Council member and Past President, and Senior Advisor, Tricor Services Ltd

Speakers: Rani Kamaruddin, Partner, KPMG Forensic, AML and Trade Sanctions Services, KPMG China; Martin Lim, Founder and Director, Ingenique Solutions; Michael Shue, Managing Director – Trust Services, Tricor Services Ltd; and Michael Lintern-Smith, Senior Partner, Robertsons

Online CPD seminars

Some of the Institute's previous ECPD seminars can now be viewed from the Online CPD seminars platform of The Open University of Hong Kong.

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

ECPD forthcoming seminars

Date	Time	Topic	ECPD points
19 June 2020	6.45pm–8.15pm	Incident or crisis management: lifecycle & practices in our daily business resilience	1.5
22 June 2020	6.45pm–8.45pm	Doing business in Hong Kong – compliance and regulations (webinar)	2
26 June 2020	6.45pm–8.45pm	Company secretarial practical training series: connected transactions – practice and application (webinar)	2
30 June 2020	6.45pm–8.15pm	What you need to know about IT governance, cybersecurity and cloud computing (webinar)	1.5

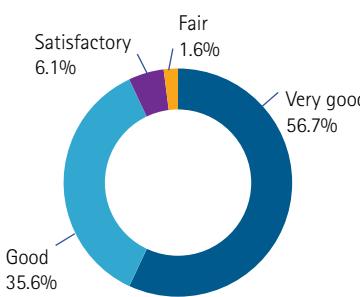
For details of forthcoming seminars, please visit the CPD section of the Institute's website: www.hkics.org.hk.

Professional Development (continued)

Feedback on webinars

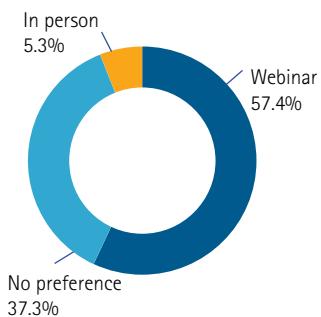
Due to COVID-19, and to safeguard the health and safety of our members, graduates and students, the Institute has converted all Enhanced Continuing Professional Development (ECPD) seminars into webinars from February 2020. Between 6 February and 31 March 2020, 12 webinars were held with a total of 4,151 participants. As a professional body established by members and for members, the Institute surveyed the participants about the webinars, to which a total of 728 (18%) responded. A summary of their feedback is as follows.

Quality of the webinars



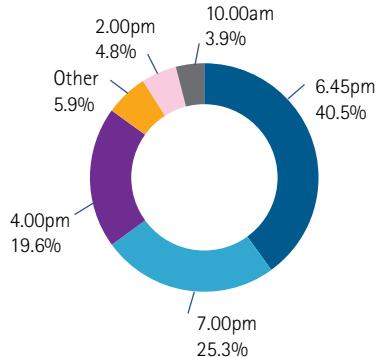
98.4% of respondents were satisfied with the quality of the webinars.

Preference for physical seminars or webinars



57.4% of respondents preferred webinars to physical seminars, whilst 37.3% did not have any preference.

Preferred starting time of future webinars



Over 65% of respondents preferred the webinars to start at or after 6.45pm.

Other comments received about the webinar format include:

- effective way of presentation, saves time for participants
- easy and convenient way to attend, and
- Q&A sessions are useful for participants, who can post their questions on the platform for speakers to address.

The Institute would like to thank all respondents for their feedback, which will help shape the format of future ECPD seminars.

Membership

Grandfathering of the Chartered Governance Professional designation

The Council has agreed to the 'grandfathering' policy for conferring the Chartered Governance Professional (CGP) designation to members on a quarterly basis.

As at 31 March 2020, 4,823 (75%) out of a total membership of 6,398 had been awarded the CGP designation.



Membership (continued)

Forthcoming membership activities

Date	Time	Topic
27 May 2020	6.45pm–7.45pm	Stress management in a time of coronavirus (free webinar)
16 June 2020	6.45pm–7.45pm	Use of essential oils for boosting immune system (free webinar)
20 June 2020	10.30am–12.00pm	Mentorship Programme Mentees' Training – goal setting and power of feedback (webinar, by invitation only)

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

New graduates

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

Chan Hoi Lam	Cheung Lo Yin	Kwong Kin	Ma Zhengjun	Tian Yuanhui
Chan Yin Lam	Cheung Wing Yan	Lee Ho Man	Pan Yaqi	Wong Yuen Ki
Chau Man Sze	Hu Ye	Li Shuk Ling	Pun Kim Ying	Yim Wing Fai
Chen Wai Yee, Michelle	Kwok Sze Nei	Lo Pun Wa	Sin Yu	

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Job Openings **Hottest Job List**

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

Membership (continued)

New Fellows

The Institute would like to congratulate the following Fellows elected in March 2020.

Chau Siu Lun FCIS FCS

Mr Chau is a lawyer qualified in Hong Kong and the UK. He is now the Managing Partner and Chief Representative of the Beijing Office of Herbert Smith Freehills. He specialises in advising Mainland state-owned enterprises and Hong Kong listed companies on corporate governance and regulatory compliance matters, outbound mergers and acquisitions, corporate restructuring, bond issuance and IPOs. Mr Chau graduated from The University of Hong Kong. Apart from being a practicing lawyer, he served as an Adjunct Assistant Professor in the master's degree programme of the Faculty of Business of The Chinese University of Hong Kong and is now the Director of the Research Center of international financing mergers and acquisitions of Zhejiang University. He has been a speaker at the Institute's seminars for more than 10 years, with a focus on corporate governance and regulatory compliance of Hong Kong listed companies.

Fu Wing Yu FCIS FCS(PE)

Ms Fu has been the Deputy Company Secretary of Swire Properties Ltd (Stock Code: 1972) since February 2010, and is responsible for regulatory compliance, corporate governance and corporate secretarial matters. She obtained a master's degree in professional accounting and information systems from City University of Hong Kong.

Tung Sze Ho, Dicky FCIS FCS

Mr Tung obtained a master's degree in corporate governance from The Open University of Hong Kong in 2010, and

has been the Company Secretary and Legal Executive of a boutique law firm, Angela Ho & Associates, since March 2014. With over 12 years of experience in the company secretarial field, Mr Tung is currently responsible for the provision of professional company secretarial services to private and public companies in Hong Kong, as well as to offshore companies. As delegated by Angela Ho & Associates, Mr Tung has been appointed company secretary to a number of listed companies in Hong Kong.

Yeung Kwok Leung, Paul FCIS FCS

Mr Yeung currently holds the position of Senior Director, Commission Secretary of the Securities and Futures Commission. He studied applied mathematics and economics at Brown University, USA, and law at the University of Cambridge in the UK. He is qualified as a solicitor in Hong Kong, as well as in England and Wales. He has been a Council member of the Hong Kong Arts Development Council and the Chairman of its Review Committee since 2017, and served as a Board member of the Hong Kong Dance Company from 2009 to 2015.

Yu Lina FCIS FCS

Ms Yu is a Deputy General Manager and Company Secretary of First Tractor Company Ltd (Stock Code: 38). She is responsible for corporate governance, information disclosure, investor relations, capital operation and human resources. Ms Yu holds a bachelor's degree in law from Zhongnan University of Economics and Law and is a Juris Master from China University of Political Science and

Law. She is also a qualified lawyer in the Mainland, a qualified legal advisor of secondary enterprises and a qualified economist.

Ha Ching Ling FCIS FCS

Company Secretarial Manager, AGTech Holdings Ltd (Stock Code: 8279)

Kwok Ka Ho FCIS FCS

Senior Finance Manager, CSPC Pharmaceutical Group Ltd (Stock Code: 1093)

Lam Sui Mei, Florence FCIS FCS

Deputy Company Secretary, Cathay Pacific Airways Ltd (Stock Code: 293)

Lau Ka Yee FCIS FCS

Chief Financial Officer, Target Insurance Company Ltd (Stock Code: 6161)

Lau Shuk Fan FCIS FCS(PE)

Deputy Company Secretary, Swire Pacific Ltd (Stock Code: 19)

Zhang Wenyu FCIS FCS

Managing Director, Dajia Overseas Holdings Company Ltd

Chan Wing Sze FCIS FCS

HKICS fee structure 2020/2021

The Council, having taken into consideration the current financial resources of the Institute and circumstances in the community, has resolved to maintain the annual subscription fee and all other fees for members, graduates, students and Affiliated Persons for the year 2020/2021 at the same level as for 2019/2020.

Subscription and related fees for members, graduates, students and Affiliated Persons for the year 2020/2021, which will apply from 1 July 2020 to 30 June 2021, are set out below.

Members and graduates

Items	Amount (HK\$)
Annual subscription	
Fellows	2,620
Associates	2,240
Graduates (holding the status for less than 10 years, ie on or after 1 August 2010)	1,930
Graduates (holding the status for more than 10 years, ie before 1 August 2010)	2,620
Concessionary subscription	
Retired rate (note 1)	500
Reduced rate (note 1)	500
Hardship rate (note 1)	1
Senior rate (note 2)	100
Election fees	
Fellows (note 3)	1,000
Associates	2,000
Graduate advancement fee	1,950
Re-election fees	
Fellows	3,300
Associates	3,000
Graduates	2,500
Other fees	
Membership or graduate card replacement	200
Certificate replacement	200
Membership or graduateship confirmation	250
Transcript application	200 per copy
Replacement for pin (Member/Graduate/AP)	100

Affiliated Persons Programme in the Mainland

Items	Amount (HK\$)
Annual subscription	2,290
Registration fee (for new Affiliated Person who registered between 1 July and 31 December)	2,290
Registration fee (for new Affiliated Person who registered between 1 January and 30 June)	1,145

Membership (continued)

Students

Items	Amount (HK\$)
Registration fee	1,280
Re-registration fee	1,500
Renewal fee	800
Late studentship registration administration charge (note 4)	650
Examination fee	1,100 per module
Examination postponement fee	850 per module
Examination appeal fee	2,200 per module
Exemption fee	1,100 per module
Exemption reapplication administration charge (note 5)	700 per module
Transcript application	200 per copy
Examination technique workshop	500 per workshop
CCA late registration charge	450 per month
Studentship card replacement	200
Replacement for pin (Student)	100

Notes:

1. Members and graduates are eligible to apply for the retired, reduced or hardship rate if they have fulfilled the respective requirements, subject to the Membership Committee's approval. Application forms can be downloaded from the Membership section of the Institute's website: www.hkics.org.hk. The application deadline for any concessionary subscription for the year 2020/2021 is Sunday 31 May 2020.
2. The senior rate is automatically granted to eligible members by the Institute. No application is required.
3. The special rate for the Fellows election fee at HK\$1,000 will continue to be applicable during the year 2020/2021.
4. An additional administration charge will be applied to late studentship registrations submitted within the following specified periods for taking the corresponding examinations in November and June.

5. An additional administration charge for each exemption reapplication will be applied to students who do not settle their exemption fees within the specified deadline.

The membership/graduateship renewal notice, together with the debit note for the year 2020/2021, will be sent to all members and graduates by email to their designated email addresses in July 2020. In view of the impact of the novel coronavirus, the deadline for annual subscription payments for the year 2020/2021 is extended to Thursday 31 December 2020. Members and graduates should settle their payment as soon as possible, but no later than the set deadline. Failure to pay by the deadline will constitute grounds for membership or graduateship removal.

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

Late studentship registration period	Examination diet
1–15 August 2020	November 2020
1–15 February 2021	June 2021

Advocacy

Supporting the fight against COVID-19

HKICS donates disinfectant packs to Agency for Volunteer Service

As a member organisation of the Hong Kong Council of Volunteering under the Agency for Volunteer Service (AVS), the Institute donated 100 disinfectant packs to AVS in support of its campaign 'Fight Coronavirus Together Volunteer Care Action' ('同心抗疫' 义工关怀行动) on 7 April 2020. All the disinfectant packs collected by AVS will be distributed to low-income families, the elderly and people with disabilities.



Members of the Institute's Community Service Core Group and the Secretariat staff showed their support by offering assistance in packing and delivering the disinfectant packs.

The Institute would like to thank the Community Service Core Group and the Secretariat staff who contributed to this meaningful event. The Institute also calls upon its members, graduates and students to work together to help the needy in our community during this challenging time.



Donation to Red Cross Society of China

As a caring organisation, through its subsidiary in Beijing (思治企业咨询(北京)有限公司), on 27 March 2020 the Institute donated RMB10,000 to the Red Cross Society of China (中国红十字基金会) to support the frontline medical staff in Wuhan fighting COVID-19.



The Institute distributed personal protection kits to Secretariat staff

As a caring employer, in March 2020 the Institute distributed a personal protection kit to every member of its Hong Kong Secretariat staff. Each kit contained 10 surgical masks, a hand-sanitising product and a bottle of vitamin C tablets. Surgical masks and vitamin C tablets were also distributed to staff members at the Beijing office in April 2020.



Advocacy (continued)

Donation presentation ceremony

Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE), International President of The Chartered Governance Institute and Institute Past President, has donated an additional sum of HK\$250,000 to The Hong Kong Institute of Chartered Secretaries Foundation Ltd (HKICS Foundation) for the 'HKICS Edith Shih Corporate Governance Scholarship' (the Scholarship). The Scholarship was first established in 2016 by Ms Shih to award final year students who have achieved outstanding academic performance in the Postgraduate Programme in Corporate Governance offered by The Open University of Hong Kong in the Mainland.

On behalf of the HKICS Foundation, Institute President Gillian Meller FCIS FCS received the donation from Ms Shih at the donation presentation ceremony held on 7 April 2020.

The Institute and HKICS Foundation would like to thank Ms Shih for her generosity.



CSj goes green

The Council, in support of preserving the environment, offers Institute members, graduates and students the option to receive *CSj* electronically, and made *CSj* available on the Institute's website from August 2015 onwards. The Institute is pleased to report that 4,277 members, graduates and students opted for the electronic version (eCSj) as of 30 June 2019.

Members and graduates may change their means of receiving *CSj* once a year, anytime between 1 May and 31 May, to either a print copy or the eCSj version. If any member or graduate would like to do so for the financial year starting from 1 July 2020, please complete the online form as provided in the email from the Institute of 25 April 2020 (the online form can also be obtained via the 'CSj goes green' newsfeed in the News section of the Institute's website: www.hkics.org.hk) and submit it on or before Sunday 31 May 2020. Otherwise your previous option will continue to apply in the year 2020/2021.

For enquiries, please contact Rose Yeung of the Institute's Membership Section: 2830 6051, or email: member@hkics.org.hk.



Chartered Governance Qualifying Programme (CGQP)

June 2020 examination diet – postponement: REMINDER

Notice of the postponement has already been sent to all students. The Institute is currently still planning for the November 2020 examination diet to go ahead as scheduled.

November 2020 examination diet timetable

November 2020 examination diet		
Date	Morning session	Afternoon session
24 Nov 2020	Corporate Governance	Hong Kong Taxation
25 Nov 2020	Interpreting Financial and Accounting Information	Risk Management
26 Nov 2020	Hong Kong Company Law	Strategic Management
27 Nov 2020	Corporate Secretaryship and Compliance	Boardroom Dynamics

Examination enrolment period: 1 July 2020 to 15 September 2020.

For enquiries, please contact the Education and Examinations Section: 2881 6177, or email: student@hkics.org.hk.

Learning support for CGQP examination preparation

One online Student Gathering on examination experience sharing was held on 23 April 2020.

This session was video-recorded. To view the video, please visit the Studentship section of the Institute's website: www.hkics.org.hk.

Forthcoming activities in May and June 2020

Date	Event
26 May 2020	Student Ambassadors Programme (SAP): virtual seminar on ESG reporting
27 June 2020	Governance Professionals Career Day 2020

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

Corporate Governance Paper Competition and Presentation Awards 2020

To promote awareness of good governance among local undergraduates, the Institute has been organising the Corporate Governance Paper Competition and Presentation Awards since 2006. This year, the theme for submission is 'ESG Reporting: A Value Proposition? Yes or No?' Six finalist teams will be selected from the contestants to present their papers and compete at the Best Presentation Awards to be held on Saturday 19 September 2020.

Chartered Governance Qualifying Programme (CGQP) (continued)

Notice:

Policy – payment reminder

Studentship renewal

Students whose studentship expired in March 2020 are reminded to settle the renewal payment by Saturday 23 May 2020.

Featured job openings

Company name	Position
Hang Seng Bank Ltd	Board Secretarial Manager

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

The advertisement features a red background with a grey diagonal band at the bottom. On the left, there is a stylized logo composed of nested squares in white, grey, and black. To the right of the logo, the words "Outstanding media" are written in a large, white, sans-serif font. Below this, there are two columns of services listed in white text: "Website development", "Advertisement design", "Content marketing" in the first column, and "Professional magazines", "Corporate newsletters", "Sales brochures" in the second column. In the bottom right corner, the "nine hills media" logo is displayed in white and red, with contact information: T: +852 3796 3060, E: enquiries@ninehillsmedia.com, and W: www.ninehillsmedia.com.

A bird's eye view

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

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



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

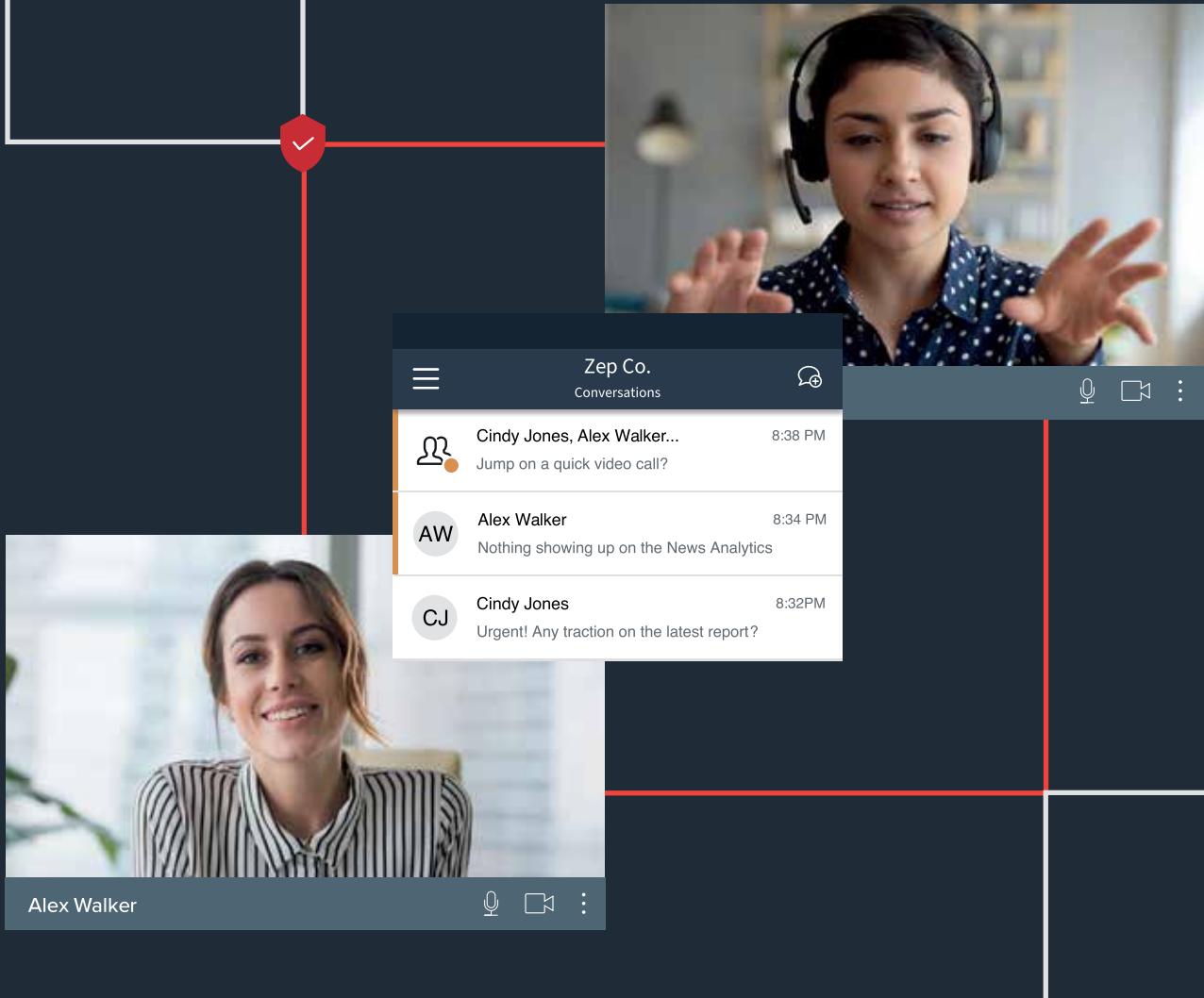
Please contact:

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

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**CHARTERED
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MODERN GOVERNANCE IN TIMES OF CRISIS

Staying connected with access to virtual meetings securely with Diligent's platform



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