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December 2021

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



Future focus

New board agenda
Stakeholder engagement
Cross-cultural communication



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About The Hong Kong Chartered Governance Institute

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

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

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

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

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Membership and studentship statistics update

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Students: 2,939 **Associates:** 5,979
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Reading the signs

As 2021 draws to a close, the outlook for organisations both locally and globally remains turbulent. There is the ongoing Covid-19 pandemic of course, but also growing geopolitical tensions, weather disasters due to climate change, disruption of global supply chains, rising inequalities, and growing cybersecurity risks and technological disruption, just to name a few of the hazards directors and governance professionals need to consider.

In this context, our roles cannot be wholly focused on ensuring that our organisations are adapted to the current regulatory and operating environment – we also need to assist the board in preparing for changes that may arise. To assist practitioners in this difficult task, our Institute has been focusing its ECPDs and publications on a number of frontier issues in governance that will shape the future both here and around the world. This month's journal takes a deep dive into two such publications – a thought leadership paper published jointly by the Institute and Bain & Company (The New Board Agenda), and the latest guidance note published by the Institute's Securities Law and Regulation Interest Group (Board Culture: The Trend Towards Ever Greater Board Accountability).

Both publications have important implications, not only regarding the changes ahead for our organisations and society, but also for the changes ongoing in our own roles. We ourselves are not immune

to the process of change and adaptation, and expectations of our roles are rising. The New Board Agenda report emphasises the value company secretaries can bring to organisations by helping to ensure that the board's discussion agenda includes critical emerging issues to build resilience. It also highlights the value we can bring by helping organisations to engage effectively with external stakeholders. External stakeholder concerns can alert organisations to specific issues that might not even be on their radar. Often such concerns are also early signs of changes in the social contract under which we operate.

Perhaps most important of all, however, governance professionals have a role to play in assisting the board in defining the organisation's long-term purpose and aligning its culture with that purpose. The Board Culture guidance note published by our Securities Law and Regulation Interest Group will be a useful resource in this respect. It highlights the increasing attention given by regulators, both locally and globally, to this area and covers the practical implications of proposed changes to the regulatory regime in Hong Kong – namely the proposed new Code Provision in Hong Kong's Corporate Governance Code requiring boards to align company culture with company purpose, value and strategy.

In summary, a key takeaway for members of our profession in this month's journal is the need to keep a keen eye on emerging

issues of relevance to our organisations and our profession. Nothing stands still for long and in the current uncertain environment we can play a critical part in building early warning systems to ensure that our organisations can predict, adapt to and be resilient to disruptions in an increasingly turbulent world.

Gillian Meller FCG FCS(PE)

明辨形势

随着 2021 年接近尾声，各地和全球企业的前景依旧晦暗不明。新冠疫情仍在持续，地缘政治紧张，局势恶化、气候变化导致天气灾害频发、全球供应链紊乱、不平等现象日益严重、网络安全风险和技术变迁日益加剧，企业管理者和治理人士面临重重挑战。

面对困局，我们需要转变自身角色，除了确保公司适应当前的监管和运营环境，还需要协助董事会，为应对未来可能出现的种种变化做好准备。为帮助各位专业人士完成这一艰巨任务，公会的强化持续专业发展课程和出版物一直以来聚焦于可能对本地及世界产生影响的前沿治理议题。本期会刊就深入解析了这样两份出版物，一份是由公会和贝恩公司联合发布的思想领导力报告《全新董事会议程》(The New Board Agenda)；另一份是由公会的证券法及规管兴趣小组 (Securities Law and Regulation Interest Group) 发布的最新指引《董事会文化：进一步深化董事会责任》(Board Culture: The Trend Toward Ever Greater Board Accountability)。

这两份出版物都具有重要意义，不仅涉及了我们的组织和社会的未来变化，还探讨了我們自身角色的变化。如今我们的角色正在发生着改变，我们被寄以越来越高的期望。《全新董事会议程》报告强调，公司秘书可为组织带来的一个价值是确保董事会议程中包括对于新兴关键议题的探讨，从而提升公司的应变能力与韧性。此外，报告也强调了公司秘书的另一价值，即，帮助公司与外部利益相关者有效互动。外部利益相关者的关切可以提醒公司关注之前可能忽略的问题。通常这种关切也往往预示着我们赖以运营的社会契约即将发生变化。

然而，最重要的一点是，治理专业人士应当协助董事会确定公司的长期目标，并确保公司文化与这些目标保持一致。在这方面，由证券法及规管兴趣小组发布的董事会文化指引将可以提供重要参考。该指引指出，地方和全球监管机构对该领域的关注力度日益增加，并探讨了香港监管制度拟议的变更将会产生的实际影响——香港的《企业管治守则》中拟议的新守则条文要求董事会确保公司文化与公司目标、价值观和战略保持一致。

总而言之，本期会刊旨在强调，我们需要密切关注与我们的公司和专业领域相关的新兴趋势。没有什么是一成不变的，面对当前变幻莫测的环境，我们可以发挥关键作用，构建早期预警系统，确保我们的公司能够预测、适应和抵御动荡环境的干扰。



马琳 FCG FCS(PE)

Future focus

As we are approaching the year end, CSj takes a look at the road ahead for governance professionals in the coming year and beyond.



In 2021, the Hong Kong Chartered Governance Institute (the Institute) has been focusing its ECPD services and publications on a number of frontier issues in governance – such as environmental, social and governance (ESG) reporting and performance, climate change mitigation and adaptation, diversity and inclusion, organisational culture and purposeful governance – that will become increasingly important for organisations' survival and growth in the years ahead. In this article, *CSj* highlights some key takeaways of two such publications designed to help governance professionals in their key role future-proofing their organisations at a time of rapid and radical change.

The new board agenda

A new thought leadership paper, published jointly by the Institute and Bain & Company on 15 September 2021, seeks to give practical suggestions to governance professionals, both on the challenges ahead, and on how they can help organisations in Hong Kong and the Mainland build resilience at this critical juncture.

The New Board Agenda (the Report), which was based on a survey of over 1,400 members of senior management of companies in Hong Kong and the Mainland, highlights the fact that the turbulence and disruptions of the current operating environment – including interstate and civil conflicts, public health and environmental threats, financial crises and trade conflicts and technological disruption – are not likely to ease any time soon. Over 90% of the senior management of companies surveyed by the Report expect more turbulence in the business environment in the coming 3 to 5 years.

In this context, the Report focuses on the roles that stakeholders, boards and governance professionals can play in future-proofing organisations in the years ahead.

A new approach to stakeholder engagement

While stakeholder engagement has become an increasing part of ESG best practice, particularly in determining the materiality of various ESG issues to organisations, it is still often regarded as a compliance requirement rather than a competitive advantage. This is borne out by the findings of the Report survey. Only half of the boards of companies surveyed reported that they discuss stakeholder engagement. The survey also found that fewer than one-quarter of boards regularly discuss stakeholder issues, as opposed to three-quarters that regularly discuss strategy development.

The Report highlights the advantages of taking a new approach to stakeholder engagement – an approach that recognises and seeks to enhance the value the exercise brings to the organisation as an early warning system for changes in the operating environment. The Report urges company secretaries to closely interact with relevant stakeholder groups and monitor signs of emerging

change that could affect the industry or the organisation they work for. 'By understanding the diverse priorities of each stakeholder, board leaders and management can more effectively create successful action plans,' the Report states.

Expanding the board's agenda

In addition to a new approach to stakeholder engagement, the Report also emphasises the need for boards to adopt a new approach to its own function. Some changes, such as to the format and frequency of board meetings, have already become common in the market as a response to the Covid pandemic, but boards can also consider more significant changes. For example, boards can consider creating new board committees to look at frontier issues that will have major implications for their operations going forward. These might include adoption of new technologies such as artificial intelligence systems, and the management of ESG reporting and performance.

The Report also emphasises the need for boards to expand their discussion agendas to ensure that they are not blindsided by emerging issues. It suggests, in particular, seven main topics that should be on board agendas (see 'Board oversight?').

Highlights

- governance professionals can play a key role in future-proofing organisations at a time of rapid and radical change
- by understanding the diverse priorities of stakeholders, board members and management can more effectively create successful action plans
- a healthy corporate culture is a source of competitive advantage and is important for creating long-term value

How can governance professionals help?

Governance professionals can play a major role in assisting organisations to become more responsive to emerging issues. One of the most obvious ways in which governance professionals can do this is by ensuring that such issues are on the board's agenda. The Report's survey, however, found that many boards do not involve their company secretaries in proposing meeting agendas. The survey found that only 17% of company secretaries are very involved in proposing topics and shaping board agendas.

A more positive finding, however, was that those boards that do involve company secretaries in proposing board agendas are more likely to discuss topics that address turbulence and stakeholder management. Such boards are more involved in identifying relevant stakeholders, setting goals to address their needs, ensuring clear actions and accountability for achieving those goals, reviewing progress toward the goals and achieving the right balance between stakeholder and shareholder interests.

The Report urges company secretaries to recognise their unique position to help Hong Kong and Mainland corporate boards of directors anticipate the challenges with a future-proof agenda. 'Ideally, they'll proactively shape the board's agenda by proposing future-proof topics for discussion and presenting critical issues for review. And they can recognise the long-term value of those agenda items and commit to those that best serve the organisation, even when inconvenient in the short term,' the Report states.

Board oversight?

The New Board Agenda, reviewed in this article, recommends a number of ways boards can minimise the chances of being blindsided by critical emerging issues. It recommends, for example, seven main topics that should be on board agendas.

1. **Purpose.** Clearly define the company's long-term purpose – its reason for existence and how it benefits both stakeholders and society. A well-defined, multigenerational purpose is a beacon by which the company can navigate turbulent times and encompasses the remaining topics.
2. **A future-proof strategy.** By focusing on the uncertainties that matter most to stakeholders, boards can begin to develop a vision for potential futures that address those concerns. They can then build a portfolio of no-regret moves and options.

3. **Response to disruption.** Boards can identify opportunities to win by considering how to respond to potential disruptions, including future customers, ecosystem evolutions, data analytics, new capabilities and emerging competition.

4. **Environmental, social, and governance (ESG) strategy.** By ensuring regular discussion of ESG, boards can sustainably accelerate the company's core strategy, setting specific goals with clear action plans, and addressing evolving issues and opportunities.

5. **Talent strategy.** The best talent strategy ensures that the right talent is in the right roles at the right time by assessing talent gaps and identifying key talent requirements. Successful strategies also include guidelines for mobilising talent and setting clear succession plans.

6. **Business performance management.** Boards can build financial strength to fuel growth and innovation by achieving commercial and operational excellence through cost transformation, agile corporate support, procurement optimisation and supply-chain resilience.

7. **Risk and compliance management.** A clean-sheet approach to compliance and risk identification re-examines the root causes of compliance failure and organisational complexity, and identifies which activities are truly needed, who should perform them and how they should be performed. It also eliminates nonessential tasks, thus reducing complexity and risk.

Corporate and board culture

The New Board Agenda, reviewed above, prioritises a new approach to organisational purpose and culture. 'A well-defined, multigenerational purpose is a beacon by which the company can navigate turbulent times,' the Report states. This has been a major theme of the Institute's ECPD services and publications throughout 2021. The Institute has been promoting the board's role in determining the purpose of an organisation and ensuring that its culture is aligned to its purpose, values and strategy.

A guidance note, published in September 2021 by the Institute's Securities Law and Regulation (SLR) Interest Group (the Guidance Note), gives advice to governance professionals on how to prepare for higher regulatory expectations relating to corporate and board culture. In April this year, Hong Kong Exchanges and Clearing Ltd (HKEX) proposed to introduce a new Code Provision to Hong Kong's Corporate Governance Code (the Code) to require listed company boards to align their company's culture with its purpose, value and strategy. The Guidance Note (Board Culture – The Trend Towards Ever Greater Board Accountability) offers a useful summary of practical ways for company secretaries to support the board in anticipation of these changes to the Code (See 'Organisational culture and purpose: recommendations for company secretaries').

International developments

There has been a growing focus on corporate culture in regulatory regimes around the world. Jurisdictions such as the UK, Australia, Singapore and Japan have introduced requirements for boards to establish an appropriate culture. The Guidance Note highlights

“
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”

some of the useful lessons governance professionals in Hong Kong can learn from these overseas developments. In particular, a report published in July 2016 by the UK's Financial Reporting Council (FRC) – Corporate Culture and the Role of Boards: Report of Observations (the Report of Observations) – found that a healthy corporate culture is a source of competitive advantage and is important for creating long-term value.

Perhaps its most useful insights, however, from the perspective of governance professionals, relate to the ways that boards can establish and uphold a robust corporate culture. The Report of Observations emphasises, for example, that companies need to have the right tone from the top. 'Leaders, in particular the chief executive, must embody the desired culture, embedding this at all levels and in every aspect of the business. Boards have a responsibility to act where leaders do not deliver,' it states.

It also makes the point that boards need to devote sufficient resources to evaluating culture and considering how to report on it. They should also take



responsibility for understanding behaviour throughout the company and challenging any misalignment with values. Another message, and one that will be particularly welcome to readers of this journal, is that companies should empower and resource the company officers responsible for embedding the values and culture of the company. The report says that these functions should be given greater recognition at the board level.

In addition to the above, however, companies should have an incentive system that encourages desired behaviour and is aligned with the company's purpose, values, strategy and business model.

The regulatory trend in Hong Kong

Hong Kong is looking to implement changes relating to culture in line with the international developments sketched above. As mentioned, HKEX has proposed amendments to the Code aimed at highlighting the importance of corporate culture. The Guidance Note points out that the HKEX approach is similar to that of the UK's FRC, focusing on the need for the board to take ownership of this issue, establish the right tone from the top and

for incentive systems to be aligned with the desired culture.

The Guidance Note usefully summarises the likely reporting requirements in this area. It also points out that a properly functioning anticorruption and whistleblowing framework is essential to establishing and maintaining a successful corporate culture. In this context, the HKEX consultation proposes to elevate the

existing recommended best practice on whistleblowing to a new code provision. This would require companies to establish a whistleblowing policy and a system for employees and those dealing with the company to be able to raise concerns about possible improprieties. 

The publications reviewed in this article are available on the Institute's website:

www.hkcgf.org.hk. The HKEX proposals on corporate culture were covered in a two-part article in the June and July 2021 editions of this journal. Corporate Culture and the Role of Boards: Report of Observations, published by the UK's Financial Reporting Council, is available at: www.frc.org.uk.

Organisational culture and purpose: recommendations for company secretaries

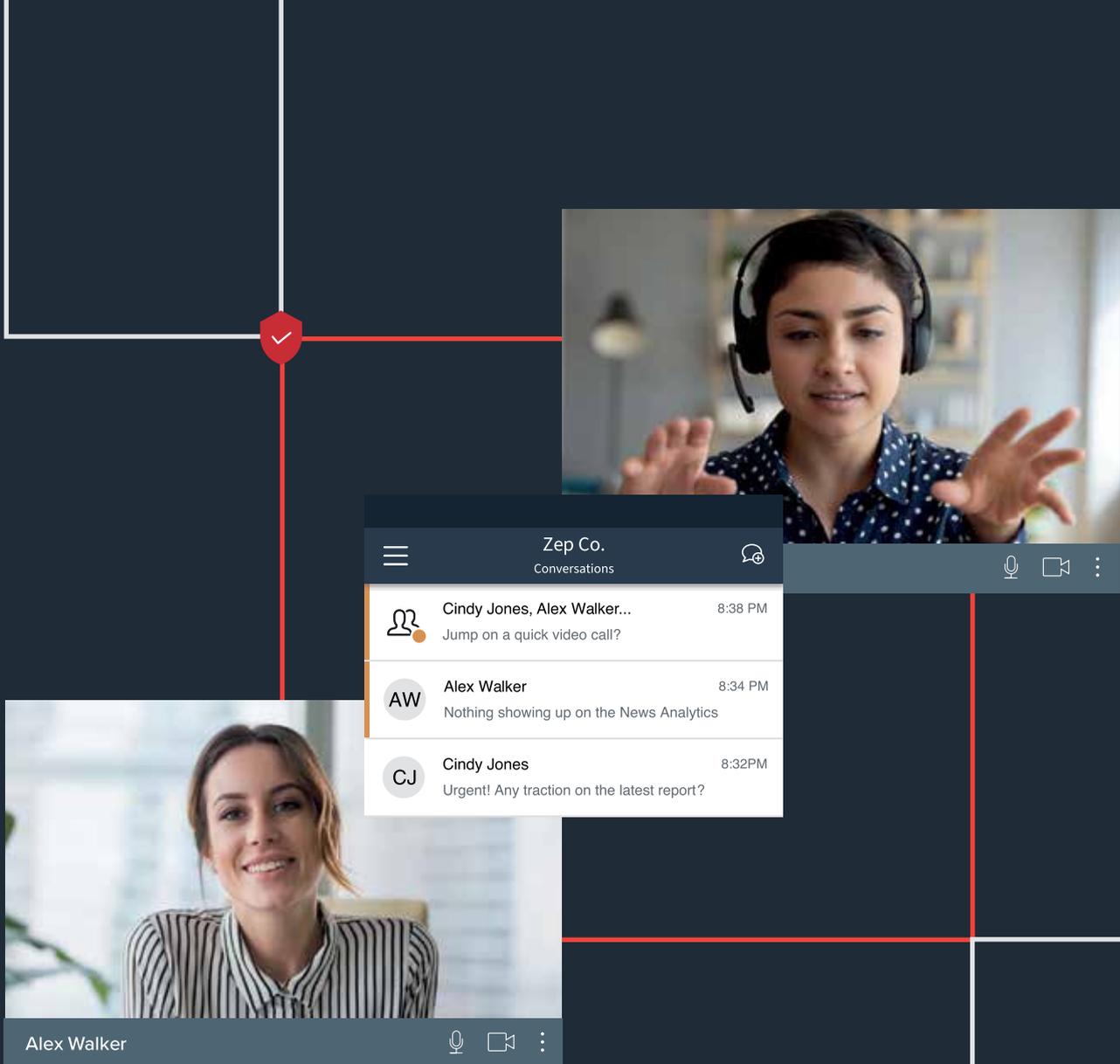
The latest guidance note published by the Institute's Securities Law and Regulation (SLR) Interest Group, reviewed in this article, suggests practical ways in which company secretaries can support the board in building a culture that is aligned with the organisation's purpose, value and strategy.

- Ensure directors are regularly reminded of their duties to ensure they fully understand the nature of their responsibilities. This could be achieved through:
 - o periodically circulating guidance notes on director duties – for example the SLR Interest Group's fourth guidance note relating to independent non-executive directors, or
 - o providing briefings on director duties and other topics at board meetings (including, for instance, arranging external

consultants to present on specialist topics such as internal controls and company culture).

- Ensure the company culture is reflected in all board papers. Board packs, containing sufficient details on the matters to be discussed by the board, should be prepared by relevant senior management and circulated to the board reasonably in advance of the meeting, so that directors have sufficient time to review the documentation and request further information, if required.
- Ensure board meetings are scheduled with sufficient time for adequate discussions of issues and at a convenient time for all directors to be able to fully participate and for issues to be raised.
- Diarise the testing and review of risk management and internal control systems and ensure that these are carried out on a timely basis with the results reported to the board. Follow-up actions should also be monitored.

- Keep the board updated with the latest guidance from Hong Kong Exchanges and Clearing Ltd (HKEX), in particular noting where updates may impact existing practices. For instance, if the proposed regulatory changes on corporate governance and culture are implemented, provide to the board any guidance issued by HKEX.
- Assist with arranging training and professional development for directors and keeping attendance records. In this connection, you can consider including the Institute's targeted practical trainings for your directors and senior management.
- Keep full and proper minutes of shareholder and board meetings and ensure other record-keeping is maintained to a good standard.



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Cross-cultural
communication

Kenny Luo FCG FCS, Institute Company Secretaries Panel member and Mainland China Focus Group member; and Board Secretary & Company Secretary, Bank of China (Hong Kong) Ltd, discusses the ways in which governance professionals can help bridge the cultural differences between Hong Kong and Mainland companies.

Can we start with an introduction to your background and your passion for cross-cultural communication?

'Around 30 years ago, I studied at the Beijing Foreign Studies University, which has been the training ground for Mainland diplomats since 1949. My major was in English, with a focus on American culture and society. This formed the basis of my understanding of the Mainland and the West from a theoretical perspective.

After I graduated, I was fortunate to find a job with Bank of China, in its Overseas Business Management Department at its Beijing Headquarters. I was even more fortunate to be able to deal with regulators and businesses in various countries as part of my job. A perk, if I may say so, was that I had the chance to travel to many countries and experience different cultures first-hand.

Through my work and travels, I acquired practical knowledge and became acutely aware of the need for good cross-cultural communication to foster understanding and avoid mistakes. I then studied for my MBA at the University of Toronto. My professors and classmates came from different cultures and diverse backgrounds. Two years of full-time study and living in Canada further enriched my day-to-day communication skills.

By 2004, when I returned to Bank of China, I was privileged to be part of the bank's initial public offering (IPO) process as part of the national reform of state-owned banks. The bank became a limited liability company, with dual Hong Kong and Shanghai listings two years later, in 2006 and with that, modern corporate governance was first established at the bank. During the bank's IPO process, I worked with a team of international lawyers, accountants and bankers, and handling cultural issues to bring the parties to the same level of understanding was important.

After the bank's listing, I became its Head of Investor Relations and Listing Affairs Representative – a role that functions as the assistant to the Board Secretary under the Mainland listing rules. I attended over 500 meetings and roadshows with international institutional investors and key banking analysts for a decade.

Then, in 2016, the bank kindly gave me the chance to be the Board Secretary of Bank of China (Hong Kong) Holdings Ltd, which is the flagship subsidiary and regional headquarters of its South East Asian operations. So here I am, attending to Bank of China Hong Kong's company secretarial work, managing its investor relations and facilitating communications with Bank of China, where compliance with national policies and local regulations are major concerns.'

Do you think there is a cultural gap between Hong Kong and the Mainland, particularly involving corporate governance practices?

'We all know that Hong Kong is an international financial centre. When we talk about cultural differences, in my experience the gap that exists between the West and the Mainland is certainly wider than that between the Mainland and Hong Kong. Under the One Country, Two Systems framework, the Mainland and Hong Kong will continue to have different political, economic and legal systems, but the cultural gap is narrowing as the result of increasing communication and exchange.

The reality is that after some 40 years of open market reforms and developments, the Mainland has caught up and even surpassed

Highlights

- the Mainland's influence over Hong Kong is now far more significant, as evidenced by the fact that over 85% of our market capitalisation is Mainland related
- the competitive landscape in Hong Kong has changed with the increasing importance of Mainland enterprises and their talent pool in Hong Kong
- governance professionals are in a unique position to adapt to and facilitate Hong Kong's transition through cross-cultural communication, and cultural sensitivity will be an important tool

Hong Kong in some areas – plenty of examples of that can be seen in the technology space. Also, there are many national policies that involve and impact Hong Kong. The One Belt One Road initiative, for example, has accelerated the Mainland's open market reforms and the pace of entry of major state-owned enterprises (SOEs) into Hong Kong. As a result, the Mainland's influence over Hong Kong is now far more significant, as evidenced by the fact that over 85% of our market capitalisation is Mainland related.

The competitive landscape in Hong Kong has changed with the increasing importance of Mainland enterprises and their talent pool in Hong Kong. There are still differences in governance practices and governance professionals need to manage this. Governance professionals are in a unique position to adapt to and facilitate Hong Kong's transition through cross-cultural communication, and cultural sensitivity will be an important tool.

I would like, by way of example, to share some anecdotes of the key cultural sensitivities that should be adopted when dealing with colleagues with a Mainland background and SOE superiors. In this connection, I spoke to some of my colleagues who have worked for foreign, Hong Kong and Mainland employers. They shared with me many typical culture shocks they experienced and six themes, discussed below, emerge.

1. Mainland employers are not easy-going and Mainland colleagues lack a sense of humour

This is a common misconception caused by language problems. I have seen many easy-going employers and humorous colleagues in the Mainland. However, without Cantonese proficiency and the requisite cultural background, Mainlanders are reluctant to joke. They do not want to cross any lines and be perceived as being offensive or harassing.

2. Mainland employers are much too detail-orientated and have a very low tolerance of mistakes

This is true and is a result of the highly competitive working environment in the Mainland. Millions of university graduates enter the Mainland labour market every year and brutal competition is everywhere. In this context, working harder and smarter is the only way to survive the daily work regime and earn the chance of promotion. While it may be an exaggeration that most Mainland employees are perfectionists, most Mainland employers are perfectionist as many of them had the experience of serving perfectionist supervisors. Perfectionism is a critical virtue and passed on from generation to generation.

Perhaps the search for perfection and having zero tolerance for mistakes have contributed to the Mainland's fast growth over the past decades. This may not resonate with Hong Kong's corporate culture, but is a function of the social development and environment of the Mainland. It is simply a matter to be mindful of, while taking care to be detailed and prepared when working for Mainland employers.

3. Mainland employers' emphasis is more on service experience than professionalism

Mainland employers do value professionalism, but they are more results-orientated. This is part of their mentality from their training and their experience of competition. Therefore, except for the provision of professional advice, Mainland employers tend to focus on providing stakeholders with a good service experience. In any event, only a perfect combination of professional advice and good service can best meet customer expectations and increase customer loyalty. Real professionalism serves the needs of employers and satisfies customers without breaching laws and regulations. This is why I strongly support the recent adoption of the Institute's new name – The Hong Kong Chartered Governance Institute – which is conducive to the delivery of even better customer service to a wider customer demand for broader governance.

4. Writing reports is an exacting task in SOEs where high standards of written Chinese are required

This is true. Mainland companies, especially SOEs, certainly have high standards for Chinese written reports, just as foreign companies have high standards for written English in their reports, which most Hong Kong employees have grown accustomed to. SOEs also tend to require more formal reports. When writing Chinese reports, employees have to demonstrate their expertise and their ability to concisely discuss complicated issues. The reports should include all the key information, be persuasive and serve as evidence for future accountability and internal audit reviews, together with disciplinary checks and scrutiny from various external regulatory bodies. The documentary chain in Western and Hong Kong companies is also important of course, but such companies is to keep many emails and ancillary documents as evidence.

5. SOEs keep tight control of the length of board meeting discussions and the time allocated is usually insufficient

Many observers have noted the way in which many important items are dispatched with a consensus without much discussion and debate during board meetings at SOEs. Some therefore

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 culture of your counterparts**
 ”



question whether non-executive directors are just acting as rubber stamps. This is an unnecessary concern caused by differences in corporate governance culture. Harmony is one of the core values of traditional Chinese culture. For Mainland companies, especially SOEs, the board meeting is the venue to reach consensus and to demonstrate unity, rather than being a forum for debate and voting. Usually, only when all obstacles and disagreements have been resolved, would an item be brought to the board room. I have seldom seen votes being cast against a proposal or an abstention. This is not due to the Chairman's dictatorship, but because consensus has been reached beforehand. If a decision is imposed on anyone by simple voting, there is a risk that the decision may not be faithfully implemented with enough cooperation.

In respect of foreign companies, the position is the opposite. Almost all issues are resolved at the table through open debate, but the risk is that the items may not be approved as scheduled. If there is no consensus and a decision has to be made, there could be a casting vote as the final solution in some situations. This is exactly the face-off scenario that Chinese companies do their best to avoid.

Moreover, senior managers of large companies need to attend many meetings and functions daily. Similarly, SOE leaders have many important commitments with local and central government officials. So their calendars are usually fully occupied without flexibility. It is understandable that SOE leaders have strict meeting time control. Therefore the necessary communication for making proper decisions would have been communicated prior to the meeting and board meetings tend to be short.

6. The reporting procedure to an SOE's parent company is too formal, long and slow

This is true. Large SOEs have complicated organisational structures and check-and-balance systems. These are the result of the long-term influence of government and anti-corruption campaigns. From my experience, however, this is improving as the Mainland continues to open up, and SOEs become more market-oriented and efficient. State-of-the-art management theories are gradually being introduced and implemented, and international talent is increasingly being recruited from the market.

In summary, there are many cultural differences between Hong Kong and Mainland companies, especially SOEs. There is no right or wrong and the point is to seek to understand cultural differences and for the governance professional to facilitate cross-cultural communication.'

How can the governance professional support Mainland employers and colleagues, in particular by facilitating effective cross-cultural communication?

'Effective cross-cultural communication requires an attitude of respect for the culture of your counterparts. It helps to learn about their cultural concerns, but if you do not have time for that then at least drop any bias you may have against the other culture. Also, try not to interpret anything that you are not familiar with based on your own cultural concerns. You should focus on common interests and goals for effective cross-cultural communication.

You need to be patient and tolerant and avoid magnifying minor problems caused by cultural differences. It is also useful to learn the language of your counterpart to better express

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and understand each other, and for meaningful understanding of cultural concerns. In any event, try to listen carefully, with patience, speak slowly and with honesty, and avoid using slang terms. It is equally important for you to introduce your cultural concerns to your counterpart. Out-of-office informal chats are often more effective than formal conversations in the business environment. A pleasant talk over dinner can establish friendship quickly. However, sensitive topics such as politics should be avoided in most cases.

To share my own experience, when I started working as the Board Secretary and Company Secretary of Bank of China Hong Kong in 2016, I found that my local colleagues could understand less than half of my Mandarin and vice versa. I forced myself to learn Cantonese by attending classes, listening to the radio and news broadcasts, and watching TV soaps and movies. I have tried my best to speak Cantonese with my colleagues on a daily basis. With the support of my local colleagues, I made a short public acceptance speech for a *Hong Kong Economic Journal* award after six months and moderated our bank's annual general meeting in Cantonese after one year. I can now communicate with my local colleagues in the office with fluent, albeit not perfect, Cantonese. I may not be able to express all my thoughts in Cantonese, but with my Hong Kong colleagues' acceptance, this has greatly improved the efficiency and accuracy of our communication and lowered the chances of misunderstanding.

It is through our communication both in and out of the office that my colleagues and I have learned about our respective cultural backgrounds. My personal advice is – don't be shy and never give up. As long as you show your willingness and

determination to cross cultural barriers, that will be a pathway for effective communication.'

How important is it to be aware of the Mainland's national plans, initiatives and policies?

'I would say it is very important, as without understanding these, governance professionals will not be able to understand the concerns of Mainland counterparts. As we all know, the Mainland has risen to be the second largest economy in the world.

As such, its national plans, strategic initiatives and policies have more impact on the world than ever before. As Hong Kong is the bridge linking the Mainland to the outside world, for its own prosperity it needs to have closer integration with the Mainland and to better serve its national development. This trend requires everyone to be aware of the Mainland's national plans and policies without preconceived bias. Better understanding of the policy concepts, goals and roadmaps of these national plans and policies can help governance professionals mitigate policy risks and capture the opportunities they offer.

I recently read a good background analysis of the Mainland by an international investment bank. The analysis traced recent regulatory measures targeting tech and property firms, education, gaming and crypto assets to the concept of 'common prosperity', which first appeared in an inaugural speech of President Xi Jinping back in 2012. 'Common prosperity', along with the new development model, the 14th Five Year Plan, the One Belt One Road initiative, and the Greater Bay Area Development Plan, certainly deserve attention and study by governance professionals.

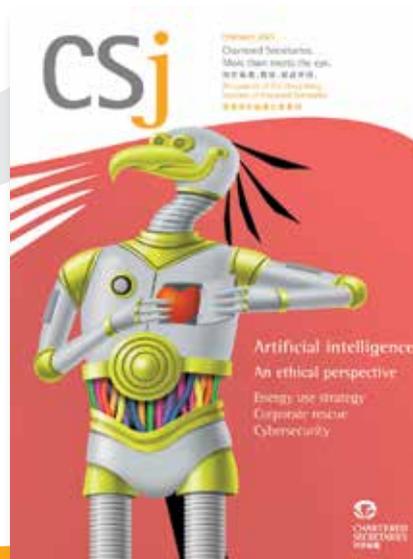
Governance professionals would also do well to understand the implications of policy changes and regulatory enforcement in the Mainland. This usually follows a three-step approach. During the first stage, the Central Government announces the direction of policy changes and encourages open debate in the media to test the water. During the second stage, relevant laws and regulations are promulgated but not strictly enforced, or are implemented on a pilot basis to leave room for transition. At the third stage, regulators begin to strictly enforce the laws and regulations.' 

Kenny Luo FCG FCS was interviewed by Mohan Datwani FCG FCS(PE), Institute Deputy Chief Executive, at the Institute's Bridging the Cultural Divide – Practical Sharing webinar held on 2 November 2021.

A bird's eye view

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

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Dawning of a new era

Gabriela Kennedy, Partner, and Karen Lee, Counsel, Mayer Brown, highlight key aspects of the Mainland's much anticipated Personal Information Protection Law.



On 20 August 2021, the Mainland's Personal Information Protection Law (PIPL) was passed. The new law came into force on 1 November 2021. The PIPL, Cybersecurity Law and the new Data Security Law (which came into force on 1 September 2021), now form the main legal framework governing data security and the handling of both personal and non-personal data in the Mainland.

The PIPL has often been compared with the European Union's General Data Protection Regulation (GDPR) and while this statement is largely true there are many points of difference between the two regimes. For example, the cross-border transfer restrictions and extraterritorial application of the PIPL are broader than the equivalent provisions in the GDPR. This, as well as some of the key aspects of the PIPL, are discussed below.

Scope and extraterritorial effect

The PIPL regulates the processing of personal information of individuals within the Mainland. Personal information is defined as any information relating to identified or identifiable natural persons that is recorded by electronic or any other means, but excluding anonymous data.

The law also expressly applies to any processing activities performed outside the Mainland, if such activities are:

1. for the purpose of providing products or services to individuals located in the Mainland
2. for the purpose of analysing or evaluating the activities of individuals located in the Mainland, or

3. they fall within any other circumstances specified under local laws or regulations.

All data controllers outside the Mainland who engage in such processing activities must establish a dedicated entity or appoint a legal representative in the Mainland to be responsible for all matters relating to the processing of personal information under the PIPL. The name and contact details of such local entity or legal representative will need to be provided to the relevant authority.

Whilst on the face of it the extraterritorial scope of the PIPL appears similar to the GDPR, there are some notable differences. Unlike the GDPR, which applies to the 'offering' of goods or services, the PIPL applies to the processing of personal information for the purpose of 'providing' products or services to individuals in the Mainland. In the absence of further clarification, the PIPL has the potential of applying to foreign companies that are not specifically targeting individuals in the Mainland but are incidentally providing products or services to them. The local authorities may issue interpretations and measures to provide further clarity on the scope of application of the PIPL.

Data controller and data processor

The responsibility and requirements under the PIPL are mainly imposed on personal information processors. The personal information processor is any organisation or individual that independently determines the purpose and means of processing of personal information. Data controllers remain responsible for supervising the entities to whom they have entrusted the processing of personal information. The parties must agree on the purpose, period and method of processing and type of personal information covered, as well as the security measures and rights and obligations of both parties. This should be reflected in an agreement between the parties. The data processor cannot further subcontract the processing of the personal information without the consent of the relevant data controller.

Under Article 59 of the PIPL, data processors are required to adopt necessary measures to protect the personal information entrusted to them in accordance with the PIPL, and other relevant laws and regulations, and to assist the data controller to comply with their obligations under the PIPL. Whilst data processors are potentially

Highlights

- the far-reaching effect of the Personal Information Protection Law (PIPL) may make it more challenging for companies, especially those with global operations, to ensure compliance
- data controllers remain responsible for supervising the entities to whom they have entrusted the processing of personal information
- companies are encouraged to review and update their privacy and compliance policies in order to satisfy the requirements under the PIPL

not directly regulated under the PIPL in the same way as they are under the GDPR, this Article 59 acts as a reminder that data processors may still be directly subject to the data security requirements under the Mainland's Cybersecurity Law and Data Security Law.

Grounds for processing

Under the PIPL, personal information may only be processed if it is for a specific and reasonable purpose, and should be directly related to such purpose. Only the minimum amount of data required to fulfil such purpose should be collected, and the excessive collection of personal information is prohibited. Similar to the GDPR, the PIPL imposes general principles of openness and transparency, legality, legitimacy, necessity and good faith. The PIPL also sets out the lawful basis for the processing of personal information. Under Article 13 of the PIPL, data controllers can only process personal information if the grounds set out below are met.

1. The data subjects have provided their consent. To be valid, individuals must provide their fully informed, voluntary and explicit consent. Where laws or regulations require separate or written consent, then this must be obtained.
2. The processing is necessary: (a) for the conclusion or performance of a contract to which the data subject is a party; or (b) to conduct human resources management in accordance with labour rules and regulations established by the employer in accordance with the laws or collective contracts signed under law.

3. The processing is necessary for the fulfilment of duties or obligations imposed under laws or regulations.
4. There is a need to respond to public health emergencies or to protect an individual's life, health or property in an emergency situation.
5. The personal information is being processed for the purposes of conducting news reporting, supervising public opinion or other such activities that are in the public interest and the processing is within a reasonable scope.
6. The personal information is already publicly available (either disclosed by the data subject or has otherwise been legally disclosed), and the processing is within a reasonable scope and in compliance with the PIPL.
7. The processing is permitted pursuant to other laws and regulations.

Notably, unlike the GDPR, legitimate interest is not a ground for processing under the PIPL. However, the PIPL does specifically include publicly available information and human resources management as grounds for processing, which are absent from the GDPR.

Regardless of the basis of processing relied on by the data controller, the data controller must still explicitly notify the data subjects beforehand of the purpose of processing, the categories of personal information being handled, the mechanisms in which the data subjects can exercise their rights, and so on. The notification must be accurate, clear and

easy to understand. Any changes to the original notice must also be notified to the data subjects.

Separate consent

If consent is being relied on as the basis of processing, then separate consent must be obtained if:

1. personal information will be provided by the data controller to a third party
2. the data controller intends to disclose the personal information publicly
3. images and other personal information collected in public areas to safeguard public security (for example, information collected via CCTV or facial recognition technology) will be used for other purposes
4. sensitive personal information will be processed, or
5. personal information will be transferred outside the Mainland.

What amounts to separate consent has not been defined in the PIPL. It is likely that unbundled and distinct opt-in consent may be required, separate to the general consent collected in relation to the processing of the data subject's personal information.

With regard to sensitive personal information, this is defined as any personal information that once leaked or illegally used could readily result in harm to the dignity of an individual, or the individual's personal safety or security of their property. Examples include biometric identification information, religious

“ the [new law] appears to be one of the world’s most stringent personal data protection laws ”

beliefs, specially designated status, medical health information, financial accounts, tracking an individual's location and personal information of minors under the age of 14. In this last case, relating to minors, the data controller must obtain the consent of the parent or guardian.

Cross-border data transfers

The PIPL has strict data localisation and cross-border data transfer requirements. Personal information cannot be transferred out of the Mainland unless it is truly necessary for business or other such requirements. Article 38 of the new law sets out a number of conditions that need to be met before any such transfers can be made. These may include having a security assessment conducted by the Cyberspace Administration of China (CAC). Moreover, a major difference to the GDPR is the restriction in the PIPL relating to the provision of personal information stored in the Mainland to any foreign judicial or law enforcement agencies, unless prior approval is obtained from the relevant Mainland authority.

Automated decision-making

Data controllers cannot use any automated decision-making that will result in unreasonable differential treatment of data subjects in terms of price or other transactional terms. It is

believed that this provision was added to tackle increasing concerns about big data-enabled discriminatory pricing, which refers to the use of big data to evaluate consumers' willingness to pay and charge different prices for the same product based on their established preference and payment conditions. This is an increasingly common practice and the Mainland has been ramping up efforts to grapple with it. For example, the Anti-Monopoly Guidelines for the Platform Economy issued in February 2021 took aim at such discriminatory treatment. On 27 August 2021, the CAC issued the draft Internet Information Service Algorithm Recommendation Management Regulations, which goes one step further and is intended to regulate the use of algorithms by companies to provide recommendations to users.

Data controllers are required to carry out a privacy impact assessment before using personal information for automated decision-making. They need to be transparent about how decisions are made, and are responsible for ensuring that the results are fair and impartial. In certain circumstances, the data subjects also have the right to request an explanation of how the automated decision was made and to refuse/opt-out of the use of automated decision-making.

Rights of data subjects

In line with the GDPR and international practice, the PIPL further strengthens a data subject's rights by introducing the right to data portability, enabling data subjects to request a data controller to transfer their personal information to another, so long as the transfer meets the requirements established by the CAC. There is no certainty yet as to what these requirements may be. Other rights

granted to data subjects under the PIPL are substantially similar to those under the GDPR, such as the right to access and correct data, the right to erasure, the right to object and restrict the processing of data, the right to withdraw consent, and so on. Further guidance will need to be provided on how data controllers must comply in practice with the exercise of these data subject rights.

Additionally, data subjects are entitled to seek recourse from the courts in the event that their requests to exercise their rights under the PIPL are rejected by a data controller. A data subject's rights are also extended to allow a deceased person's next of kin to access, copy, correct and delete the deceased person's personal information for their lawful and legitimate interests.

Obligations of large internet platform service providers

Additional obligations are placed on data controllers that provide important internet platform services to a large number of users and/or who operate complex business models, including the need to establish an independent body (mainly consisting of external personnel) to oversee the data controller's processing activities, and to stop providing services to those who offer products or services via the data controller's platform, who are in serious violation of the relevant laws and regulations governing personal information. It is still unclear what would constitute a substantial number of users or complex business models. Further measures or regulations will be required to shed light on this requirement.

Data breach notification

Under Article 57 of the PIPL, if any leak, tampering or loss of personal

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 the [new law] has the potential of applying to foreign companies that are not specifically targeting individuals in the Mainland but are incidentally providing products or services to them
 ”



information has or may have occurred, the data controller must immediately deploy remedial measures and notify the relevant local authorities and data subjects. It is important to note that this notification obligation arises even if the data incident is just a mere possibility. Currently, there is no clarification as to the degree of likelihood that a data incident may have occurred in order for the notification obligation to be triggered, for example, reasonably likely or mere suspicion. The notification obligation also applies even if there has been no data leak – if the personal information has been altered or tampered with, then this will require notification.

Data controllers can elect not to notify affected data subjects if they determine that they have taken measures that effectively prevent the data subjects from suffering any harm from the data incident. However, this decision can be overridden by the relevant authority, who can still decide that notification to the data subjects is required. Unlike the GDPR, the PIPL does not specify an

exact deadline or time limit within which to notify the relevant authorities or data subjects. This may change once further measures or regulations are issued relating to the implementation of the PIPL.

Data controllers should also note that unlike the GDPR, there is no obligation under the PIPL for data processors to notify their data controllers in the event of any data incident. It is therefore vital that such obligation is incorporated in any data processing agreement between the parties, as the data controller will still remain liable for any failure to notify the relevant authorities or data subjects.

Penalties

Breach of the PIPL can incur administrative fines of up to RMB50 million or 5% of the data controller's annual revenue in the last year. Unlike the GDPR, it is unclear whether this revenue is calculated based on the data controller's global revenue, or only the revenue generated in the Mainland. In addition to fines, other penalties include rectification

orders, warnings, confiscation of illegal gains, suspension or cessation of services, cessation of operations or revocation of permits or business licenses, or entering the data controller on a credit list. The local authorities also have the specific power to take steps against any foreign organisation that is seen as engaging in processing activities that harm the rights and interests of Chinese citizens or which endanger national security or public interest, such as prohibiting Chinese entities from providing any personal information to them. Persons-in-charge and other directly responsible personnel may also be held personally liable and fined or prohibited from acting as directors, supervisors, senior managers or personal information protection officers.

Takeaways

While the PIPL resembles the GDPR, the PIPL appears to be one of the world's most stringent personal data protection laws and its far-reaching effect may make it more challenging for companies, especially those with global operations, to ensure compliance. As the PIPL has just come into effect, companies are encouraged to review and update their privacy and compliance policies, align with suppliers, and have proper technical solutions integrated into their operational system in order to satisfy the requirements under PIPL. A sharp eye should also be kept out for any guidelines, measures or regulations likely to be issued by the authorities to flesh out the implementation of different aspects of the PIPL.

**Gabriela Kennedy, Partner, and
 Karen Lee, Counsel**
Mayer Brown

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FUTURE

Climate Change Conference (2022)

By 2025, it is likely that mandatory reporting on climate-related risks for listed companies and other relevant sectors will have been strengthened, as part of Hong Kong's 2050 carbon neutrality goal, and to attract international capital flows towards sustainable investments. The Institute is pleased to organise this climate change conference, which also serves as an event for the International Financial Week of the Asian Financial Forum (AFF) in January 2022.

At this conference, regulators and practitioners will come together to discuss pressing issues relating to climate change as a part of the Institute's thought leadership on climate change, including the proposed establishment of the International Sustainability Standards Board (SSB) by the International Financial Reporting Standards Foundation (IFRS Foundation) for aligning international reporting standards with the Task Force on Climate-related Financial Disclosures (TCFD) recommendations.

The topics covered will include:

- Keynotes on Hong Kong's major climate change related initiatives to address global concerns
- The IFRS Foundation's work on aligning sustainability reporting standards
- The demands of international investors for sustainable investments
- The TCFD recommendations on climate change disclosures
- Sharing on CLP's transition to the new lower carbon economy
- Sharing on MTRC's journey in measuring and setting target for emission reductions

Date: Thursday, 13 January 2022
 Time: 2.30 pm – 5.45 pm
 Language: English
 Venue: Webinar session. No physical attendance is required.
 Accreditations: HKCGI (3 ECPD points)
 The Law Society of Hong Kong (To be confirmed)
 Fee: HK\$560 for HKCGI member/AFF participant;
 HK\$390 for HKCGI student;
 HK\$660 for Non-member

Online Registration:



For enquiries, please contact the Professional Development Section at: 2881 6177 or email: cpd@hkcg.org.hk.

Chair:



Ms Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE)
 Immediate Past International President, CGI
 Past President, HKCGI;
 Executive Director and Company Secretary
 CK Hutchison Holdings Ltd

Speakers: (in order of appearance)



Ms Katherine Ng
 Managing Director and
 Head of Policy and Secretariat Services
 Listing Division
 Hong Kong Exchanges and Clearing Ltd



Ms Teresa Ko BBS JP
 Former Chairman, Listing Committee of
 the Hong Kong Stock Exchange;
 Partner and China Chairman
 Freshfields Bruckhaus Deringer



Mr Amar Gill
 Managing Director and
 Head of Investment Stewardship, APAC
 BlackRock



Mr Hendrik Rosenthal
 Director, Group Sustainability
 CLP Holdings Ltd



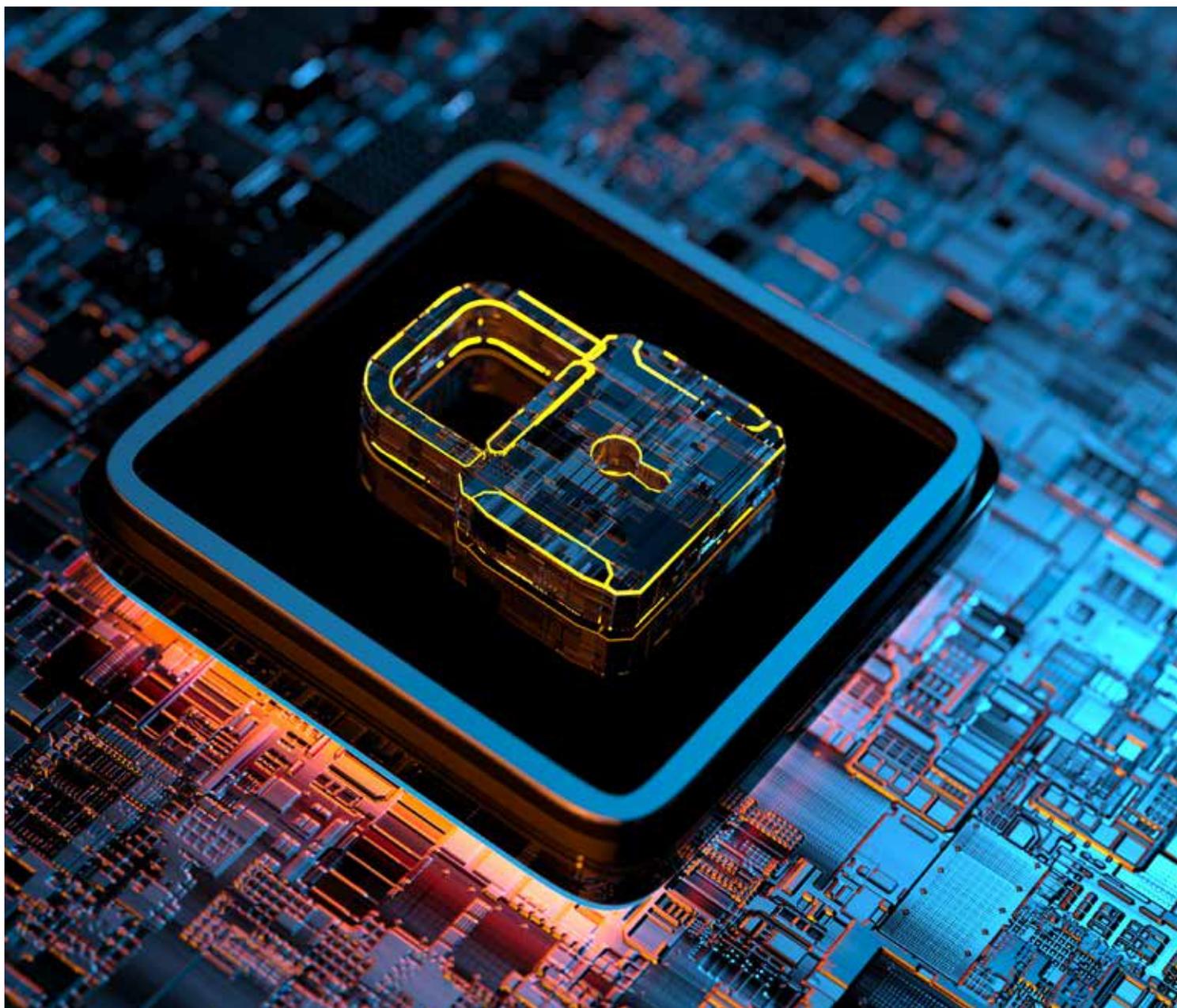
Ms Irene Chu
 Partner, ESG and Sustainability
 Head of New Economy and Life Sciences
 KPMG China



Ms Gillian Meller FCG FCS(PE)
 President, HKCGI;
 Legal and Governance Director
 MTR Corporation Ltd

New guidance notes

CSj reviews a two-part guidance note issued by the Technology Interest Group of the Hong Kong Chartered Governance Institute (the Institute), looking at the all-important issue of data protection in today's highly data-dependent business environment.



Good data management and protection has increasingly become one of the most important determinants of success in the current business environment. Not surprisingly then, a plethora of new roles have emerged to specialise in this area, including: Head of Data Management, Chief Data Officer, Data Architect, Chief Information Officer and Data Protection Officer.

So what is the role of the governance professional in this context? Should data protection even be under the remit of the governance professional? The simple answer is yes. To begin with, data governance is an enterprise-wide undertaking – everyone from operational staff up to board directors need to be involved in data management and protection. However, in addition, there are many specific areas within this area, in particular regulatory compliance and board advisory, that are directly relevant to governance professionals.

The Guidance Note on Data Protection, published by the Institute Technology Interest Group, offers advice to practitioners on how to address this timely and critical part of their work. The guidance note, available from the publications section of the Institute's website (www.hkcg.org.hk), is divided into two parts – the first part looks at the principles of data protection and addresses key concerns for governance professionals, and the second part looks at the handling of data breaches.

1. Key concerns for governance professionals

The compliance perspective

The guidance points out that governance professionals will often be in a facilitative role in addressing data management and

protection issues, but the most obvious area where data governance will be relevant to practitioners is in their overall responsibility for regulatory compliance. In particular, organisations in Hong Kong need to comply with the Personal Data (Privacy) Ordinance (Cap 486) (PDPO). The PDPO took effect in 1996 and regulates any person or company (data user) that collects, holds or uses personal data, and aims to prevent abuse or negligence in handling personal data by data users in Hong Kong.

The guidance points out, however, that organisations involved in the collection and processing of personal data from overseas countries may also need to consider overseas data privacy laws with extraterritorial application. A prominent example is the European Union's (EU) General Data Protection Regulation that took effect on 25 May 2018 and has extraterritorial application to non-EU companies that conduct data processing activities relating to persons located in EU member states. Ensuring compliance with local and overseas data protection regulations may often necessitate seeking professional legal advice. 'When in doubt, professional advice should be sought, especially in relation to the

use of exemptions under the PDPO for disclosures of personal data that are collected or processed,' the guidance note states.

Board support and data handling

Another area where data management and protection will be a key issues for governance professionals is in their board support and advisory work. The guidance note highlights the need for governance professionals to ensure that directors are aware of data privacy requirements and whether the company has complied with the relevant data privacy laws affecting its business. Directors will also be involved, of course, in preparing the organisation's data protection guidelines. Governance professionals may also need to work with data protection staff (for example, the company's Data Protection Officer) to ensure sufficient awareness of data privacy requirements among operational staff. This may include the facilitation of relevant training.

Governance professionals, whether acting as company secretaries or in some other capacity, will also be custodians of sensitive data themselves. This might include the names, addresses and identity

Highlights

- the most obvious area where data governance will be relevant to governance professionals is in their overall responsibility for regulatory compliance
- the guidance note highlights the need for governance professionals to ensure that directors are aware of data privacy requirements and whether the company has complied with the relevant data privacy laws affecting its business
- the process of implementing a Privacy Management Programme helps organisations build the necessary internal controls to minimise the risk of data breaches

card numbers of the directors to be stated on the company's annual return, names and contact information of shareholders to be used for convening general meetings, and the identity information and remuneration packages of the senior staff members of the company. Governance professionals will therefore need to build their own awareness of data protection and ensure that they follow data protection principles in their own work. At a minimum, to prevent unauthorised or accidental access to such sensitive information, proper security measures must be put in place.

2. Preventing and handling data breaches

Preventing data breaches

The second part of the guidance note focuses on the roles of governance professionals in preventing and handling data breaches. Since Data Protection Principle 4 of the PDPO requires data users to take proper security measures to protect any personal data they possess, data breaches are highly relevant to governance professionals' compliance role.

There are various practical measures that can be taken to minimise the risk of data breaches, but organisations need to consider which measures will work best for them. As a first step, the guidance note recommends practitioners promote the advantages of implementing a Privacy Management Programme (PMP), as recommended by The Office of the Privacy Commissioner for Personal Data (PCPD).

The process of implementing a PMP helps organisations build the necessary internal controls to minimise the risk of data breaches. A PMP, for example, requires organisations to carry out

a comprehensive review of existing personal data handling practices, establish proper data handling guidelines and procedures, and appoint a Data Protection Officer to oversee all data privacy related matters. A PMP also requires the setting up of a data breach reporting mechanism and a training programme to improve awareness within the organisation of the requirements of the PDPO, IT security measures and the handling of personal data.

Practitioners can also consider promoting the implementation of a Privacy Impact Assessment (PIA) for projects that involve the collection and use of personal data. A PIA generally involves:

- a fact-finding exercise to discover what kinds of personal data will be collected from which parties and to assess the data flow

- a privacy risk analysis to identify the privacy risks involved in each stage of the data flow
- an analysis of possible privacy risks mitigation measures, and
- an assessment of reporting and continuous monitoring obligations.

Handling data breaches

The guidance recommends organisations consider five steps in the handling data breaches.

1. Information gathering and escalation.

Staff members who commit or discover the data breach should gather key information relating to the breach and notify their immediate supervisors. This information then needs to be passed on to heads of departments and the Data Protection Officer. The Data

Serious data breach incidents

If a data breach incident is serious, governance professionals should request the Data Protection Officer to regularly report on the status of the incident to the appropriate persons. Governance professionals may also need to monitor the progress of remedial actions. This may involve whether:

- the affected data subjects and the Office of the Privacy Commissioner for Personal Data (PCPD) have been notified
- any complaints have been received from data subjects
- any feedback has been received from the PCPD – for example whether it has commenced an investigation, and
- there has been any involvement from other law enforcement agencies.

Governance professionals should in turn report on the status of the incident to the board of directors on a regular basis. In addition to the disclosure of factual information, governance professionals may need to make recommendations to the board regarding any suggested further actions that may be advisable, and to then implement any directions from the board on the matter.

Protection Officer should then make an assessment as to the seriousness of the incident and determine whether it has to be reported to senior management staff, including the governance professional and the board of directors.

2. Determine feasible interim actions to mitigate the loss. Action should be taken to mitigate the potential damage caused by the data breach, for example temporarily suspending the organisation's computer system where the breach was caused by a computer system failure or hacking incident. If the incident involves external service providers, the organisation should work with them to tackle the issue. If the incident involves criminal activities, the Data Protection Officer should consider seeking legal advice and notifying the relevant law enforcement agencies.

3. Notifying the affected data subjects and the PCPD. The PDPO does not currently require data users to notify affected data subjects where data breaches occur. However, the guidance note recommends doing so as the affected data subjects should be warned about any such incidents and may need

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good data management and protection has increasingly become one of the most important determinants of success in the current business environment
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to take necessary precautions to avoid further loss. If the Data Protection Officer is of the view that the data breach is serious, a notification should also be made to the PCPD via its Data Breach Notification Form (available from the PCPD website). A notification of the breach may also need to be sent to relevant law enforcement agencies and regulatory bodies. The guidance note suggests organisations seek legal advice to determine when such a notification will be legally required.

4. Implement remedial actions. In addition to the interim actions suggested above, organisations should consider

further remedial actions. For example, where the data breach indicates a systematic or persistent problem, the responsible department must review and make necessary amendments to existing guidelines. New equipment or IT infrastructure may also be required to prevent a repeat of the incident. Where the breach involves a significant loss of customers' personal data, the organisation will need to work with the administrative or corporate communication staff in preparing relevant disclosures for the affected customers and the media.

5. Monitor the progress of the tasks above. This will involve recording all the relevant details and will be an essential step in the process of not only dealing with the immediate fallout, but also ensuring better defences against any repeated breach. 

The guidance note reviewed in this article is available from the Publications section of the Institute's website: www.hkcg.org.hk. More information on the process of implementing a PMP is available in the PMP Manual produced by the the PCPD.

Credits

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Mohan Datwani FCG FCS(PE), Institute Deputy Chief Executive, serves as Secretary to the Institute's Interest Groups. If you have any comments and/or suggestions relating to the Institute's Interest Groups, he can be contacted at: mohan.datwani@hkcg.org.hk.



Estate planning and probate

Death and probate processes may be an unwelcome topic in Hong Kong, but Alex Chung, Associate, Withersworldwide, recommends some basic due diligence measures that can help streamline the probate process for both individuals and family businesses.



The Covid-19 pandemic has brought unprecedented changes to how government departments around the world operate as they have to work at a reduced capacity. This has also resulted in unexpected delays to probate processes. For instance, it is not as easy (and efficient) as it was before to obtain authenticated foreign public documents (such as death certificates) in some countries.

Furthermore, unnecessary complications could arise if the deceased person's will has not been regularly reviewed before his or her passing, as some of the information in his or her will may no longer be applicable. While wills and death have always been taboo subjects in Hong Kong, regularly reviewing your will would generally help streamline, although not eliminate, the probate processes so that your loved ones can access those 'frozen' assets more quickly after you have passed away.

The benefits of regularly reviewing a will

For those who already have a will in place, you may want to review it to see if any important events have happened since you last executed it. These important events would include, but not be limited to, marriage, divorce, birth, death, relocation, purchase of an overseas property and change in tax laws. If one or more of these important events have happened but your will has not been reviewed and updated appropriately, there could be unexpected issues and delays with respect to the probate process. Below are a few examples of how these events may affect your will.

Marriage

A will is generally revoked by the testator's subsequent marriage. If the testator has remarried, it is generally advisable for the testator to update his or her will.

Divorce or death

If the testator has divorced or if a family member has passed away, the appointment of the former spouse or the deceased family member as executor and any testamentary gift in favour of that person will generally lapse.

If all of the named executors have predeceased the testator, one will need to look to the applicable probate rules to determine who has the highest priority to become the administrator of the estate. Importantly, the question of which probate rules should apply depends on the law of the place where the deceased was domiciled when he or she died. If the place of domicile of the deceased was outside Hong Kong, a foreign legal opinion will be required and this will likely lengthen the probate process.

Birth

If the testator has a new child after executing his or her will, that child may not necessarily be included in the class of the beneficiaries under the will, depending on how the will was drafted.

Relocation

If you relocate to a new jurisdiction on a long-term basis, it would generally be

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unnecessary complications could arise if the deceased person's will has not been regularly reviewed before his or her passing

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advisable to review and consider updating your will. This is particularly true if you are going to relocate to a non-common law jurisdiction because your will, even though it is formally valid, may not necessarily be valid with respect to its substantive contents. For instance, in some jurisdictions, there could be a forced heirship regime under which a testator's freedom to choose how his or her property is to be divided upon his or her death is restricted.

Purchase of an overseas property

If you have purchased a property in a non-common law jurisdiction (such as the Mainland), your common law will may not necessarily be recognised in

Highlights

- wills need to be regularly reviewed to avoid any unexpected issues and delays with the probate process
- many developments subsequent to the signing of a will, including relocation, the purchase of an overseas property or a change in tax laws, may necessitate a review of the will
- family businesses owned and controlled by a sole shareholder/director should consider appointing a reserve director who can act in the place of the sole director upon the sole director's passing

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that non-common law jurisdiction. Even if you have a will in that non-common law jurisdiction, you should always make sure the execution of that will did not inadvertently revoke your common law will. Inconsistencies among separate situs wills could also cause problems in getting the wills probated.

Change in tax laws

While this is not normally an issue for families based in Hong Kong without any overseas connections, if any beneficiary is a citizen or resident of a high-tax jurisdiction or is going to relocate to that jurisdiction, you may want to consider any changes in the tax laws of that high-tax jurisdiction when you review your will.

Probate due diligence

For those who do not have a will at all, you should consider taking steps to ensure that your loved ones are properly provided for when you are no longer around. This is especially true if what the intestacy rules dictate would be different from what you would have

intended to provide for in your will. Also, if you have any dependants who are not entitled to anything under the applicable intestacy rules, it would be beneficial to provide for such dependants in your will. Otherwise, there could be a risk that such dependants may take the matter to the court, and, for example, in Hong Kong, make an application to the court for financial provision from your estate under the Inheritance (Provision for Family and Dependants) Ordinance (Cap 481 of the Laws of Hong Kong).

It is also helpful to the probate process to update your list of assets and liabilities from time to time (for example, when a significant asset is acquired). It is advisable to provide a copy of the list to your executors or, if you do not feel comfortable doing so, to your estate planning lawyer who will keep that together with your original will. Doing so could speed up the probate process, as your executors could avoid all the hassle of figuring out what assets and liabilities are involved in your estate.

On a related note, given that the probate process in Hong Kong can be time-consuming, it is also useful to consider family business succession issues, particularly if the family business in question is owned and controlled by a sole shareholder/director (which is not uncommon in Hong Kong). In this scenario, the sole shareholder/director may want to consider appointing a reserve director. If the sole shareholder/director of a Hong Kong private company passes away without a reserve director being validly appointed, then the company will not have any director to exercise its powers. As the sole director is also the sole shareholder, there will not be any person (whether shareholder or director) who can appoint a new director. The company is effectively at a standstill until after a grant of representation is obtained. If a reserve director has been appointed, he or she can act in the place of the sole director immediately upon the sole director's passing.

Alex Chung, Associate
Withersworldwide



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Implementing equity incentive plans in non-state-owned listed companies

How can non-state-owned listed companies make better use of equity incentive plans as a means of encouragement? Yang Liang, Board Secretary, Livzon Pharmaceutical Group Inc, shares his experience on the planning and implementation in this area.



Currently, listed companies in the Mainland generally implement employee incentives in two ways – equity incentives and employee stock ownership plans. Equity incentives refer to long-term incentives for directors, senior managers and other employees of listed companies based on the company's stocks. The main methods for offering equity incentives include restricted stocks and stock options (see Glossary for an explanation of the terms used in this article).

An employee stock ownership plan refers to a system arrangement whereby a listed company legally allows employees to obtain the company's stock and hold it for a long period of time according to the wishes of the employees. The rights and interests of the stock are allocated to employees in accordance with the plan design. Currently, the stock ownership plans available in the market mainly include private placements, financing, award fund, repurchase and stockholder grants.

Different incentive methods have their own advantages and disadvantages. For listed companies, different incentive plans need to be adopted based on actual conditions. Generally speaking, equity incentive plans balance incentives and constraints well, while employee stock ownership plans focus on benefit-sharing. In the design of incentive schemes, the key elements can generally be summarised as relating to 'four areas' (person, quantity, price and timing) and 'two sources' (stock source and capital source).

Creating a multilevel equity incentive system

Following its goal to become a leader in the pharmaceutical industry, Livzon Pharmaceutical Group Inc (Livzon) has

been actively implementing a variety of equity incentive measures since 2014. Depending on the incentive purpose and scope level, it has adopted various forms of equity incentives including employee stock ownership plans, restricted stocks, stock options and subsidiary-level incentives, which provide strong support for the sustainable growth of the company's business.

At the base of the pyramid, Livzon has formulated standardised equity incentives, such as stock options and restricted stocks, for executive-level employees and above and core personnel within the group. Middle-level management and above, together with core personnel of Livzon's business units or subsidiaries, participate in the investment or transfer of equity of these business units or subsidiaries. At the top of the pyramid, Livzon adopted a 'business partner share ownership scheme' to cover a small number of core personnel who play a key role in the future strategy and business of the company.

In 2014, against the background of management changes at Livzon and the successful conversion of B shares into H shares after listing on the main board of the Stock Exchange of Hong Kong, Livzon initiated planning and then implemented its first equity incentive plan. This is

to enhance the morale and governance standards of the team. Some 10 million shares were issued to 483 middle and senior management, and core technical personnel. In 2018, Livzon officially launched a stock option plan with a total of 1,045 participants and a total of 15 million shares, accounting for 2.71% of the company's total shares.

In 2020, on the basis of the existing wide coverage of the equity incentives, Livzon launched a medium to long-term business partner share ownership scheme for its core management, which is based on the modal of excess profit assessment and reward fund. From 2020 to 2029, Livzon will implement multiple, independent phases of its share ownership schemes.

Incentive mechanisms are crucial to the company's long-term development. For the company, on the one hand, the distribution of performance stocks can reduce the cost of cash expenditures, which is conducive to stabilising the stock price. On the other hand, the partner incentive mechanism can attract more domestic and foreign talent to join the company.

Equity incentives create value for enterprises

According to Livzon's experience in implementing multilevel equity incentives,

Highlights

- incentive plans must cater to the interests of shareholders and guide managers to bear shareholders' concerns and interests in mind when taking decisions
- aligning the interests of managers and listed companies increases investor confidence
- listed companies might wish to be bold in setting performance indicators and long-term goals – after all, equity incentives have a future orientation

from planning and approval to market value management, listed companies need to ensure smooth communication with key decision-makers, such as managers and major shareholders, and with internal supporting departments and external service organisations.

Equity ownership incentives should essentially serve corporate strategy and business development. The choice of incentive methods should be based on the company's performance, and should be able to bring stability and attract talent. A stock incentive plan can be designed to be effective, exercisable and sustainable from the perspective of time, price, quantity, people and funding sources.

1. In terms of effectiveness, the incentive plan must cater to the interests of shareholders and guide managers to bear shareholders' concerns and interests in mind when taking decisions. The plan should enable managers to generate proper expectations and achieve the desired goals.
2. In terms of operability, consider whether the plan is feasible – in particular whether participants can reasonably take on the risks involved, whether the incentive cost is reasonable, whether the funds can be properly sourced and whether the equity pricing method is reasonable and clear enough.
3. In terms of sustainability, it is important to avoid equity immobilisation. When a listed company launches an equity incentive plan, it can set up reserved equity and the reserved proportion usually does not exceed 20% of

the amount of equity to be granted under the equity incentive plan.

In determining individual performance indicators, performance evaluation tools such as key performance indicators or the balanced scorecard tool, can be introduced. Listed companies might wish to be bold in setting performance indicators and long-term goals – after all, equity incentives have a future orientation.

Today, equity incentives have become one of the effective means of market value management for listed companies. Based on Wind data, China International Capital Corporation established an index with the sample base of companies that were implementing or had implemented equity incentives from 2010 to 2020. The data showed that the A share companies implementing equity incentives significantly outperformed the main indexes. In fact, aligning the interests of managers and listed companies can

increase investor confidence. More and more listed companies attach importance to the establishment of long-term incentive mechanisms and the use of other market value management tools. They can increase their rate of return on equity incentives.

Since its listing, Livzon has attached great importance to corporate social responsibility and continues to improve its ability to give a return to investors. It has experienced a sharp increase in its market value from 2011 to 2020. However, we must also be clearly aware that the existing equity incentive mechanisms still have their own limitations, and the improvement of corporate governance is a long-term task. In the future, Livzon hopes to work with more listed companies to explore the optimal incentive mechanisms and possibilities for improving corporate governance.

Yang Liang, Board Secretary
Livzon Pharmaceutical Group Inc

Glossary

Restricted stocks. Restricted stocks refers to company shares acquired in accordance with the conditions specified in an equity incentive plan, whose transfer and some other rights are restricted.

Stock options. Stock options refers to rights granted by a listed company to participants to purchase a certain number of company shares under predetermined conditions within a certain period of time.

Key performance indicators (KPIs). KPIs are target-oriented quantitative management indicators that measure process performance by setting, sampling, calculating, assessing and analysing the key parameters of inputs and outputs in internal processes. They are also a tool used to divide strategic business goals into exercisable work targets, constituting the basis of business performance management.

Balanced scorecard (BSC). As one of the common performance evaluation methods, BSC is a new performance management system that evaluates the implementation of business strategies by exercisable indicators and targets from four different perspectives: finance, customers, internal operation, and learning and growth.



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民营上市公司 股权激励方案

民营上市公司如何灵活运用现有股权激励工具？
丽珠医药集团股份有限公司董事会秘书杨亮先生
就股权激励方案的设计与实施分享了经验。

目前，国内上市公司实施员工激励主要有两种方式：股权激励和员工持股计划。股权激励是指上市公司以本公司股票为标的，对其董事、高级管理人员及其他员工进行的长期性激励，股权激励主要工具有限制性股票和股票期权（有关本文中使用的术语的解释，请参阅“词汇表”）。

员工持股计划则是指上市公司根据员工意愿，通过合法方式使员工获得本公司股票并长期持有，股份权益按约定分配给员工的制度安排。目前市场上的持股计划主要有定向增发型、融资买入型、奖励基金买入型、公司回购型与股东赠与型。

不同激励方式各有其利弊，对于上市公司来说，不同发展阶段需根据实际情况采用适宜的激励方案。总体来讲，股权激励计划偏向激励股方向，注重激励与约束的平衡；员工持股计划则偏投资股

方向，侧重利益共享机制。在激励方案设计时，一般可将关键要素归纳为四定（定人、定量、定价、定时）和二来源（股票来源和资金来源）。

打造多层次股权激励体系

秉持做医药行业领先者的愿景，丽珠医药集团股份有限公司（丽珠集团）自2014年以来积极实践多种股权激励措施，根据激励目的与范围层级情况的不同，分别采用员工持股计划、限制性股票、股票期权、子公司层面激励等多种形式的股权激励，为公司业务的可持续增长提供了支持。

在金字塔底座，丽珠集团针对全集团范围内主管级以上及核心骨干人员制定了股票期权、限制性股票等规范股权激励；针对事业部或子公司中层以上管理人员及核心骨干，参与事业部或子公司股权跟投或转让；在金字塔顶端，通过“事业合伙人持股计划”

覆盖少数对公司未来战略及业务起关键决定作用的骨干人员。

2014年，恰逢丽珠集团管理层调整及成功实现B股转板香港H股主板上市，为促进管理层的凝心聚力及公司治理水平的提升，公司启动筹划并实施了上市后的首次股权激励，向483位中

摘要

- 激励计划必须迎合股东利益，引导管理者在决策时考虑股东的关切和利益
- 可调整管理层和上市公司的利益，增加投资者信心
- 上市公司不妨大胆设定业绩指标和长期目标——毕竟股权激励是有未来导向的

高层管理人员及核心技术人员定增发1000万股。2018年，丽珠集团正式推出股票期权计划，激励对象共计1045人合计1500万股，占公司股本2.71%。

2020年，在既有的广覆盖的股权激励基础上，丽珠集团针对核心管理层推出中长期事业合伙人计划。本次中长期事业合伙人计划采用超额利润考核奖励基金方式，在2020年至2029年十年间，丽珠集团将实施多期各自独立存续的持股计划。

激励机制对公司的长远发展至关重要。对于公司而言，一方面，业绩股票的分配可减少现金支出成本，利于股价稳定，另一方面，合伙人激励机制可吸引更多国内外优秀人才加入企业。

股权激励为企业缔造财富价值

根据丽珠集团多层次股权激励实施经验，从方案筹划到审议决策再到市值管理各阶段，上市公司需做好多维度的沟通工作，不论是与管理层、大股东等关键决策者的沟通，还是与内部支持部门、外部服务机构的沟通。

激励本质上是为公司战略与业务发展服务，激励方式选择上要以公司业绩导向为主，兼顾稳定和吸引人才。在股权激励方案设计原则上，可以从时、价、量、人、资金来源等角度出发，让方案具备有效性、可操作性与可持续性。

1. 有效性方面，真实的激励导向要符合股东利益，引导经理人向股东关注的方向努力，使经理人产生合适的期望及达成期望的效价。
2. 可操作性方面，考虑是否符合被激励人合理适度承受风险的原则，激励成本是否合理，是否能够妥善解决资金来源，股权定价方法是否合理清晰。
3. 可持续性方面，要避免股权固化导致激励性股权枯竭。上市公司在推出股权激励计划时，可设置预留权益，预留比例通常不超过股权激励计划拟授予权益数量的20%。

个人业绩指标确定上，可引入关键绩效指标或平衡计分卡等绩效考核工

“ A股实施股权激励的上市公司大幅跑赢主要指数 ”

具，突出股权激励个人考核的灵活性与差异化。其实不管是股权激励的选择还是方案的设计，上市公司在业绩条件设定上不妨大胆一些，以长远视角设定目标，毕竟股权激励是面向未来的激励体系。

时至今日，股权激励已成为上市公司市值管理的有效手段之一，中金基于万得数据将2010年至2020年正在实施或曾经实施股权激励的公司作为样本空间建立指数，数据显示，A股实施股权激励的上市公司大幅跑赢主要指数。实际上，当管理者与上市公司利益趋同，同样可以增加投资者信心。当越来越多的上市公司重视长效激励机制建设与其他市值管理工具运用，也能提高股权激励收益率，发挥正向激励作用。

上市以来，丽珠集团高度重视公司社会责任，持续提升回报投资者的能力，2011年至2020年市值规模大幅攀升。不过，我们也要清楚意识到，现有股权激励机制仍然有各自的局限，公司治理提升亦是一个任重道远的长期课题。未来，丽珠集团希望与更多上市公司携手，不断探索最优激励机制与公司治理提升的诸多可能。

杨亮先生

丽珠医药集团股份有限公司
董事会秘书

词汇表

限制性股票：激励对象按照股权激励计划规定的条件，获得的转让等部分权利受到限制的本公司股票。

股票期权：上市公司授予激励对象在未来一定期限内以预先确定的条件购买本公司一定数量股份的权利。

关键绩效指标 (KPI)：是以目标为本的量化指标，通过设置、抽样、计算和分析内部流程中输入和输出的关键参数来衡量流程绩效。它是一种能把战略业务目标转化为可实施的工作目标，成为业务管理基础的工具。

平衡计分卡 (BSC)：常见的绩效考核方式之一，BSC是从财务、客户、内部运营、学习与成长四个角度，将组织的战略落实为可操作的衡量指标和目标值的一种新型绩效管理体系。

Professional Development

Seminars: October 2021

5 October

Enforcement series: HKMA enforcement – update



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

Speaker: Jill Wong, Partner, Howse Williams

11 October

Tax risk management for corporate governance enhancement

Chair: Jerry Tong FCG FCS, Institute Assessment Review Panel member, and Financial Controller and Company Secretary, Sing Lee Software (Group) Ltd

Speakers: Dr Angus Ho, Partner, Tax and Business Advisory Services, and Velma Lam, Manager; ShineWing Hong Kong

12 October

Doing business in China series: civil code – issues for commercial contracts

Chair: Bill Wang FCG FCS, Institute Council member, Professional Development Committee member, Technical Consultation Panel (TCP) member, TCP – Securities Law and Regulation Interest Group member and Mainland China Focus Group member

Speakers: Tom Fu, Partner, and Rosalyn Han, Counsel; Mayer Brown

19 October

Recent developments in insolvency and restructuring under the Companies Ordinance (Cap 622)



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

Speaker: Look Chan Ho, Barrister, Des Voeux Chambers

20 October

Artificial intelligence – legal and governance perspectives



Chair: Ellie Pang FCG FCS, Institute Chief Executive

Speakers: Ling Ho, Partner, Jonathan Wong, Partner, William Wong, Consultant, and Iris Mok, Senior Associate, Clifford Chance; and Kevin Pereira, Managing Director, Blu Artificial Intelligence

22 October

Company secretarial practical training series: disclosure of interests in securities – practice and application

Speaker: Ricky Lai FCG FCS(PE), Company Secretary, China Renewable Energy Investment Ltd

26 October

Doing business in China series: finance operations & compliance – best practice

Chair: Patrick Wong FCG FCS, Institute Membership Committee and Rebranding Working Group member, and Director, Aoba CPA Ltd

Speakers: Donald Tsang, Executive Director, Head of Corporate Services of Greater China, and Jessie Shi, Director, Accounting & Tax Compliance; Intertrust Group China

28 October

TCFD reporting – overview, company secretary's roles, and investor's perspectives on climate change and investment

Chair: Stella Lo FCG FCS(PE), Institute Council member and Education Committee Vice-Chairman, and Group

Speakers: Company Secretary, Guoco Group Ltd
Ricky Cheng, Director and Head of Risk Advisory, BDO; and Mervyn Tang, Head of Sustainability Strategy, APAC, Schroders

Video-recorded CPD seminars

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

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

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

ECPD forthcoming webinars

Date	Time	Topic	ECPD points
5 January 2022	4.00pm–6.00pm	Sanctions: key concepts & sanctions compliance programme in practice	2
11 January 2022	4.00pm–5.30pm	An update on the IRD's views on charitable institutions – time to take a tax 'health check'	1.5
13 January 2022	2.30pm–5.45pm	Climate Change Conference (2022)	3
17 January 2022	6.45pm–8.45pm	Corporate Rescue Bill	2

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

Membership

Forthcoming membership activities

Date	Time	Event
8 January 2022	1:50pm–3:30pm	Community Service – 探訪活動: 長者活力齊共舞 (A組)
8 January 2022	3:20pm–5:00pm	Community Service – 探訪活動: 長者活力齊共舞 (B組)
22 January 2022	10.30pm–12.00pm	Fun & Interest Group – Fai Chun calligraphy workshop (新年揮春工作坊)

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

Membership (continued)

Membership activities: November 2021

13 November

Fun & Interest Group – coffee grounds mosquito coil-making & planting workshop



17 November

Overview on enduring power of attorney (free webinar)



22 November

(摒棄歧視同心抗疫 2.0) Togetherness, instead of labelling, will help us fight the virus 2.0 (free webinar)



New graduates

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

Chan Wing Ling
Chan Yuen Ping
Cheng Siu Chun
Huang Jieling

Hung Hiu Ching
Lam Lok Tin, Timothy
Law Chung Wing
Leung Chi Ho

Leung Kin Ping
Leung Shu Tak
Ng Pik Ying
Ng Yin Fei

Tam Wang Ngai
Tsang Pui Kwan
Wong Hei Ching
Wong Sin Yi

Yeung Chi Shun
Yeung Fout Kei
Yip Hoi Lam
Zou Jieni

Advocacy

Change of post-nominals

In July 2021, the Institute changed its name to The Hong Kong Chartered Governance Institute (HKCGI). This represents a significant step forward in claiming a much wider governance remit for our members and strengthening our status as governance professionals. We are now working to relaunch our brand in the next few months, initiatives of which will include a new logo and website.

The Institute is also delighted to report that, on 18 November 2021, the Companies Registry published its External Circular No 3/2021, which updates the meaning of a 'professional company secretary' to reflect the change to the Institute's name and the new post-nominals for its members. For the Institute's related

guidelines on certification, please visit the News section of the Institute's website: www.hkcgj.org.hk.

While the post-nominals from our affiliated international body – The Chartered Governance Institute (CGI) – remains unchanged, the current HKCGI post-nominals FCS or ACS will expire on 31 January 2022, and as of 1 January 2022, the new post-nominals HKFCG or HKACG should be used instead. There is also the option for members to combine the new post-nominals with the dual Chartered Secretary and Chartered Governance Professional (CS/CGP), and, where applicable, the Practitioner's Endorsement (PE) designations.

To assist you, the following is a practical summary:

	Valid until 31 January 2022			Commencing 1 January 2022		
Fellow	FCG FCS	or	FCG(CS, CGP) FCS(CS, CGP)	FCG HKFCG	or	FCG(CS, CGP) HKFCG(CS, CGP)
For holder of PE:	FCG FCS(PE)	or	FCG(CS, CGP) FCS(CS, CGP)(PE)	FCG HKFCG(PE)	or	FCG(CS, CGP) HKFCG(CS, CGP)(PE)
Associate	ACG ACS	or	ACG(CS, CGP) ACS(CS, CGP)	ACG HKACG	or	ACG(CS, CGP) HKACG(CS, CGP)
For holder of PE:	ACG ACS(PE)	or	ACG(CS, CGP) ACS(CS, CGP)(PE)	ACG HKACG(PE)	or	ACG(CS, CGP) HKACG(CS, CGP)(PE)

Institute Council strategy meeting

The Institute Council strategy meeting was held on Saturday 27 November 2021 at Two International Finance Centre. Council and the Secretariat gathered to discuss milestones from previous years, and to set new strategic targets and objectives for 2022. After a morning of fruitful discussions and strategic planning, participants enjoyed lunch together at The Hong Kong Club.



Advocacy (continued)

Webinar on ESG and climate-related issues (online only)

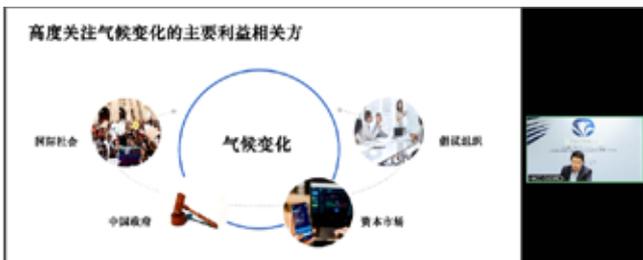
The Institute's subsidiary in Beijing organised a webinar on 12 November 2021, attended by 130 participants, covering thought-provoking ESG and climate-related issues that lie at the heart of purposeful governance.

The webinar was divided into four sessions, namely compliance supervision, expectations of governance institutions and investors, problem identification and

solutions, and practical experience and problem discussion. A series of relevant topics was covered in each session, including the Hong Kong Exchanges and Clearing Ltd's major regulatory initiatives in relation to climate change, the expectations of international investors on sustainable investments, highlights of ESG guidelines in relation to climate change disclosures and other practical issues, the formulation of business strategies based on the Task Force on Climate-related Financial Disclosures reporting

requirements, the roadmap to carbon neutrality and much more.

The webinar was conducted in Putonghua and each participant earned a maximum of six ECPD points from attending this important webinar.



Celebration of the 20th anniversary of the establishment of the Hong Kong Coalition of Professional Services

In celebration of the 20th anniversary of the establishment of the Hong Kong Coalition of Professional Services (HKCPS), of which the Institute is an ordinary member, a celebration seminar-cum luncheon was held on 3 December 2021.

The seminar showcased the challenges and opportunities for, and contributions by, professionals under the 14th Five-Year Plan, particularly in the Greater Bay Area. The Honourable CY Leung, GBM GBS JP, Vice-chairman of the National Committee of the Chinese People's Political Consultative Conference, was present as the Guest of Honour, while The Honourable Paul Chan Mo-po, GBM GBS MH JP FCG FCS, Financial Secretary of the HKSAR Government, was the VIP guest speaker.

Edith Shih FCG(CS, CGP) FCS(CS, CGP)(PE), CGI Immediate Past International President and Institute Past President, and Executive Director and Company Secretary, CK Hutchison Holdings Ltd, led the singing of the national anthem with Dr Anthony Chow SBS JP to commemorate the anniversary.

Gillian Meller FCG FCS(PE), Institute President, and Legal and Governance Director, MTR Corporation Ltd; Ernest Lee FCG FCS(PE), Institute Vice-President, Audit Committee Chairman and Mainland China Focus Group member, and Technical Partner, Deloitte China; Natalia Seng FCG FCS(PE), Institute Past President, Council member, Education Committee Chairman and Mainland China Focus Group member; David Fu FCG FCS(PE), Institute Past President and Company Secretaries Panel member, and Group Company Secretary, Hong Kong Exchanges and Clearing Ltd; Ivan Tam FCG FCS, Institute Past President, Mainland China Focus Group Convenor, and Deputy Managing Director,

Chevalier International Holdings Ltd; Dr Maurice Ngai FCG FCS(PE), Institute Past President, Professional Services Panel member, Mainland China Focus Group member, and Chief Executive Officer, SWCS Corporate Services Group (Hong Kong) Ltd; Edmond Chiu FCG FCS(PE), Institute Council member, Membership Committee Vice-Chairman, Professional Services Panel Chairman and AML/CFT Work Group member, and Managing Director, Corporate Services, Vistra Hong Kong Ltd; Bill Wang FCG FCS; Ellie Pang FCG FCS, Institute Chief Executive; Mohan Datwani FCG FCS(PE), Institute Deputy Chief Executive; and Louisa Lau FCG FCS(PE), Institute Registrar, all showed their support by taking part in the occasion. Senior officials from the HKSAR Government and the Liaison Office of the Central People's Government in the HKSAR also attended the event.



Advocacy (continued)

Academic luncheon

The Institute held an academic luncheon on 11 November 2021. The luncheon was well attended, with 34 representatives from local universities and academic institutions, as well as Institute members and partners who have supported the Education Committee throughout the year. Natalia Seng FCG FCS(PE), Institute Past President, Council member, Education Committee Chairman and Mainland China Focus Group member, thanked the academics, Institute members and partners for their staunch support in promoting the Chartered Secretary and Chartered Governance Professional qualification, as well as the development of the Institute's qualifying programme, the Chartered Governance Qualifying Programme (CGQP). Recent Institute developments and other educational matters were shared and discussed during the luncheon.



2021 Tricor conference

Tricor held its Annual Conference 2021 at the Hong Kong Convention and Exhibition Centre on 19 November 2021. The conference showcased how digital solutions can help companies improve sustainability, uplift corporate governance and achieve industry best practices. Ellie Pang FCG FCS, Institute Chief Executive, was a guest speaker on the evolving landscape of corporate governance, as sustainability increasingly becomes a top priority for many companies and governments worldwide.

Collaborative Course Agreement signing ceremony

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

As an alternative to the CGQP examinations, the Institute has developed collaborative courses with local universities, successful completion with fulfillment of the Institute's registration requirements leads to full exemptions from the Institute's own qualifying programme.

On 8 December 2021, Natalia Seng FCG FCS(PE), Institute Past President, Council member, Education Committee Chairman and Mainland China Focus Group member, signed and renewed a Collaborative Course Agreement with Professor Edward Snape, Dean of the School of Business, Hong Kong Baptist University (HKBU), at a signing ceremony held at the HKBU campus. The curriculum of HKBU's Master of Science in Corporate Governance and Compliance (MScCGC) programme has been accredited by the Institute under the CGQP syllabus.

Stella Lo FCG FCS(PE), Institute Council member and Education Committee Vice-Chairman; Jerry Tong FCG FCS, Institute

Assessment Review Panel member; Patrick Sung FCG FCS, Institute Education Committee member and Audit Committee member; and Ellie Pang FCG FCS, Institute Chief Executive, as well as Secretariat staff, also attended the ceremony.

For details of the MScCGC programme, please visit the HKBU website: <http://bus.hkbu.edu.hk/msccgc>. For enquiries, please contact HKBU: 3411 5728, or email: msccg@hkbu.edu.hk.



Chartered Governance Qualifying Programme (CGQP)

November 2021 examination diet – postponement application: REMINDER

Candidates who were unable to attend the scheduled CGQP November 2021 examinations may apply for examination postponement by submitting a relevant medical certificate and/or supporting document(s). All applications must be submitted to the Institute on or before Friday 17 December 2021.

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

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

Studentship activities: November and December 2021

5 November
Industry talk at
The University
of Hong Kong

12 November
Introductory session
for Partnership
Bachelors' Programme
(PBP) students
2021 at Hong Kong
Metropolitan University



25 November
Introductory
session for PBP
students 2021 at
The Hang Seng
University of
Hong Kong



26 November
Introductory
session for PBP
students 2021 at
Hong Kong Shue
Yan University



Forthcoming studentship activities

Date	Time	Event
23 December 2021	1.00pm-2.15pm	Governance Professionals Information Session (Putonghua session)
26 January 2022	1.00pm-2.00pm	Student Ambassadors Programme (SAP): experience sharing on summer internship programme 2021

Fast Track Professional route

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

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

Policy – payment reminder

Studentship renewal

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

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

Featured Job Openings

Company name	Position
粵海投资有限公司	Secretarial Manager
The Hong Kong Jockey Club	Assistant Corporate Secretarial Manager

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


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

Exchange publishes corporate governance and ESG (climate disclosures) guidance

The Stock Exchange of Hong Kong Ltd (the Exchange), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEX), has published guidance to listed issuers on climate disclosures, as well as an analysis of initial public offering (IPO) applicants' corporate governance and environmental, social and governance (ESG) practice disclosure in 2020/2021.

Guidance on climate disclosures

The Exchange's ESG reporting requirements have incorporated certain key recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). Meanwhile, in December 2020, Hong Kong's Green and Sustainable Finance Cross-Agency Steering Group (the Steering Group) announced that TCFD-aligned climate-related disclosures will be mandatory across relevant sectors no later than 2025. The Steering Group indicated its support for adopting the standard to be developed by the International Sustainability Standards Board in July 2021, and further expressed its support for Hong Kong's Climate Action Plan 2050 in October 2021. Hong Kong's Climate Action Plan 2050 outlines strategies and targets for combating climate change and achieving carbon neutrality.

The Guidance on Climate Disclosures (the Guide) will help companies assess their response to risks arising from climate change. The Guide provides practical tips and step-by-step guidance to assist issuers in preparing TCFD-aligned climate change reporting.

The Exchange will review its ESG reporting framework to further align with TCFD recommendations, and will collaborate with other regulators to work on a roadmap to evaluate and potentially adopt the new standard(s) to be developed by the International Sustainability Standards Board under the International Financial Reporting Standards Foundation.

Analysis of IPO applicants' governance and ESG disclosures

Separately, the Exchange has also published its Analysis of IPO Applicants' Corporate Governance and ESG Practice Disclosure in 2020/2021 (the Review). The Exchange evaluated the prospectuses of new applicants seeking a primary listing on the Exchange between July 2020 and June 2021, and further tracked the diversity progress of newly listed issuers (listed between July 2019 and December 2020) with single gender boards by reviewing their corporate governance reports.

Key findings and recommendations of the Review are highlighted below.

- **Compliance culture.** IPO applicants should instil strong corporate culture that fully adopts and prioritises compliance and governance measures of integrity, and embed the compliance culture into their everyday workflows.
- **Board diversity.** Board gender diversity of new applicants has improved significantly, with the percentage of single gender board applicants dropping from 30% in 2019 to 21% in 2020, and down further to 12% in the first half of 2021. IPO applicants are expected to not have single gender boards and should prioritise on achieving board gender diversity.
- **ESG matters.** Most applicants made disclosures on environmental and social issues at IPO. Nonetheless, IPO applicants should conduct a thorough analysis and assessment to identify material ESG risks, and consider making appropriate disclosure on climate-related issues and initiatives to reduce carbon emissions, to facilitate the transition to a low-carbon economy. ESG risk management starts before listing and it is important for IPO applicants to plan ahead to implement the necessary measures to ensure future compliance.

ESG Academy

In a related development, HKEX has launched a new centralised ESG educational platform – ESG Academy. The ESG Academy is a useful one-stop-shop for the Exchange's guidance materials, rules and regulations, and training materials relating to ESG, and aims to guide issuers and the broader business community in their sustainability journeys.

More information is available on the HKEX website: www.hkex.com. For details of Hong Kong's Climate Action Plan 2050, visit the Climate Ready website: www.climateready.gov.hk.

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Pre-IPO

- VIE structure setup ²/Incentive plan design
- Employee incentive plan execution
- Trust setup

IPO

- Pre-IPO warm-up
- IPO retail distribution, international placement, friends and family shares ¹
- Marketing promotion during subscription period

Post-IPO

- Investor relations IR/PR
- Foreign exchange filing ^{1,2}
- Tax withholding ^{1,2}
- Share vesting and allocation ¹
- Share sale /repatriation ^{1,2}

Note: 1.Service will be provided by licensed subsidiaries of FUTU
2.If they have an entity or plan to setup an entity in Mainland China



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