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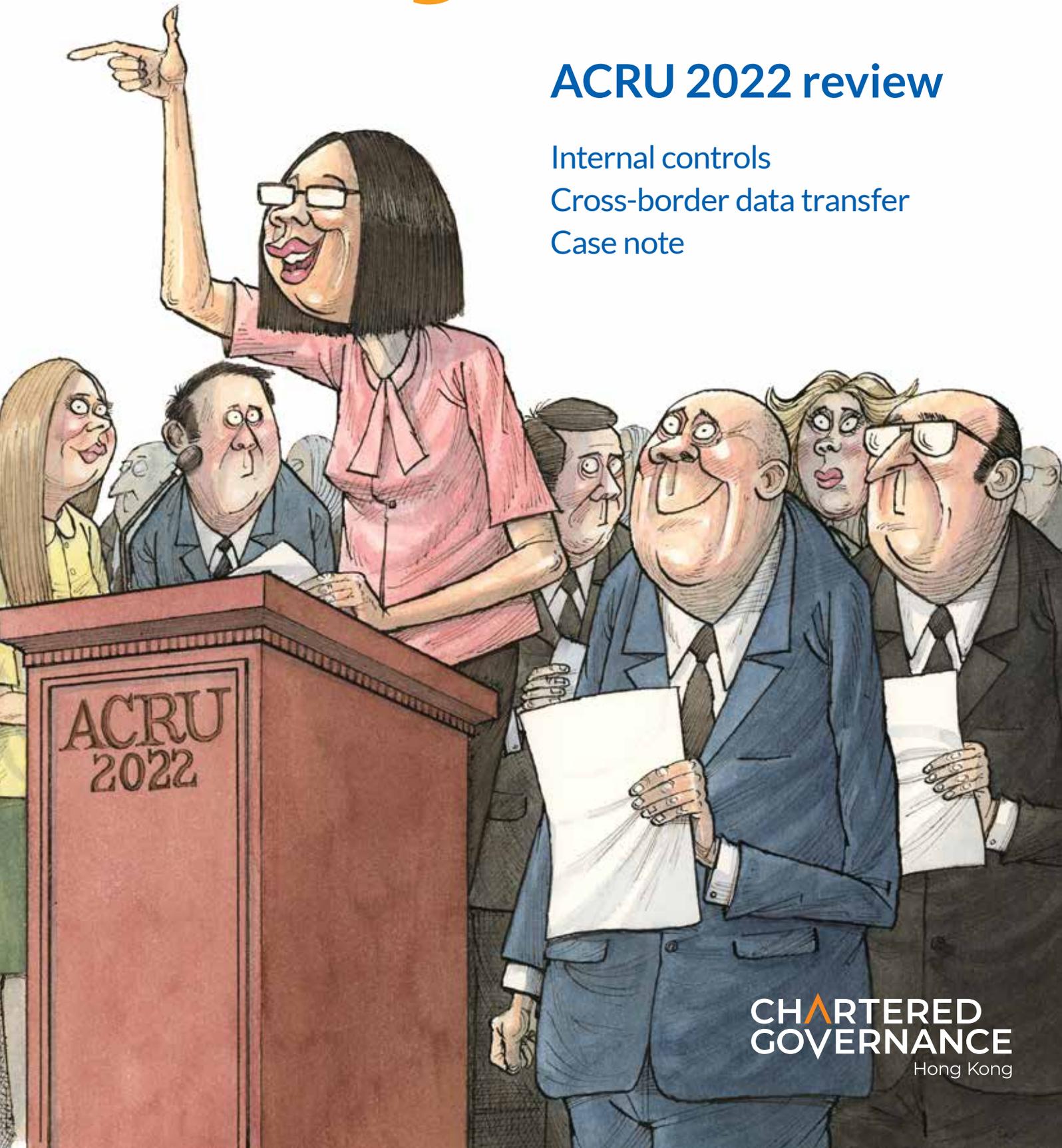
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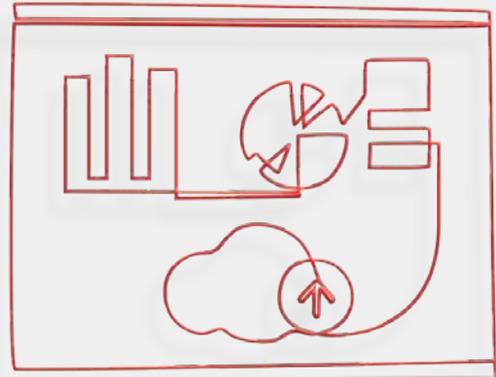
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The Hong Kong Chartered Governance Institute (HKCGI, the Institute) is an independent professional body dedicated to the promotion of its members' role in the formulation and effective implementation of good governance policies, as well as the development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

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 6,700 members, and more than 400 graduates and around 3,000 students.

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This edition of CGj reviews our 23rd Annual Corporate and Regulatory Update (ACRU), held on 9 June. ACRU is the most popular CPD event in the Institute's calendar and is a rare opportunity for participants to have a direct dialogue with regulators about all of the top issues in governance and compliance.

This year, the need for such a dialogue is more evident than ever. The operating environment in Hong Kong, the Mainland and globally continues to grow in uncertainty and complexity, which creates risks to be managed through good governance. This year's ACRU covered a wide range of issues including environmental, social and governance (ESG) and climate change concerns, IPO-related misconduct, due diligence in corporate transactions, financial reporting deadlines and the Covid-19 pandemic, directors' duties, personal data privacy and anti-corruption compliance.

The cover stories in this edition of CGj will guide you through the key ACRU takeaways on all of these topics, but one theme that I would like to draw to your attention here is the role of internal controls in achieving good governance. This theme came up in a number of speaker's presentations. It has also been a regular theme of ACRUs in the past and is a

Governance 101

salutary reminder for members and stakeholders of our profession of the fundamental rationale for having a properly resourced governance team in organisations of all types.

At this year's ACRU, Kenneth Luk, Senior Director, Enforcement Division, Securities and Futures Commission (SFC), made the point that companies with internal controls that 'exist only on paper' can expect, sooner or later, to be involved in an investigation by the SFC enforcement team. Similarly, Jon Witts, Head of Enforcement, Listing Division, Hong Kong Exchanges and Clearing Ltd (HKEX), emphasised that having impressive sounding policies on governance issues is only half the story – boards need to ensure that their strategic policy decisions are backed up by procedures at the technical level.

This, of course, is where good governance is invaluable. Does the organisation have the right systems in place to ensure timely corporate filings and financial disclosure? Is the internal audit function adequately resourced? Does the organisation have the appropriate segregation of duties to avoid abuses in conflict of interest situations? Are these internal controls subject to regular review? Does the organisation provide adequate training for everyone involved in implementing these controls?

Good governance is as much about these technical details as it is about

high-level strategic and ethical considerations. Nevertheless, some would wrongly regard getting effective controls at the appropriate level of detail as an unnecessary cost for organisations, or as red tape and a distraction from the actual business organisations are engaged in.

While effective internal controls do represent a cost for organisations, this year's ACRU, as indeed any of our ACRU events, was a demonstration of the much greater costs involved in failures of internal controls. When internal controls fail, external controls, in the shape and form of regulators, external auditors or other stakeholders, get involved. This can lead to regulatory fines and legal costs, and may also represent a personal liability risk for directors and managers. Add to this the potential loss of clients due to the reputational damage organisations suffer as a result of high-profile compliance breaches, and you begin to see the value and competitive advantage of having a properly resourced governance team in place where members of the Institute serve as governance champions.

Ernest Lee FCG HKFCG(PE)

治理101

本月会刊回顾了公会于6月9日举行的第23届企业规管最新发展研讨会(ACRU)。ACRU是公会现有活动安排中最受欢迎的持续发展活动，是参会者与监管机构就治理和合规相关重要议题进行直接对话的难得机会。

今年，这种对话较以往更为必要。香港、内地和全球经营环境的不确定性和复杂性持续增加，引发了诸多风险，需要通过良好治理来管理这些风险。今年的ACRU涵盖了广泛的议题，包括环境、社会与治理(ESG)和气候变化问题，IPO相关的不当行为，企业交易中的尽职调查，财务报告的最后期限和新冠肺炎疫情，董事的职责，个人数据隐私和反腐败合规。

本月会刊的封面故事将向读者介绍本次ACRU对这些议题的主要讨论成果，但我想特别提请读者注意的是有关内部控制在实现良好治理中的作用这一议题。这在一些演讲者的发言中提到过，也是过去ACRU的一个常规议题。这是一个有益的提醒，提醒了公会会员和利益相关者，组织中需要拥有一个有充分资源支持的治理团队的根本原因。

在今年的ACRU会议上，证券及期货事务监察委员会(SFC)规则执行高级总监Kenneth Luk指出，那些内部控制“只存在于纸面上”的公司，迟早会被SFC

的执法团队进行调查。同样，香港交易及结算有限公司(HKEX)上市科规则执行主管Jon Witts强调，制定令人印象深刻的治理政策只是完成了一半的工作，董事会需要确保他们的战略决策有技术层面的相应程序来支撑。

当然，这正是良好治理的宝贵之处。组织是否有恰当的系统来确保及时的公司申报和财务披露？内部审计部门是否有足够的资源？组织是否有适当的职责分工，以避免利益冲突情况下的权力滥用？这些内部控制是否受到定期审查？组织是否为参与实施这些控制的每个人提供充分的培训？

良好的治理既涉及这些技术细节，也涉及高层战略和道德考量。然而，有些人错误地认为，在适当的细节水平上获得有效的控制是组织不必要的成本，或者是“繁文缛节”，消耗了组织开展业务的力量。

虽然有效的内部控制确实代表了组织的成本，但今年的ACRU，就像我们所有的ACRU网络研讨会一样，揭示了内部控制失败所涉及的更大成本。当内部控制失败时，外部控制，就会以监管机构、外部审计师或其他利益相关者的形式介入。这可能导致监管部门的罚款，产生法律费用，也可能使董事和经理陷入个人责任风险。此外，由于违规行为曝光导致组织的声

誉受损，客户可能会因此而流失，这时你就会开始意识到拥有一个资源充足的治理团队的价值和竞争优势，在这个团队中，公会的会员是治理的引领者。



李俊豪 FCG HKFCG(PE)

The critical role of internal controls

ACRU 2022 review: part one



This first part of CGj's review of the Institute's 23rd Annual Corporate and Regulatory Update (ACRU), held on 9 June 2022, highlights key takeaways from the first session, featuring speakers from Hong Kong Exchanges and Clearing Ltd (HKEX).

In the 12 months since the Institute's previous ACRU, listed company enforcement activity has continued to rise in Hong Kong. Last year's ACRU came shortly after HKEX entered a 'new chapter' in its enforcement work. With the benefit of recently enhanced disciplinary powers and sanctions, HKEX has continued to strengthen its enforcement of the Listing Rules and to focus on individuals responsible for compliance breaches.

The impact of this on its enforcement caseload has been visible in the last financial year, said Jon Witts, Head of Enforcement, Listing Division, HKEX. Speaking in first session of the day, chaired by Edith Shih FCG(CS, CGP) HKFCG(CS, CGP)(PE), Institute Past President and International Past President, he reported that HKEX has published sanctions in over 30 cases, involving sanctions against over 160 individuals.

In this context, he focused his ACRU presentation on the critical importance of listed companies establishing and maintaining effective internal control frameworks. He pointed out that, in the majority of cases handled by HKEX in its enforcement work, breaches of the Listing Rules by the company could have been avoided if directors had properly discharged their responsibilities in respect of regulatory compliance and internal controls.

He then outlined three crucial components of effective internal controls frameworks.

Recommendations on internal controls

1. Setting up a framework

Setting up an internal controls framework is not simply a matter of having the right policies in place. Mr Witts emphasised that having impressive-sounding policies is worthless if you don't have the necessary procedures and processes to back them up. 'Policies are important high-level statements, but writing policies for a control framework will not get you to where you need to be. You need to have the procedures in place to make sure that the policies are brought into effect. You also need to have checks and balances across the organisation to make sure that people are given the right authority and can use the framework in the right way,' he said.

He added that HKEX investigations will not only consider potential compliance failures, but also whether

directors failed to discharge their duties in respect of establishing and maintaining effective internal controls. If so, disciplinary action may follow even if no breach or misconduct is found to have occurred at the company level.

A key part of an effective internal control framework is internal audit. Mr Witts warned that companies without a strong internal audit mechanism are at risk of getting into serious trouble. Moreover, the internal audit function needs to be adequately resourced. By way of example, he cited a recent enforcement case (Beijing Media Corporation Ltd – sanctioned in February this year), in which the company had an internal audit department but it only comprised one person. 'They didn't have the resources and, unsurprisingly, failed to pick up on a whole range of control deficiencies which contributed to their problems. Directors need to make sure that there are proper resources in place,' he said.

Highlights

- HKEX has published sanctions in over 30 cases over the previous 12 months, involving sanctions against over 160 individuals
- having impressive-sounding policies is worthless if you don't have the necessary procedures to back them up
- listed companies in Hong Kong can expect tougher disclosure requirements relating to their management of ESG and climate change issues

2. Reviewing effectiveness

Just as important as establishing a framework is reviewing it for ongoing effectiveness. Mr Witts emphasised that, once again, this review needs to look deeper than the policy level. 'The internal controls need to be tested to check that the processes are actually working,' he said.

He recommended that ACRU participants read the latest HKEX Enforcement Bulletin which gives practical advice on internal controls. In particular, the Bulletin cites the recently updated Assistance Options to New Applicants and Sponsors in connection with Internal Controls over Financial Reporting (AATB 1), published by The Hong Kong Institute of Certified Public Accountants (HKICPA). Appendix 3 of AATB 1 contains a six-page list of bullet points itemising the sorts of things that companies should be thinking about when reviewing their internal controls – a good reminder, Mr Witts said, of the scale of the work that needs to be done.

3. Training

A third essential component of an effective framework is the training needed to ensure that everyone – directors, managers and staff – knows how to use it. Mr Witts pointed out that this is particularly important for managers working for subsidiaries outside Hong Kong who may be less familiar with the Hong Kong regulations. Directors should make sure that appropriate training and information is available to everyone in the group.

ESG and climate change

ESG and climate change issues continue to climb the regulatory

agenda. Kelly Lee, Vice-President, Policy and Secretariat Services, Listing Division, HKEX, gave ACRU participants a preview of upcoming HKEX initiatives in this space. Her core message was that HKEX will continue to upgrade the ESG and climate change disclosure requirements for listed companies in Hong Kong to align them with international standards.

International standards are increasingly coalescing around the requirements of the Task Force on Climate-related Financial Disclosures (TCFD) and the International Sustainability Standards Board (ISSB). HKEX has already incorporated key elements of the TCFD recommendations into Hong Kong's ESG framework. For example, since July 2020 listed companies have had to report on the board's governance of ESG matters and their handling of climate change issues.

To further promote more transparent and comparable climate disclosure amongst listed companies, Ms Lee confirmed that HKEX will focus future upgrades of Hong Kong's regime on closing the gaps with the TCFD and particularly the ISSB emerging standards – which are still under consultation and are expected to be published by the end of the year.

'We need to keep up our existing framework to reflect international developments. This year we will again conduct a review of our ESG framework and focus on how we can further enhance climate disclosures from our issuers. The focus areas will be on meaningful and decision-useful climate information that is consistent

with international standards, taking into account the market readiness and capabilities of our companies,' she said.

Listed issuers can expect tougher disclosure requirements relating to their use of scenario analysis for climate change risk management. They can also expect broader scope green house gas (GHG) emission reporting and more specific metrics in relation to climate-related risks.

Ms Lee urged the company secretaries and governance professionals in the ACRU audience to update their board of directors on this. 'Directors need to get to know the ISSB standards and the TCFD recommendations, and to identify any gaps with internal policies and practices. They then need to consider whether they need any system enhancements in preparation for the enhanced climate disclosures going forward,' she said.

Directors' duties

HKEX has from time to time observed a number of corporate transactions where directors might have failed to apply proper due diligence to protect the interests of the company and its shareholders. In his ACRU presentation, Max Cheng, Vice-President, Listed Issuer Regulation, Listing Division, HKEX, emphasised that HKEX expects to see directors use independent judgement when assessing whether the terms of such transactions are fair and reasonable. In particular, they should not take a checklist approach to this.

HKEX has observed cases where listed companies have agreed to pay high prices for acquisitions

“
Writing policies for a control framework will not get you to where you need to be. You need to have the procedures in place to make sure that the policies are brought into effect.
 ”

Jon Witts, Head of Enforcement, Listing Division, Hong Kong Exchanges and Clearing Ltd



outside their principal businesses. He reminded directors of their duty to critically assess the value of potential acquisitions. Even where an independent professional valuation has been given, directors are expected to exercise their own judgement and not to overly rely on one source of information. They should at least be assessing the assumptions of the valuation and reviewing the business operations of the target.

Moreover, where the vendor provides warranties or guarantees, directors should consider whether the vendors are in a position to fulfil these obligations. Where a target is a newly established business that lacks a track record, directors should be particularly cautious about relying on any profit guarantees given.

‘In some cases the vendor provided guarantees, but there was very limited recourse for the issuer to safeguard against a failure of these contractual obligations. In

the end, the issuers faced material impairments on the assets shortly after acquisition, resulting in a dissipation of shareholders’ assets,’ Mr Cheng said.

HKEX has also observed a number of cases where listed companies lent money or made advance payments that lacked apparent commercial merits. Mr Cheng reminded ACRU participants of the need for directors to fulfil their duties in overseeing lending transactions and ensuring that all the necessary disclosures are made.

Financial reporting

The accuracy and timeliness of financial disclosures by listed companies has been the subject of increased scrutiny during the Covid-19 pandemic, and two HKEX speakers updated ACRU participants on this area. William Wong, Head of Accounting Affairs, Listing Division, HKEX, highlighted the findings and recommendations of HKEX’s latest review of companies’ annual report financial disclosures for the 2020 financial year-end. While

HKEX is generally satisfied with issuers’ compliance with the required and recommended disclosures, Mr Wong focused his presentation on several key areas where they can continue to improve.

Patrick Yu, Senior Vice-President, Listed Issuer Regulation, Listing Division, HKEX, addressed the impacts of the Covid-19 pandemic on the ability of listed companies to meet the publication deadline for their audited financial results. The ‘fifth wave’ of the pandemic (January to May 2022) coincided with the peak season for financial reporting in Hong Kong. Nevertheless, Mr Yu confirmed that close to 90% of companies with a December year-end were able to comply fully with the Listing Rule requirement to publish audited financial results by the end of March.

Lockdowns in Hong Kong and the Mainland hampered the audit and financial report preparation work, but, since 2020, both HKEX and the

“
directors need to get to know the ISSB standards and the TCFD recommendations, and to identify any gaps with internal policies and practices
 ”

Kelly Lee, Vice-President, Policy and Secretariat Services, Listing Division, Hong Kong Exchanges and Clearing Ltd



Securities and Futures Commission (SFC) have permitted listed companies to continue trading if they publish their preliminary results (results without the auditors’ agreement) and make a subsequent announcement regarding the auditors’ agreement. About 200 companies so far have enjoyed this timing relief.

‘This figure is a lot higher than last year because of the fifth wave of the pandemic,’ Mr Yu said. He added that the timing relief does not give listed companies an automatic extension, but is designed to give relief on a case-by-case basis. He therefore urged any companies with a March year-end that foresee difficulties in publishing their financial results on time to get in touch with HKEX.

In addition to the timing of annual reports, Mr Yu also addressed the

level of compliance with the disclosure requirements. He highlighted, in particular, the level of compliance with the new requirement under the revised Corporate Governance Code, effective 1 January 2022, relating to listed companies proposing to re-elect independent non-executive directors (INEDs) who have served the board for more than nine years. Such companies are required to disclose in their AGM circulars:

1. why the long-serving INED is still considered independent, and
2. where all the INEDs have served more than nine years on the board, the length of tenure of each INED on a named basis.

While compliance with the first requirement was around 95%, a little under half the listed companies failed to comply with the second

requirement. Mr Yu speculated that they may have assumed that disclosure was only necessary for INEDs up for re-election. He emphasised that, where all the INEDs have served more than nine years, the requirement applies to all of them, regardless of whether they are up for election or not.

Under the comply-or-explain regime in operation for Hong Kong’s Code, companies who omitted to disclose this information will be expected to explain why not in their CG Report. He added that similar requirements apply to the nomination of INEDs who will be holding their seventh (or more) listed company directorship. [CGI](#)

The Institute’s 23rd Annual Corporate and Regulatory Update was held on 9 June 2022. More information is available on the HKEX website: www.hkex.com.

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Trends in listed company regulation

ACRU 2022 review: part two

This second part of CGj's review of the Institute's 23rd Annual Corporate and Regulatory Update (ACRU) highlights key takeaways from the second session of the webinar, featuring speakers from the Securities and Futures Commission (SFC).



The first part of this review makes the point that listed company enforcement activity continues to rise in Hong Kong. This is as true for the SFC as it is for Hong Kong Exchanges and Clearing Ltd (HKEX). Kenneth Luk, Senior Director, Enforcement Division, SFC, reported that new investigations into IPO-related misconduct doubled over the last financial year and there has been a similar surge in cases involving the money lending practices of listed companies.

Speaking in the second session of the webinar – chaired by David Simmonds FCG HKFCG, Institute Vice-President and Chairman of the Membership Committee – Mr Luk said that these two types of misconduct accounted for half the new investigations the SFC started in the last financial year and that the SFC has set up two specialised teams to handle these areas of malpractice.

He also pointed out that, for investors, the first line of defence is not regulatory intervention but good corporate governance among listed companies themselves. ‘Cases that are passed to our enforcement team often involve companies with poor corporate governance, or companies whose corporate governance and internal controls exist only on paper,’ he said.

He added that where governance and internal controls fail, the external auditors play a very important role in uncovering problems. Cases often come to the attention of the SFC enforcement team where auditors have raised concerns and issued a qualified opinion on the accounts. ‘We

rely heavily on the auditors to do a good job of uncovering problems and to put pressure on the directors to make proper disclosure in the financial statements,’ he said.

IPO-related misconduct

As outlined above, IPO-related misconduct has been a major focus of the SFC’s enforcement work in the last financial year and Clarence Chan, Director, Corporate Finance Division, SFC, addressed this issue in his ACRU presentation. He started by pointing out that the SFC’s front-loaded approach to regulation focuses on early intervention. ‘We strive to mitigate misconduct risks at an early stage with a view to preventing possible misconduct, as opposed to detection after the fact,’ he said.

He added that this aligns the SFC’s work with that of company secretaries and governance professionals. ‘Company secretaries and governance professionals need to demonstrate professional scepticism and take appropriate follow-up action in response to hints of potential problems before harm is done,’ he said.

Highlights

- new investigations into IPO-related misconduct doubled over the last financial year and there has been a similar surge in cases involving questionable listed company loans
- for investors, the first line of defence is not regulatory intervention but good corporate governance standards in listed companies
- the SFC’s front-loaded approach to regulation focuses on early intervention to prevent possible misconduct, as opposed to detection after the fact

Red flags

Looking out for red flags that might be an early indicator of malpractice is a key component of the SFC’s front-loaded approach. In the context of IPOs, these red flags include unusually high IPO underwriting commissions and discretionary bonuses paid to underwriters. The commissions in question exceeded 20% of the total IPO proceeds in some cases.

In addition, regulators in Hong Kong have seen cases where companies paid very substantial fees shortly after listing for various kinds of professional services, such as public relations, market research, corporate finance and accounting services. In some cases these fees were paid upfront for services to be provided over a period of several years.

‘There is reason to suspect that, in some cases, a portion of the underwriting commissions and other fees were used to partially finance share subscriptions by some controlled investors,’ Mr Chan said.

This suspicion is strengthened in cases where the IPO applicant has a high

“
**company secretaries and
 governance professionals
 need to demonstrate
 professional scepticism and
 take appropriate follow-
 up action in response to
 hints of potential problems
 before harm is done**
 ”

**Clarence Chan, Director, Corporate
 Finance Division, Securities and
 Futures Commission**



shareholding concentration. There is a risk that some investors are controlled by related parties to mask the lack of genuine investor interest in the shares. ‘This calls into doubt the existence of an open, orderly and fair market in the shares, which is of central importance to the integrity of our stock market,’ said Mr Chan.

He added that such red flags may result in the rejection of the listing application but, even where an applicant has been rejected, that doesn’t necessarily mean that the SFC’s regulatory process has ended. ‘We would continue to see whether there are sufficient grounds for further action and investigation of the intermediaries and other parties involved in the IPO. Governance professionals involved in an IPO are encouraged to look out for these red flags and to take appropriate follow-up action to make our market a healthy one,’ he said.

Another speaker from the SFC gave an overview of the SFC’s new Code of Conduct requirements on book-building and placing activities. Anthony Wong, Director, Intermediaries Supervision, Intermediaries Division, SFC, gave ACRU participants an introduction to the new Code, which will become effective in August 2022 following a consultation in 2021. The new Code defines the roles of capital market intermediaries and overall coordinators in book-building and placing activities and sets out the conduct requirements expected of these roles. He recommended that ACRU participants take a look at the new Code and the subsequent FAQs issued by the SFC in May 2022.

Enforcement strategies

In IPO misconduct cases, the focus of the SFC enforcement team is on whether fraud in contravention of

Section 300 of the Securities and Futures Ordinance (SFO) is involved. Mr Luk said that this may include the use of nominees pretending to be independent investors in a bid to mislead regulators and investors into believing that there is investor demand for the IPO shares at the IPO price. These parties may be financed in part by funds diverted from the unusually high underwriting commissions or other IPO expenses mentioned above.

The SFC also focuses on whether there has been any false or misleading disclosures, such as misrepresentations about the use of IPO proceeds or the omission of material expenses. This may constitute a contravention of sections 384 and 298 of the SFO, or may constitute market misconduct in contravention of section 277 of the SFO, which can be dealt with by the Market Misconduct Tribunal (MMT).

The SFC also looks into whether the directors have discharged their fiduciary duties. If directors have not exercised due care skill and diligence, or have failed to act in the best interests of the company, the SFC may take civil action against them.

Questionable loans

Another major focus of the SFC's enforcement work over the last 12 months has been the rise in questionable loan cases, usually involving listed companies granting substantial unsecured loans to purported third parties. Many of these loans were granted without

a reasonable commercial rationale, credit assessment or even proper documentation, and eventually resulted in substantial impairment losses.

In some cases, the loans were granted shortly after the company had raised funds from the investing public by issuing new shares or corporate bonds. The proceeds from these fundraising exercises were very quickly transferred out of the company by way of substantial unsecured loans to individuals, or companies with scant past business relationships with the company. Shortly after the loans had

been granted, the responsible directors resigned, leaving the bad debt behind.

The SFO provisions discussed above in the context of IPO-related misconduct, as well as the legal remedies available to the SFC, are also applicable in these questionable loan cases. Mr Luk added, however, that in both IPO misconduct and questionable loan cases, the SFC collaborates closely with other law enforcement agencies. If any part of the proceeds of the fundraising activities, for example, find their way back to the management of the listed company, this begs the question of whether management has obtained advantages from counterparties in breach of the Prevention of Bribery Ordinance. This would come under the remit of the Independent Commission Against Corruption.

Similarly, if any of the counterparties to the transactions are nominees of management, the transactions are effectively a means of syphoning money away from the company, and the SFC may make referrals to the police and collaborate closely with them in investigating the case.

Insider dealing

Another important message to emerge from ACRU 2022 is the increasing sophistication of the technological tools used by enforcement teams to detect malpractice. For example, the SFC is digitising and automating the process of obtaining and analysing bank records. Local banks can now submit bank statements to the SFC via its proprietary online submission platform. Artificial intelligence (AI) is then used to derive useful data from the statements. The SFC is

Takeovers, mergers and share buy-backs

Another area of close scrutiny by the SFC over the last 12 months has been compliance with Hong Kong's due diligence requirements for takeovers, mergers and share buy-backs. Roger Cheng, Senior Director, Corporate Finance Division, SFC, focused his ACRU presentation on the lessons to be learned from some recent breaches of the Codes on Takeovers and Mergers and Share Buy-backs (collectively the Codes).

The basic underlying principle of the Codes is that all shareholders should be treated equally. Equal access to information is a key part of this and Mr Cheng highlighted its relevance to the work of governance professionals involved in acquisition deals. In particular, governance professionals have a role in keeping transactions confidential until they're ready to be announced.

He pointed out that leaks relating to merger and acquisition transactions can have severe consequences. For example, leaks relating to the price of the transaction will set a price floor for the offer. Moreover, leaks will result in an obligation upon the parties to the transaction to put out an announcement and the offer period will commence upon this announcement. The offeree will also be subject to the relevant regulatory requirements under the Codes, including all of the required disclosures and restrictions on the ability of directors to resign.

'It's not simply a matter of inconvenience,' Mr Cheng said. 'There are a lot of adverse potential consequences for you and your company, so it's very important for all matters to be kept confidential until they're ready to be announced.'

“cases that are passed to our enforcement team often involve companies with poor corporate governance, or companies whose corporate governance and internal controls exist only on paper”

Kenneth Luk, Senior Director, Enforcement Division, Securities and Futures Commission



also developing a tool that will automatically identify suspicious fund flow patterns, which will enable it to trace funds more effectively and efficiently.

These developments have particular significance for the SFC’s enforcement work to combat insider dealing. Mr Luk cited two recent insider dealing cases that originated from the SFC’s electronic surveillance of securities trading.

In the first case, the company secretary of China Automation Group Ltd was convicted of insider dealing. The defendant became aware of a possible general offer for the company shares. Before he arranged for a trading suspension, he purchased 534,000 shares through his wife’s account and she then sold his shares at

a profit. Although the defendant only made a profit of around HK\$7,000, and had a good background without a previous criminal record, he was sentenced to immediate imprisonment and ordered to pay a fine and the SFC’s costs.

In the second case, a former executive director and a former company secretary of Asia Telemedia Ltd withheld price-sensitive information from the market relating to the company’s indebtedness. Both sold their shareholdings in the company before the information was disclosed to the public and avoided a loss of approximately HK\$3 million and HK\$1 million, respectively.

Mr Luk pointed out that the MMT report on this case discusses at length the important role and responsibility

of company secretaries. ‘The MMT considers a company secretary as a member of senior management with a duty to advise the board on all matters of good governance. This includes advising the board on matters that should be reported to the market, such as matters that may constitute price-sensitive information,’ he said.

He emphasised that company secretaries need to be aware of their responsibilities in this area. ‘Ensure your organisations have robust governance to manage the flow of insider information and ensure its timely disclosure to the public in accordance with the SFO requirements and best business practices,’ Mr Luk said. [CG](#)

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



HKCGI – 50 Years of Excellence

Please join us in celebrating the 50th anniversary of the following members of The Hong Kong Chartered Governance Institute.

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Fok Hei Yuen

Fong Pak Wo

Ho Chi Kun

Ip Yin Wah

Leung Kwong Lap

Francis Robert Mullens

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Poon Cheung Fung, David

Seing Nea Yie

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Compliance update

ACRU 2022 review: part three

This final part of the CGj review of the Institute’s 23rd Annual Corporate and Regulatory Update (ACRU), highlights the key takeaways from the afternoon session, featuring speakers from the Companies Registry (CR), the Office of the Privacy Commissioner for Personal Data and the Hong Kong Business Ethics Development Centre of the Independent Commission Against Corruption.



The first two parts of this review focus on the latest trends in listed company regulation, but ACRU is not solely dedicated to the listed company sector. Governance and compliance is just as relevant, of course, to other sectors of the economy and governance professionals work for a wide range of organisations, including private companies, NGOs, social enterprises and public sector entities. This final part of the CGj ACRU review focuses on three topical issues in governance and compliance – the new inspection regime of Hong Kong’s Companies Register, personal data privacy and anti-corruption.

The Companies Register’s new inspection regime

In 2021, the HKSAR Government set out seven pieces of subsidiary legislation to implement the Companies Register’s new inspection regime. The first afternoon session of the ACRU webinar, chaired by Wendy Ho FCG HKFCG(PE), Institute Council Member and Vice-Chairman of the Professional Development Committee, featured two speakers from the Companies Registry (CR) who clarified the major changes brought in by the new regime.

The compliance implications

Agnes Wong, Deputy Registry Manager, Registration Division, CR, started with an overview of the new inspection regime, which is designed to restrict public access to the personal data of directors, company secretaries and other parties contained in company registers and on the company’s register held by the CR. This personal data comprises the usual residential addresses (URAs)

and full identification numbers (IDNs) of directors, and the full IDNs of company secretaries and some other individuals (such as liquidators and provisional liquidators). Access to this data (Protected Information), will be progressively restricted in three phases.

Phase 1 (commenced 23 August 2021) – companies may withhold the Protected Information contained in their own registers from public inspection.

Phase 2 (commencing 24 October 2022) – In respect of new filings, the CR will withhold the Protected Information from public inspection.

Phase 3 (commencing 27 December 2023) – the individuals concerned may apply to the CR to withhold from public inspection their Protected Information registered with the CR prior to 24 October 2022.

Ms Wong focused her presentation on the implications of phase 2. In particular, she highlighted a number of compliance obligations companies and governance professionals

should be aware of. When phase 2 commences, for example, if a director’s correspondence address was contained in the company’s register of directors, and such address was not the address of the company’s registered office, the company will need to inform the CR of that director’s correspondence address within 15 days after the commencement of phase 2. The relevant form for this will be made available before the October commencement date. The form, along with 25 other specified forms revised to facilitate the implementation of the new inspection regime, will be available for download from the New Inspection Regime section of the CR’s website.

Ms Wong warned that there will be no transitional arrangement regarding delivery of specified forms to the CR for registration. In other words, from 24 October 2022, the CR will only accept the revised specified forms for registration. Forms that are currently in use will no longer be acceptable and will be returned to the document presenters.

Highlights

- if a company’s registered office is not its correspondence address, it will need to inform the Companies Registry of its correspondence address within 15 days of the implementation of phase 2 of the new inspection regime of Hong Kong’s Companies Register
- data breaches may be a contravention of the Personal Data (Privacy) Ordinance that requires data users to take all practicable steps to protect the security of the personal data they hold
- governance professionals can play a valuable role in ensuring an ethical culture in the organisations they serve

“
the PCPD has always encouraged data users to give data breach notifications to affected individuals and the PCPD to minimise the potential damage which might be caused
 ”

Clemence Wong, Legal Counsel (Acting), the Office of the Privacy Commissioner for Personal Data, Hong Kong



The implications for public search services

The second CR speaker, Fanny Lam, Deputy Registry Manager (Public Search), CR, highlighted the implications of the changes outlined above for public searches of the Companies Register after 24 October 2022. Such searches will no longer have access to the URAs of directors (these will be replaced with correspondence addresses) or the full IDNs of directors, company secretaries and other individuals (these will be replaced with partial IDNs). For groups with the same director name and same partial IDNs, but different full IDNs, Ms Lam explained that in such cases one extra digit of the IDN will be displayed. If one extra digit does not differentiate the records, two extra digits will be displayed at any positions.

Personal data privacy

The second session of the afternoon, chaired by Natalia Seng FCG HKFCG, Institute Past President and Council Member, addressed an issue that has been climbing the agenda for

governance professionals for some time – personal data privacy. Two speakers from the Office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD) updated ACRU participants on handling data breaches and Hong Kong’s new doxxing offences.

Handling data breaches

Data breaches have been on the rise for a number of years, whether as a result of malicious cyber attacks on computer systems or the negligent leaks of data by insiders. Such data breaches generally result in reputational harm to the organisation involved, but Clemence Wong, Legal Counsel (Acting), PCPD, reminded ACRU participants that they may also constitute a contravention of the Personal Data (Privacy) Ordinance (PDPO) in Hong Kong. Among the six Data Protection Principles (DPPs) set out in the PDPO, DPP4 requires data users to take all practicable steps to ensure that any personal data held by them would be protected against unauthorised or accidental access, processing, erasure, loss or use.

What should companies do, however, if they experience a data breach? The PCPD recommends organisations should endeavour to collate all relevant information related to the breach including, in particular:

- the kinds of personal data being compromised
- the impact on the individuals concerned
- the potential cause of the leakage, as well as any possible containment measures to be adopted, and
- contact the stakeholders (for example, service providers, management and affected data subjects) swiftly.

Ms Wong added that, although it is not currently required by the PDPO, those ‘stakeholders’ should include the PCPD. ‘The PCPD has always encouraged data users to give data breach notifications to the PCPD, in addition to the affected individuals, as we are

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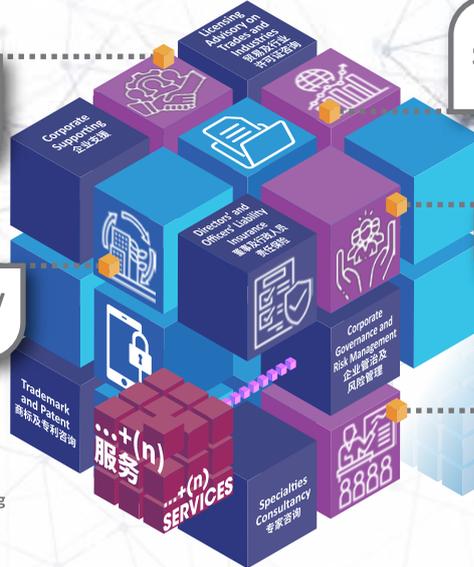
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providing all necessary assistance and the enforcement of the relevant regulatory requirements to minimise the potential damage which might be caused to organisations,' she said.

She then highlighted some useful lessons to learn from recent investigations carried out by the PCPD. A recent investigation looked into the handling of a hacker's intrusion into the email system of Nikkei China (Hong Kong) Ltd. After obtaining the password of one of Nikkei's email accounts, the hacker gained access to the personal data

(including names, email addresses, company names, telephone numbers and credit card data) of over 1,600 Nikkei customers.

The company sent a data breach notification to the PCPD, but a subsequent investigation by the PCPD found a number of deficiencies in the company's data security system, including:

- weak password management
- retention of obsolete email accounts
- lack of security controls for remote access, and
- inadequate security controls on the company's information system.

Nikkei had failed to take all practicable steps to protect the security of its customers' personal data in accordance with the requirements of DPP4 and the PCPD issued an enforcement notice to direct it to take the following steps:

- revise its information security policy

- devise effective measures to ensure the staff’s compliance with the revised policy
- engage an independent data security expert to conduct regular reviews and audits
- develop up-to-date training and education for staff members on information security, and
- provide documentary proof within two months to show the completion of the items above.

A guide to Hong Kong’s new doxxing offences

Under a recently enacted amendment to the PDPO, a person commits an offence if the person discloses any personal data of a data subject without the relevant consent of the data subject:

- with an intent to cause any specified harm to the data subject or any family member of the data subject, or
- being reckless as to whether any specified harm would be, or would likely be, caused to the data subject or any family member of the data subject (new section 64(3A) of the PDPO).

This new doxxing offence has two tiers differentiated by whether actual harm has been caused to the data subjects or their family members (new section 64(3C) of the PDPO). The first-tier offence attracts a maximum penalty of HK\$100,000 and imprisonment for two years, whilst the second-tier offence attracts a maximum penalty of

HK\$1,000,000 and imprisonment for five years.

In addition, the revised law also confers on the PCPD certain powers to facilitate investigation of these new doxxing offences, as well as to demand the removal of the doxxing messages. The second PCPD speaker at this year’s ACRU, Dennis Ng, Assistant Privacy Commissioner for Personal Data (Acting) (Legal, Global Affairs & Research), first explained the PCPD is now empowered to:

- issue written notices to request any person to provide relevant materials, or to answer relevant questions to facilitate investigation (new section 66D of the PDPO)
- apply for a warrant to enter and search premises or to access electronic devices (new section 66G of the PDPO)
- stop, search and arrest any person who is reasonably suspected of having committed a doxxing-related offence (new section 66H of the PDPO), and
- prosecute a doxxing-related offence triable summarily in the Magistrates’ Court (new section 64C of the PDPO).

In order to swiftly curb the dissemination of unlawful doxxing messages, the PCPD may also issue cessation notices to demand for the removal of a doxxing message, whether it is a written message or an electronic message, involving an individual who is a Hong Kong resident or is present in

Hong Kong when the disclosure is made, as long as these elements are satisfied:

- there is a disclosure of personal data of a data subject without consent, regardless of whether the disclosure is made in Hong Kong or not, and
- the discloser has an intent or is being reckless as to the causing of any specified harm to the data subject or any family member of the data subject.

Given that the cyberworld has no borders, the new provision contains an extraterritorial element such that a cessation notice may be served on a person in Hong Kong, including an individual in Hong Kong or an internet service provider having a place of business in Hong Kong or, in relation to an electronic message, a service provider outside Hong Kong, which covers the operator of an overseas social media platform, who the PCPD has reasonable grounds to believe is able to take down the subject message (that is, to take a cessation action) (new sections 66K and 66M of the PDPO).

Mr Ng emphasised that failure to comply with a cessation notice issued by the PCPD is an offence, whereby offenders are liable, on first conviction, to imprisonment for two years and a fine of HK\$50,000, and subsequent offenders to imprisonment for two years and a fine of HK\$100,000. In case of a continuing offence, a further fine of HK\$1,000 (or HK\$2,000 for repeated offenders) applies for every day during which the offence continues (new section 66O of the PDPO).

He added that the PCPD takes doxxing offences very seriously, and had already laid charges on the first doxxing case concerning a contravention of section 64(3A) of the PDPO in May this year, with a number of other ongoing investigation cases.

Anti-corruption and ethical governance

This year's ACRU was fortunate to have a speaker from the Independent Commission Against Corruption (ICAC) to give an update on the latest developments relating to anti-corruption in Hong Kong. Daniel Chui,

Executive Director (Acting), Hong Kong Business Ethics Development Centre, ICAC, speaking at the final session of the webinar – chaired by Ernest Lee FCG HKFCG(PE), Institute President – reminded ACRU participants that the reputation of Hong Kong as an international financial centre is closely tied to the concerted effort of the business community in upholding business ethics and its high vigilance against corruption.

He also highlighted the valuable role governance professionals can play in ensuring an ethical culture in the

organisations they serve. To do this, they need to recognise their dual role – as both advisers and guardians. On the one hand, as employees they are expected to serve the interests of their organisations, but they also have a responsibility to safeguard the interests of the various stakeholders by acting as an internal 'check and balance'.

'In the face of the recent economic downturn, I think it's even more important for governance professionals to enhance their vigilance and equip themselves to

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“
in the face of the recent economic downturn, I think it’s even more important for governance professionals to enhance their vigilance and equip themselves to cope with the risks and challenges ahead
 ”

Daniel Chui, Executive Director (Acting), Hong Kong Business Ethics Development Centre, ICAC



cope with the risks and challenges ahead,’ Mr Chui said.

He added that anti-corruption measures are increasingly a standard part of companies’ ESG obligations and therefore a core concern for governance professionals in their regulatory compliance function. Under the ESG Guide of the Listing Rules, for example, listed companies are required to disclose their compliance with relevant laws and regulations that have significant impact on the issuer relating to bribery, extortion, fraud and money laundering. They are also required to disclose their policies on these issues. Furthermore, Mr Chui drew participants’ attention to the most recent amendments to Hong Kong’s Corporate Governance Code, which outlines the core elements of a whistleblowing and anti-corruption policy that should be adopted by listed companies.

Handling conflicts of interest

One of the key defences against corrupt practices is to build an effective internal

control system for handling conflicts of interest (COIs). A company should set out clear guidelines for staff to handle such situations so as to safeguard the company’s interest and protect staff from falling into corruption traps. Mr Chui further added that COIs are not only an issue for the private sector. For public servants, serious COIs may even lead to the common law offence of Misconduct in Public Office (MIPO). He alerted ACRU participants that apart from the involved public servant, individuals or business entities connected with the misconduct might also be liable for offences such as conspiracy to MIPO. ‘It is therefore important for individuals who have dealings with public servants to have an understanding of this common law offence,’ he said.

Corruption prevention services of the ICAC

Finally, Mr Chui urged ACRU participants to make use of the many

resources made available on the website of the Hong Kong Business Ethics Development Centre of the ICAC. This not only includes a wide range of publications addressing all aspects of anti-corruption and ethical governance, but also the Corruption Prevention Advisory Service of the ICAC. This service can help to review a company’s internal control mechanism and provide consultancy advice to companies on how they can improve.

‘Our ultimate goal is for companies to build up their own ethical organisational culture, which will form the most robust protection against malpractice and corruption,’ Mr Chui said. 

More information is available on the websites of the Companies Registry (www.cr.gov.hk), the Office of the Privacy Commissioner for Personal Data, Hong Kong (www.pcpd.org.hk) and the Hong Kong Business Ethics Development Centre, ICAC (<https://hkbedc.icac.hk>).

HKCGI – 25 Years of Excellence

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

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Liza Murray
Ng Koon Keung
Ng Ming Lun
Ng Wai Yee, Betty
Ng Yuk Ha
Nip Sin Mui, Tiffany
Pang Fai
Poon Mi Lan
Sham Sun Ho
So Shuk Yi, Betty
Sum Wai Ting
Sy Mei Ling
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Tam Chui Yi, Tweety
Tam Hung Biu, Billy
Tang Ching Wan, Joyce
Tang Kam Sun
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Tsang Siu Ping, Lillian
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Tse Lai King
Tsui Mei Ling, Rita
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Yuen Wing Kwan
Yuen Wing Yee, Winnie





Cross-border transfers of personal data

Ada Chung Lai-ling FCG HKFCG, Barrister, Privacy Commissioner for Personal Data (PCPD), discusses new guidance published by the PCPD in May this year and the compliance implications of transfers of personal data from Hong Kong to the Mainland or other places.



In the light of the globalisation of business operations and unprecedented digitalisation in our daily lives, we have seen an exponential increase in cross-border transfers of personal data. The implementation of the Personal Information Protection Law in the Mainland in November 2021 has also brought about a whole new regulatory regime for transborder flows of personal information from the Mainland to other parts of the world.

In the context of cross-border transfers of personal data involving data users in Hong Kong, local enterprises, especially the small and medium-sized ones, may experience practical difficulties in drafting appropriate contractual terms for effecting cross-border transfers of personal data while ensuring that the transfer is in compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486) (Ordinance).

In this context, governance professionals are very well placed

within their respective companies or organisations to provide advice to the board and senior management on how personal data can be transferred across the border, from Hong Kong to the Mainland or other places. The Office of the Privacy Commissioner for Personal Data, Hong Kong, published the Guidance on Recommended Model Contractual Clauses for Cross-border Transfer of Personal Data (Guidance) on 12 May 2022.

The Guidance provides detailed elaborations as to the substantive effect of the Recommended Model Contractual Clauses (RMCs), and how adherence to the same ensures that adequate protection be given to the personal data as provided for under the Ordinance, as if the data concerned were not transferred outside Hong Kong. The Guidance also recommends to data users, especially the small and medium-sized enterprises, the best practices to be adopted as part of their data governance responsibility to protect and respect the personal data privacy of data subjects.

Highlights

- the same level of protection as provided for in Hong Kong's Personal Data (Privacy) Ordinance needs to be given to personal data irrespective of the location of the data
- data users are advised to adopt the Recommended Model Contractual Clauses (RMCs) in agreements for cross-border data transfers as contractual means to ensure that the data is given the required level of protection
- the new Guidance includes two sets of the RMCs, which may be incorporated in commercial agreements between data transferors and transferees to ensure that the data transfer remains in compliance with Hong Kong's regulatory regime

“
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”

In particular, the Guidance introduces two sets of RMCs, which may be incorporated into more general commercial agreements between data transferors and data transferees, in which other commercial considerations may also be addressed.

The legal requirements

Essentially, the protection should follow the data irrespective of the location of the data. Data Protection Principle (DPP) 3 of the Ordinance, which is directed against the misuse of personal data, specifies that personal data shall not, without the data subject's express and voluntary consent, be used for a new purpose. Thus, transfer of personal data to a place outside Hong Kong would require the data subject's prescribed consent under DPP3 if it is for a new purpose, unless such transfer falls within the exemptions under Part 8 of the Ordinance.

Further, if a data user engages a data processor to process personal data outside Hong Kong on behalf of the

data user, the data user must adopt contractual or other means to, among other things:

1. prevent any personal data transferred to the data processor from being kept longer than is necessary for the processing of the data (under DPP2(3)), and
2. prevent unauthorised or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing (under DPP4(2)). The data user remains liable for the acts of its agent done with its authority under section 65 of the Ordinance.

To ensure compliance with the requirements imposed by the Ordinance, notwithstanding the transfer of data outside Hong Kong, it is advisable for data users to incorporate the RMCs into agreements for cross-border data transfers. The adoption of the RMCs will also serve to illustrate that the data user has taken all reasonable precautions and exercised all due diligence to ensure that the data will not, in the jurisdiction of the transferee, be collected, held, processed or used in any manner which, if that took place in Hong Kong, would be a contravention of a requirement under the Ordinance. All these factors will be taken into account when there is any suspected or alleged breach of the Ordinance, including the DPPs.

The RMCs

The two sets of RMCs set out the general obligations of the contracting parties in respect of the protection

of personal data privacy and cater for two different scenarios in cross-border transfers of personal data, namely:

1. from one data user to another data user, and
2. from data user to data processor.

They are applicable to the transfer of personal data from a Hong Kong entity to another entity outside Hong Kong, or between two entities both of which are outside Hong Kong when the transfer is controlled by a Hong Kong data user, with a view to facilitating the parties to cross-border transfers of personal data to take into account the relevant requirements of the Ordinance, including the DPPs under Schedule 1 thereof.

In the context of cross-border transfers of personal data outside Hong Kong, data users are advised to take all reasonable precautions and exercise all due diligence to ensure that the personal data transferred would not, in the destination jurisdictions, be handled in a manner which, if that took place in Hong Kong, would be a contravention of the requirements of the Ordinance. The RMCs provide, for instance, that a transferee should:

1. only use or process the personal data transferred for the specified purposes of transfer
2. adopt the agreed security measures in the use or processing of the personal data transferred

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“
essentially, the
protection should
follow the data
irrespective of the
location of the data
”



3. retain the personal data transferred only for a period which is necessary for the fulfilment of the defined purposes
4. take all practicable steps to erase the personal data transferred once the purposes of transfer have been achieved
5. not make any onward transfer of personal data to any third party except as agreed by the parties, and ensure that parties to any onward transfer should be subject to the same (or substantially similar) RMCs, and
6. comply with the data subjects' access and correction requests (only for a transferee acting as a data user).

Good data ethics

Last but not least, the Guidance advocates that data users should

adhere to the principles of good data ethics which, put simply, is about doing what is reasonably expected by data subjects and being transparent about data processing activities. A perceived lack of transparency around data processing activities can engender a sense of distrust between the data user and data subjects. Adopting RMCs and observing the principles of transparency and accountability will be conducive not only to maximising the value of data, but also to developing and sustaining the trust of data subjects.

Recommendations for governance professionals

Governance professionals are recommended to read the Guidance and understand the practical implications of the RMCs in the context of cross-border transfers of personal data carried out by the companies or organisations which they serve. Given the important role which Hong Kong will play in the implementation

of the Outline Development Plan for the Guangdong–Hong Kong–Macao Greater Bay Area, I envisage that there would be more frequent transfers of data, including personal data, between Hong Kong and other cities in the Greater Bay Area. Governance professionals should equip themselves with up-to-date knowledge of the legal requirements for cross-border data transfers to better serve businesses in the Greater Bay Area. Data governance, including cross-border data transfers, will undoubtedly take centre stage in the years to come.

Ada Chung Lai-ling FCG HKFCG Barrister

Privacy Commissioner for Personal Data

The Guidance is available in hard copy and accessible at: https://www.pcpd.org.hk/english/resources_centre/publications/files/guidance_model_contractual_clauses.pdf.

Calling for Nominations of HKCGI Prize 2022

Prize Awardees from 2010 to 2021:



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Past Chairman,
The Association of
The Chartered
Secretaries and
Administrators in
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Edwin Ing
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2014
Neil McNamara
FCG HKFCG
Past President,
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Anthony Rogers
GBS QC JP FCG HKFCG
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Gordon Jones
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Former Registrar of
Companies



2017
Natalia Seng
FCG HKFCG(PE)
Past President,
HKCGI



2018
Peter Greenwood
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HKCGI
Representative to
CGI Council and
Chairman of CGI
Thought Leadership
Committee



2019
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FCG(CS, CGP)
HKFCG(CS, CGP)(PE)
Immediate Past
International President,
CGI; Past President,
HKCGI; Executive
Director and Company
Secretary, CK Hutchison
Holdings Ltd



2020
Ada Chung
FCG HKFCG
Privacy Commissioner
for Personal Data



2021
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HKFCG(CS, CGP)
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Real and discernible benefit

Hong Kong court sets out principles for winding up offshore holding companies



Jonathan Leitch, Partner, and Nigel Sharman, Senior Knowledge Lawyer, Hogan Lovells, Hong Kong, explain some recent court judgments and clarify the key issues that need to be addressed in applications for the winding-up of companies with offshore-incorporated subsidiaries controlling operating subsidiaries in the Mainland.

In two recent judgments, the Hong Kong companies court has set out the principles applicable to winding up companies holding operating subsidiaries in the Mainland through intermediate subsidiaries incorporated offshore, most commonly in the British Virgin Islands (BVI).

In doing so, the Honourable Mr Justice Harris highlighted the need for the petitioner to demonstrate a ‘real and discernible benefit’ to creditors, something which will be challenging to prove if the company’s centre of main interests is not in Hong Kong.

Substitution application

In *Re Grand Peace Group Holdings Ltd* [2021] HKCFI 2361 (*Grand Peace*), Harris J considered an application to substitute a petitioner in respect of a Bermuda-incorporated, Hong Kong listed company that was having difficulty restructuring its debts. The petitioner also wanted to persuade the court to make an immediate winding-up order.

The question before the court concerned the court’s jurisdiction to make the order requested. The company said it would not seek an immediate dismissal of the petition should the application prove unsuccessful, as it accepted the reality was that if the restructuring eventually failed, liquidation would be inevitable.

Three core requirements

The main issue that arose was the Hong Kong court’s jurisdiction to make a winding-up order for this foreign incorporated company.

Section 327 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) sets out three core requirements that must be met before the court will exercise its discretion to wind up a foreign incorporated company.

1. There has to be a sufficient connection with Hong Kong, but this does not necessarily have to consist of assets present within the jurisdiction.
2. There must be a reasonable possibility that the winding-up order would benefit those applying for it.

3. The court must be able to exercise jurisdiction over one or more persons in the distribution of the company’s assets.

There was no dispute that the first and third core requirements were met. The only dispute concerned the second core requirement.

Harris J said it was ‘futile’ for the Hong Kong court to appoint liquidators over a Bermuda-incorporated company in order to take control of the BVI subsidiaries (with the aim, in turn, of taking control of their Mainland subsidiaries), since the BVI courts would not recognise the liquidators. Harris J said the correct approach would be to seek to wind up the holding company in its place of incorporation.

Highlights

- the Hong Kong court has recently set out the principles applicable to winding up companies holding operating subsidiaries in the Mainland through intermediate subsidiaries incorporated offshore
- if certain provisions under the new Hong Kong–Mainland cross-border insolvency arrangement are satisfied, the Hong Kong court may make *in personam* orders against a company’s directors, regardless of where a company is incorporated
- of the three core requirements that must be met before the court will exercise its discretion to wind up a foreign incorporated company, the second – that the winding-up order would benefit the creditors – will be given very careful consideration

“ the clear preference of the Hong Kong court is for petitioners to commence winding- up proceedings in the debtor’s jurisdiction of incorporation ”

Compulsion order?

The court carefully considered – but ultimately rejected – the petitioner’s suggestion that since the majority of directors were in Hong Kong, and thereby subject to the *in personam* jurisdiction of the Hong Kong court, the liquidators could apply to the court for an order that the directors execute the documents necessary for the liquidators to take control of the BVI subsidiaries.

As Harris J had explained in his earlier decision in *Re China Huiyuan Juice Group Ltd* [2021] 1 HKLRD 679, it is a principle of BVI private international law that only a liquidator appointed by the court of the place of incorporation will be recognised and given assistance. This principle is echoed in Hong Kong law, which holds that matters concerning the constitution and management of the affairs of a foreign company are determined by the laws of the place of incorporation.

Even if the Hong Kong court were to take the view that the principle did not prevent the making of an order in respect of assets within its jurisdiction

(as in this case, the shares of a Hong Kong company), ‘it would seem to me highly questionable whether it should do so in respect of an asset in another jurisdiction, particularly if that jurisdiction’s own substantive law would not recognise the Hong Kong winding-up.’

Harris J concluded that it seemed wrong to proceed on the basis that if he were to make a winding-up order, the liquidators would be able to obtain control of the BVI subsidiaries by seeking orders against the company’s directors, unless there were some other overriding principles which justified treating the Hong Kong liquidators as the agents of the company.

Powers of directors lapse

In determining whether the second core requirement is satisfied (that is, whether there was a reasonable possibility it would benefit those applying for it), the petitioner ‘must be able to point to a discernible and real benefit’ to creditors.

It was ‘not necessary for the petitioner to identify with great precision what the benefit will be or quantify with exactness the benefit’s alleged value. However, the court must be satisfied that the benefit is tangible and justifies putting in motion the entire Hong Kong insolvency regime...’

The requirement could be satisfied if it could be demonstrated that the centre of main interests (COMI) of the BVI subsidiaries was in Hong Kong and that what was sought was the making of applications pursuant to the new Hong Kong–Mainland insolvency arrangement.

The court said it was trite in English law – and there appeared no reason to suggest that the law in Hong Kong was any different from the English position – that in the case of compulsory liquidation, once a company has been ordered to be wound up and a liquidator appointed, the powers of directors cease and the liquidators are the only agents of the company in liquidation with power to act on its behalf.

Harris J said he assumed that the same situation applies in Bermuda and BVI. So even if a winding-up order were made, the liquidators would not be able to obtain control of the BVI subsidiaries unless other factors were present.

Overriding principles?

The court noted that these objections could be overridden under the insolvency arrangement if it could be demonstrated that:

- the centre of main interests of the BVI subsidiaries was in Hong Kong for six months or more prior to the application for recognition being commenced in the Mainland, and
- an application is made to the Mainland’s Intermediate People’s Courts concerning the appointment of liquidators in Hong Kong.

If the conditions are satisfied, then the insolvency arrangement would apply to the winding-up, regardless of where the company is incorporated and, in these circumstances, the court would be able to make *in personam* orders against the company’s directors.

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As governance professionals play a vital role in providing advice and assisting the board in driving business performance and create resilience, they must take into account areas of the latest developments in applied governance. One of the objectives of the conference is to provide thought leadership from the applied governance perspective to generate an awareness on these global issues.

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Harris J said he was not satisfied that the second core requirement had been met in this case, particularly as most of the assets were owned through BVI incorporated entities, which could only be accessed by liquidators appointed in Bermuda. Whilst the evidence suggested that most of the BVI subsidiaries did have their COMI in Hong Kong, one did not. In addition, since the company's shares were now delisted, the company's listed status had lost its value.

Harris J held that the petitioner was unable to point to a discernible and real benefit, and so failed to satisfy the second core requirement. The court dismissed the substitution application with costs paid to the company and listed the petition for hearing.

Two in a row

Similar factors applied in *Yao Weitang v China Creative Global Holdings Ltd* [2021] HKCFI 2814, with Harris J again considering whether the second core requirement had been met.

The court said that the company, which was listed in Hong Kong and incorporated in the Cayman Islands, had not engaged in a responsible way with its creditors to address the repayment of its debts and appeared to be under the control of directors who had misappropriated nearly all of its assets.

Harris J said it was clear the company should be wound up and would have been wound up if the petitioner had issued a petition in the Cayman Islands.

The petitioner advanced two matters, which it claimed constituted a real

and discernible benefit. The first was bank and cash balances, but the court noted there was insufficient cash in the company's Hong Kong bank accounts to justify making a winding-up order. The second again concerned obtaining control of BVI intermediate subsidiaries controlling subsidiaries in the Mainland.

The petitioner did not have access to the company's financial records and neither was there evidence that the subsidiary's COMI was located in Hong Kong. Harris J found the second core requirement had not been met and declined to make the winding-up order.

Grand Peace swiftly reconsidered

Harris J was asked to consider whether he might have been wrong on the issue of the court's discretion to make *in personam* orders against directors in a case he heard subsequently.

In *Re Evergreen International Holdings Ltd* [2021] HKCFI 2694, a creditor asked him to consider whether certain observations of Ma CJ and Lord Millett NPJ in the Court of Final Appeal case *Kam Leung Sui Kwan v Kam Kwan Lai* (2015) 18 HKCFAR 501 (the Yung Kee case), meant that the court did have discretion to make *in personam* orders against directors.

Harris J said that whilst he did not have to decide the point straight away, it was important for any future consideration to understand whether the comments would be relevant to consideration of the second core requirement and also whether it would apply to the kinds of situations seen in *Grand Peace*, since the Yung Kee case concerned a solvent company and a dispute between

ultimate beneficial owners, all of whom were resident in Hong Kong.

Key takeaways

The three decisions considered together underline several key issues that will be important for future petitioners to ensure are properly addressed in future applications for the winding-up of offshore-incorporated holding companies:

- The clear preference of the Hong Kong court is for petitioners to commence winding-up proceedings in the debtor's jurisdiction of incorporation.
- If this is not possible (or desirable), it may be permissible to approach the Hong Kong court if the provisions of the new cross-border insolvency arrangement apply. This means the company's COMI must have been in Hong Kong for a period of at least six months and an application must be made to the Intermediate People's Courts following the procedure set out in the new cross-border insolvency arrangement.
- Careful consideration should always be given as to whether the second core requirement can be satisfied. If the petitioner is not able to demonstrate a discernible and real benefit, the application is unlikely to be successful.

Jonathan Leitch, Partner, and Nigel Sharman, Senior Knowledge Lawyer
Hogan Lovells, Hong Kong

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Professional Development

Seminars: May 2022

4 May

Hong Kong SPAC: overview and practical sharing

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

Speaker: Daniel Wan, Partner, Addleshaw Goddard (Hong Kong) LLP

5 May

Climate change reporting – changes are coming quickly



Speakers: David Simmonds FCG HKFCG, Institute Vice-President, Membership Committee Chairman, Company Secretaries Panel Chairman, Technical Consultation Panel – Competition Law Interest Group Chairman and Investment Strategy Task Force member, and Chief Strategy, Sustainability & Governance Officer, CLP Holdings Ltd; Pat-nie Woo, Partner, KPMG China, and Head of Environment, Social and Governance, Hong Kong and Global Co-Chair, Sustainable Finance, KPMG IMPACT; Kelly Lee, Vice-President, Policy and Secretariat Services, Listing Division, Hong Kong Exchanges and Clearing Ltd; and Wei Lin, Partner, Head of ESG and Head of Strategy & Operations, KPMG Advisory (China) Ltd

11 May

Valuation in practice: from fundraising to IPOs and beyond

Chair: Polly Wong FCG HKFCG(PE), Institute Disciplinary Tribunal member, and Company Secretary and Group Financial Controller, Dynamic Holdings Ltd

Speaker: Vincent Pang, Managing Director – AVISTA Group

12 May

Technology series: the role and benefits of RegTech within the digital transformation agenda

Chair: Kitty Liu FCG HKFCG, Company Secretarial Consultant, Law Department of the Hong Kong office, AIA International Ltd

Speaker: Pradip Madhanagopal, Partner, Risk Assurance, PricewaterhouseCoopers

13 May

Tax audit on small and medium-sized enterprises

Chair: Eric Chan FCG HKFCG(PE), Chief Consultant, Reachtop Consulting Ltd

Speaker: Wilson Cheng, Partner, Hong Kong Business Tax Services/Tax Controversy Services, Ernst & Young

17 May

US export controls and sanctions against Russia and Belarus: an expansive, novel and plurilateral approach

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

Speaker: Tatman R Savio, Partner, Akin Gump Strauss Hauer & Feld LLP

18 May

Family wealth management

Chair: Eric Chan FCG HKFCG(PE), Chief Consultant, Reachtop Consulting Ltd

Speakers: KP Cheng, Partner, SW Hong Kong; and Daniel Minihan, Partner, SW Australia

20 May

Company secretarial practical training series: connected transactions – practice and application

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

23 May

CSP foundation training series: statutory records

Speaker: YT Soon FCG HKFCG(PE)

ECPD Videos on Demand

Some of the Institute's previous ECPD seminars/webinars can now be viewed on its online platform – ECPD Videos on Demand.

Details of the Institute's ECPD Videos on Demand are available in the Professional Development 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
22 July 2022	6.45pm–8.45pm	Company secretarial practical training series: disclosure of interests in securities – practice and application	2
27 July 2022	6.45pm–8.15pm	China-appointed attesting officers – system and attested documents	1.5
28 July 2022	4.00pm–5.30pm	Share repurchase in Hong Kong – a practical perspective	1.5

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

Membership

Recognition of senior members

Senior members currently enjoy a concessionary rate on the annual subscription (Senior rate). This applies to members who have reached the age of 70 or above before the beginning of the financial year (1 July) and is granted to eligible members automatically without prior application. In order to show the Institute's appreciation and to encourage a greater participation in the Institute's functions amongst senior members, a new policy has been approved by the Council, effective from 1 July 2021. Enrolment fees for the following events and seminars will be waived for senior members:

- membership events (except for the Annual Dinner and any other events as may be decided by the Membership Committee), and
- ECPD seminars (except for the Annual Corporate Regulatory Update and Corporate Governance Conference).

For enquiries, please contact the Membership Section: 2881 6177, or email: member@hkcgj.org.hk.

Membership/graduateship renewal for the financial year 2022/2023

The renewal notice, together with the debit note for the financial year 2022/2023, was sent to all members and graduates by email at the beginning of July 2022 to the email address registered with the Institute. Members and graduates should settle the payment as soon as possible, but no later than Friday 30 September 2022.

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

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Membership (continued)

New graduates

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

Cheng Pui Ling	Li Xiaohui	Shi Yu	Yang Yu
Cheng Si	Li Yifang	Sun Yanmei	Yao Jau-Chang
Ding Yan	Lin Jiajia	Tang Chi Ho	Yuan Zhenyu
Huang Minjie	Liu Mengyun	Tian Shanshan	Zhu Chenxing
Jiang Wei	Liu Wenjing	Tu Yu	Zhu Wen
Lee Yan Lam	Ng Po Yee	Wu Yixiang	Zhuang Yuan
Leung Chun Yeung	Ni Yidan	Xie Weiquan	
Li Chenji	Shen Xiaoxiao	Yang Juan	

New Associates

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

Au Ming Yuk	Hung Yee Hei	Man Sau Mei	Tu Yu
Au Wing Han	Kwan Wing Sum	Mok Ho Wan	Wang Haikui
Chan Ho Kwong	Lam Chi Lok	Ng Janet Ka Ying	Wong Ka Yin
Chan Janet Wing Si	Lam Lai Man	Ni Yidan	Wong Lok Hang
Chan Ka Ning	Lau Sau Fong	Qin Yingshi	Wong Wai Tung
Chan Kim Yi	Law Yiu Sing	Ren Yu	Wong Wing Yee
Chan Nga Shan, Claudia	Lee Calvin Charles Ka-wing	Sha Wai Ying	Wu Sze Lai, Mandy
Chan Nga Ying	Lee Mei Sim	Shek Siu Ling	Wu Yixiang
Chan Yuk Yung	Lee Pui Cheung	Shi Yu	Xie Weiquan
Chen Jaclyn	Leung Hoi Ting, Vanessa	Siu Ut Kun	Xu Ai
Cheng Ching Sum	Leung Tsz Yan	Sun Hoi Yan	Yang Juan
Cheng Ming Yuen	Li Chenji	Sun Yanmei	Yang Yu
Cheng Pui Ling	Li Ka Kiu	Tai Ka Man	Yao Jau-Chang
Cheng Si	Li Sarah Sze-man	Tai Siu Ting	Yeo Sze Hua
Cheng Wai Kin	Li Wan Wa	Tang Chi Ho	Yuan Zhenyu
Chiu Yu Kang	Li Xiaohui	Tang Wai Mui	Yue Hiu Tung
Chui Choi Mei	Li Yifang	Tang Ying Hei	Yue Weiyu
Ding Yan	Lin Hoi Lap	Tian Shanshan	Zhang Xiangyu
Gan Wai Man	Lin Jiajia	Tse Wai Wah	Zhu Chenxing
He Rongfang	Liu Tsz Kiu	Tsea Po Kwan	
Ho Hoi Fu	Lo Hoi Yu	Tsoi Cho Ngan	
Huang Minjie	L Thanusha Nepali Magamage	Tsoi Hoi Yin	

Forthcoming membership activities

Date	Time	Event
26 July 2022	1.00pm–2.00pm	Wellness series: healthy diet to fight against viruses (free webinar)

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

Membership activities: May and June 2022

28 May

Mentorship Programme online training – emotional intelligence and your success



2 June

Wellness series: staying positive with mindfulness



Advocacy



Joint research on the 'Roles of governance professionals in today's post-pandemic and dynamically changing risk environment' and related seminar

The Institute, together with Corporate Secretaries International Association Ltd (CSIA) and Ernst & Young Advisory Services Ltd (EY), published a survey report in May on the 'Roles of governance professionals in today's post-pandemic and dynamically changing risk environment', which includes feedback from over 1,700 participants from CSIA member countries globally.

On 21 June, the Institute, CSIA and EY jointly organised a related webinar, titled 'How are governance professionals DNA expected to change in today's risk environment?', designed to discuss the important role of the governance professional in today's changing risk environment. Amongst other issues, the Covid-19 pandemic and various global business disruptions have highlighted the emerging trend of dynamic risk environment. Governance professionals are in a unique position to support and assist the board in overseeing all high-risk issues in organisations.

Advocacy (continued)



ESG interviews with Hong Kong listed companies

The Institute is publishing a series of interviews with governance professionals, company secretaries and heads of ESG in Hong Kong listed companies that examines best practices, challenges and opportunities in the five key industry sectors for which the Task Force on Climate-related Financial Disclosures has issued specific guidance.

These interviews will inform the design of an Institute survey to assess the current ESG people, processes, technology and data capabilities, as well as the challenges and opportunities to meet climate change and sustainability requirements from diverse stakeholders. The Institute is grateful to Professor Lapman Lee, Hong Kong Polytechnic University, for conducting the interviews.

Please visit the Guidance Notes/Guidance/Thoughts subpage under the Thought Leadership section of the Institute's website to view the first article in the series, which explores the finance sector with Kenny Luo Nan FCG HKFCG, Institute Council Member, General Manager, Board Secretary & Company Secretary, Bank of China (Hong Kong).

Council luncheon

The Institute will organise a Council luncheon in July at the Hong Kong Club, where the ceremonies for the handover of the President's Medal, the award for the Past President's Medal and the HKCGI Prize 2021 will also take place. In addition, the Institute will invite past presidents who are active contributors to the Institute's work.

Better Governance. Better Future – NGOs (webinar)

Non-governmental organisations (NGOs) are mainly not-for-profit organisations that promote mandated matters, including social issues. With their goals beyond profit-making, they must be seen to adhere to good governance and take full responsibility for the societal impact of their activities. Specifically, NGOs must be accountable to their stakeholders (such as donors) for the proper use of funds and donations, as well as the service entrusted to them. These and other governance-related issues require that well-defined policies, structures and processes are in place.

There have been some recent and high-profile governance breaches by NGOs, and due attention has not been paid to this area because of resource limitations. On 26 May, the Institute held a webinar to explain the good governance that is needed to ensure a better future for NGOs, including donor support and achieving optimal positive societal impact on relevant stakeholders. During the webinar, Mrs April Chan FCG HKFCG, Institute Past President, and Chairman of the



Institute's Technical Consultation Panel and the Appeal Tribunal; Mr Paul Yeung FCG HKFCG, Senior Director, Commission Secretary, Securities and Futures Commission; and Professor Lapman Lee, Professor of Practice (ESG, FinTech, Governance), School of Accounting and Finance, The Hong Kong Polytechnic University, shared their insights and practical experience.

Relocation of the Institute's Beijing Representative Office

The Institute's Beijing Representative Office has been relocated to Room 1220, Jinyu Tower, No 129 Xuanwumen West Street, Xicheng District, Beijing, 100031, PRC (北京代表处: 中国北京市西城区宣武门西大街甲129号金隅大厦1220室 邮编: 100031)

For more information, please visit the Institute's Chinese website: www.hkcgj.org.cn.



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Chartered Governance Qualifying Programme (CGQP)

Corporate Governance Paper Competition and Presentation Awards 2022

The annual Corporate Governance Paper Competition and Presentation Awards, organised by the Institute, is designed to foster appreciation of corporate governance among local undergraduates. The theme this year asks applicants to evaluate the question: ‘Do you think better governance leads to a better future for organisations?’

Undergraduates of all disciplines in Hong Kong are eligible to enrol for the competition in teams of two to four members each. We are delighted to announce that, this year, 49 teams from the following eleven universities and higher education institutions (in alphabetical order) have registered.

- City University of Hong Kong
- Hong Kong Baptist University
- Hong Kong Metropolitan University
- Hong Kong Shue Yan University
- Lingnan University
- The Chinese University of Hong Kong
- The Hang Seng University of Hong Kong
- The Hong Kong Polytechnic University
- The Hong Kong University of Science and Technology
- The University of Hong Kong
- HKU School of Professional and Continuing Education

The submitted papers will be reviewed by a team of 10 to 15 reviewers. The six finalist teams will present their papers on Saturday 17 September 2022 to compete for the Best Presentation Award and the Audience’s Favourite Team Award.

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

Studentship activities: June 2022

22 June

Governance Professionals Information Session (Putonghua session)



23 June

Students Gathering (3): Fireside Chat with Education Committee Chairman



Forthcoming studentship activities

Date	Time	Event
17 September 2022	10.00am–1.00pm	Corporate Governance Paper Competition and Presentation Awards 2022
20 September 2022	1.00pm–2.00pm	Governance Professionals Information Session (Cantonese session)

Learning support for CGQP examinations preparation

HKU SPACE CGQP Examination Preparatory Programme – autumn 2022 intake

HKU SPACE has been endorsed by the Institute to organise the CGQP Examination Preparatory Programme, which helps students to prepare for the CGQP examinations. One assignment and one take-home mock examination will be provided to students. There are 36 contact hours

for each module, except for Hong Kong Company Law, which has 45 contact hours. The autumn 2022 intake will commence in September 2022.

For details, please contact HKU SPACE: 2867 8485, or email: hkcgi@hkuspace.hku.hk.

Examination technique online workshops and student seminars

Video-recorded examination technique online workshops and student

seminars are available for subscription to assist with preparing for the CGQP examinations.

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

Studentship renewal for the financial year 2022/2023

The renewal notice for the financial year 2022/2023 was sent to all students to the email address registered with the Institute in early July 2022. Students should settle the payment as soon as possible, but no later than Friday 30 September 2022.

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

For enquiries, please contact the Institute's Studentship Registration Section: 2881 6177, or email: student_reg@hkcgi.org.hk.

Notice

Update of the CGQP exemption policy

With effect from 1 July 2022, all exemption appeal applications are subject to an application fee of HK\$1,400.

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

Update of the CGQP syllabus and study materials

The syllabus and online study materials for the following CGQP modules have been updated. With effect from the November 2022 examination diet and onwards, the new syllabus will be incorporated into the following examinations:

- Corporate Governance
- Corporate Secretaryship and Compliance
- Boardroom Dynamics
- Interpreting Financial and Accounting Information
- Risk Management

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

In addition to the updated study materials mentioned above, a list of resources from the Companies Registry and Hong Kong Exchanges

and Clearing Ltd for the relevant modules, and the syllabus, examination paper, mark scheme and examiners' report for all eight CGQP modules are available on the PrimeLaw online platform.

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

Featured job openings

Company name	Position
CK Asset Holdings Ltd	Company Secretarial Officer
CS Legend Corporate Services Ltd	Company Secretarial Assistant
LC Management (International) Ltd	Assistant Company Secretary
The Hong Kong University of Science and Technology	Senior Manager/Manager

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



Corporate Governance Paper Competition and Presentation Awards 2022

The annual Corporate Governance Paper Competition and Presentation Awards organised by the Institute aims to promote the importance of good governance among local undergraduates. This is a great opportunity for students to learn about teamwork and to research, write and present their thoughts on a selected theme. The topic this year entices applicants to evaluate the question – ‘Do you think better governance leads to a better future for organisations?’

Awards

Best Paper: HKD11,000.

The best paper will be published in the HKCGI monthly journal

Best Presentation: HKD6,000

Audience’s Favourite Team: HKD2,000

For enquiries, please contact Ivy Ho: 2830 6013 or email: student@hkcgi.org.hk



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HKEX private reprimands

Since the expansion of its disciplinary and sanctioning powers came into effect in July 2021, Hong Kong Exchanges and Clearing Ltd (HKEX) has been keen to publicise its disciplinary and sanctioning activities. One way it does this is to publish, on an anonymous basis, the substance of private reprimands. Last month, HKEX added summaries of seven recent private reprimands on its website.

The key themes to emerge from the summaries are the failure of directors to ensure compliance with the Listing Rules. They breached their duties of skill, care and diligence (under Rule 3.08(f)) and their director's undertakings to ensure the company maintained adequate and

effective internal controls. In most cases, significant deficiencies in the company's internal controls led to the compliance breaches.

The individuals reprimanded included both current and former, and both executive and independent non-executive, directors. A key lesson for governance professionals is to remind directors of their obligation to ensure that the company has adequate and effective internal controls, and that proper annual reviews of these internal controls are conducted.

The private reprimands, together with other enforcement guidance materials, are available from the HKEX website: www.hkex.com.hk.

The SFC proposes statutory amendments to strengthen enforcement

Last month, the Securities and Futures Commission (SFC) launched a two-month consultation on proposed enforcement-related amendments to the Securities and Futures Ordinance (SFO) to enable it to take more effective enforcement action. The amendments would broaden the scope of some SFO provisions to expand the basis for the SFC to apply for remedial and other orders against a regulated person under section 213 of the SFO. They would also enable the SFC to address insider dealing perpetrated in Hong Kong involving overseas-listed securities and insider dealing involving Hong Kong-listed securities perpetrated elsewhere.

Other amendments include clarifying an exemption in section 103(3)(k) of the SFO such that, unless authorised by the SFC, advertisements of investment products which are intended to be sold only to professional investors may only be issued to professional investors who have been identified in advance as such by an intermediary through its know-your-client and related procedures.

The consultation closes on 12 August 2022. More information is available from the SFC's website: www.sfc.hk.

AMLO Amendment Bill

The HKSAR Government has introduced the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 into the Legislative Council to enhance Hong Kong's regulatory regime for anti-money laundering and counter-financing of terrorism (AML/CFT).

The Amendment Bill seeks to introduce a licensing regime for virtual asset service providers and a registration regime for dealers in precious metals and stones (DPMS), so as to impose statutory AML/CFT obligations on these two sectors. Furthermore, opportunity will be taken to address a number of miscellaneous and technical issues under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO), which have been identified in the Mutual Evaluation and other Financial Action Task Force (FATF) contexts.

Any person who seeks to carry on a business of operating a virtual asset exchange is required to apply for a licence from the Securities and Futures Commission. The relevant person is subject to the meeting of a fit and proper test, as well as the AML/CTF and other regulatory requirements. Under the proposed DPMS registration regime, any person who is seeking to carry on a business of dealing in precious metals and precious stones in Hong Kong will be required to register with the Commissioner of Customs and Excise.

More information is available from the HKSAR Government information hub: www.info.gov.hk.

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