



現時，本港公司超過90%為中小型企業（中小企），而中小企所聘請的員工佔私人機構勞動市場約60%，證明中小企對香港經濟發展擔當極為重要的角色。

最近，香港金融管理局進行中小企信貸資料庫系統中央化，將中小企界定為全年營業額低於5千萬港元的企業。一般而言，中小企包括獨資公司、合夥公司、股份制私人公司（股東少於50名及限制

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Small and medium-sized enterprises (SMEs) account for more than 90% of all business enterprises in Hong Kong, and the number of employees hired by SMEs amounts to about 60% of the private sector labour force. It is obvious that SMEs play a very important role in the economic development of Hong Kong.

Recently, the Hong Kong Monetary Authority, when developing the centralised SME loan credit database system, defined SMEs as any business with an annual turnover of less than HK\$50 million. In general, SMEs include sole proprietorships, partnerships, private companies limited by shares (with less than 50 shareholders and restriction of share transfer) and public (listed) companies limited by shares. Most

## 董事權利及責任：提升中小企的公司管治

### Director's Rights and Responsibility: Improving Corporate Governance in SMEs

公司管治是關乎如何透過委任、監察及推動員工而提升企業表現。

Corporate governance is about enhancing corporate performance through delegation, monitoring and motivating.

股份轉讓)及股份制上市公司。香港的有限公司多為私人公司(本文重點研究對象)，而部分低市值、低資產值或員工人數較少的上市公司亦可歸類為中小企。

limited companies in Hong Kong are private companies and this is the major target of this article. Public listed companies with low market values, assets or numbers of employees can also be categorised as SMEs.

#### 家族式經營中小企的管治問題

香港大部分中小企均由白手興家的企業家及其家族成員控制，亦大多由控權股東及其家族成員管理及經營。因此，董事會主席及行政總裁職位通常由創辦人(兼控權股東)擔任，部分甚至包辦掌管整個生產流程的生產經理一職。

#### Governance Issues of Family-Controlled SMEs

The majority of SMEs in Hong Kong are controlled by individual entrepreneurs and their families, and most are managed and operated directly by the controlling shareholder and their family members. Hence, the founder, as the controlling shareholder, commonly occupies the posts of the chairman of the board, the chief executive and sometimes even the production manager in charge of the whole manufacturing operation.

家族生意具有傳統的優勢，例如決策過程較有效率、行事積極果斷、管理層工作投入、歸屬感較大且人事穩定，有助企業邁步向前創造繁榮。

Family business has its traditional advantages such as efficiency in the decision-making process, proactiveness and devotion, loyalty and stability for the enterprise, entrepreneurship and commitment

近年的研究證明家族生意比非家族生意表現更佳。事實上，本地家族生意發展欣欣向榮，是推動香港整體經濟發展的重要因素。然而，家族生意亦有其根本的管治短處：

- 控權股東的操守、信念及視野大大影響公司的文化及價值觀；
- 欠缺長遠的策略計劃；
- 欠缺有效的內部監控制度；
- 欠缺對外集資渠道；
- 外部專業管理不足；
- 組織架構及業務運作缺乏正式制度及透明度不足；
- 對部分主要客戶及供應商過份依賴；
- 忽略必須正視的繼任問題；及
- 控權股東的利益凌駕於其他非董事股東以至公司整體的利益。

to prosperity. Research evidence in recent years proves that family business performs better than non-family business. In fact, the flourishing of Chinese family businesses is an important factor in the overall economic development of Hong Kong. However, family business has its own inherent governance weaknesses:

- the company's culture and integrity being influenced largely by the personal integrity, beliefs and vision of the controlling shareholders;
- the lack of a long-term strategic plan;
- the lack of an effective internal control system;
- the lack of capital injection from outside sources;
- insufficient attention to outside professional management;
- the lack of formalization and transparency of the organizational structure and business operations;
- over reliance on a few major clients and suppliers;
- neglecting the unavoidable succession issue; and
- the interests of the controlling shareholders are given greater care than those of the company as a whole or other non-director shareholders.

很多人誤以為公司管治只針對大型或巨型企業，而中小企由於規模小、架構較簡單，可自行解決問題。此謬誤部分由傳媒報導造成，因為傳媒焦點偏向大企業及大醜聞，以致人們誤以為巨型跨國企業的管治比中小企差。事實上，企業經營好與否，並非在於規模大小，很多中小企亦面對不少本身獨有的管治問題。

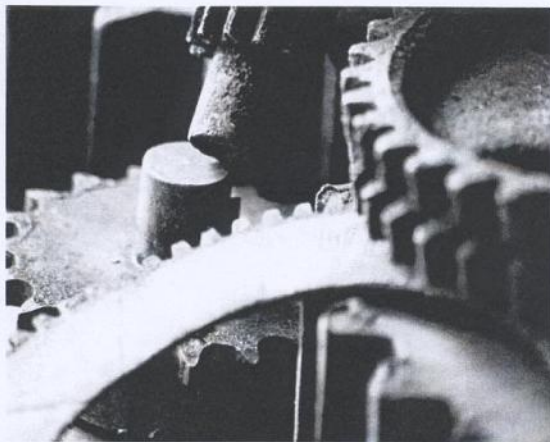
Many people hold a misconception that corporate governance only relates to large or mega enterprises, and SMEs can take good care of themselves, given their relatively smaller scale and less complicated structure. This false notion partly comes from the media, which tend to report on large enterprises and focus on big scandals, resulting in some people thinking that mega multinational enterprises are worse than SMEs. Obviously, whether an enterprise is well run or not is not dependent on its size and many SMEs have their own unique governance problems.



## 良好公司管治的基本法

理論上，當一間有限公司的股東多於一名，而他們並非全部為董事，又或部分董事並非股東，便會出現代理問題或公司管治問題。換言之，當部分股東(作為當事人)委任其他人(作為代理)出任公司的董事或管理人員時，便會出現資訊不一及潛在利益衝突的問題。

由於沒有一份管理人員合約可包涵一切，有限公司的股東必須制定適當的監控及獎勵措施，以確保管理層以股東的利益為首要考慮，並盡力將股東、董事及管理人員之間的利益衝突減至最低。公司管治的主要課題包括如何確立股東、董事及管理人員的權利及責任，以及如何建立一個有效的監控及制衡機制。總括而言，公司管治是關乎如何透過委任、監察及推動員工而提升企業表現。



環視國際，公司管治的發展焦點主要落在大型上市公司。因此，大部分大型企業所採納的公司管治原則及模範守則不一定適合中小企。我們應該識辨出一些中小企可應用的原則、措施及程序，並因應個別需要作出修訂。

## Principles of Good Corporate Governance

In theory, agency problems or corporate governance issues emerge when a limited company has more than one shareholder, when not all of the shareholders are directors, or when some directors are not shareholders. In other words, information asymmetry and potential conflicts of interest arise when some shareholders (as principals) delegate others (as agents) to be the directors or managers of the company.

As no managerial contracts are complete, shareholders of a limited company must enact appropriate control and incentive measures to ensure that the management will consider the shareholders' interests as the first priority, and strive to minimise conflicts amongst shareholders, directors and managers. How to specify rights and responsibilities among shareholders, directors and managers, and how to create an effective check and balance mechanism are the main issues of corporate governance. Corporate governance is about enhancing corporate performance through delegation, monitoring and motivating.

Internationally, most corporate governance developments focus on large listed companies. Therefore, the corporate governance principles and best practices designed for and adopted by many large enterprises are not necessarily suitable for SMEs. We should differentiate what kind of principles, measures and procedures can be applied to SMEs, and how to modify them to meet their specific needs.

Various international organizations have devised sets of principles that have been widely accepted by corporations and proven to be useful in enhancing corporate competitiveness and increasing the likelihood of achieving corporate objectives. Regardless of the size, complexities and ownership structure of firms, the internationally recognized indicators that can be used to measure the corporate governance level of an enterprise include compliance, managerial discipline, controlling shareholders'



現時有多套由不同國際組織倡議的原則廣受企業採納，事實證明它們有助提高企業競爭力及增加企業成功實現目標的機會。不論公司的規模、複雜程度及擁有權架構，均可利用這些國際認可指標，包括法規監督、管理紀律、控權股東的行為、董事會的獨立性、是否對股東一視同仁、操守、透明度、責任感、問責性、對有利益關係的各方的負責程度及社會責任等，以量度企業的公司管治水平。

公司管治的守則和標準，除了受一些制度安排所影響，亦受到以下四種因素所決定：

- 個人道德及企業文化
- 內部監控及獎勵機制
- 外部監察及融合機制
- 監管規則的制定及執行

一個國家需要制定的公共法例及規例多寡，某程度上視乎社會上的個人道德標準與企業文化，以及現有管治機制的有效性而定。法例及規例可確立行為標準的最低要求，而公平的市場競爭可解決部分管治問題。

因此，董事及高級管理人員應嚴格遵守以上標準，樹立榜樣，為員工建立正面的企業文化。根據經濟合作及發展組織(OECD)倡議的原則，我們應將焦點放在公司的整體利益，而非少數人的利益。良好的公司管治的好處顯而易見。一間公司管治水平高的公司，不但融資成本較低，公司市值及經濟回報亦較高。

## 股東及董事的責任

根據公司條例，所有有限公司必須制定公司組織章程大綱及公司細則，並須選出董事會向股東負責。同樣地，專業管理人員亦應向董事會負責。

conduct, the independence of the board, fairness of treatment to all shareholders, integrity, transparency, responsibility, accountability, respecting different stakeholders and social responsibility.

Besides other institutional arrangements, there are 4 levels of forces shaping the practice and standard of corporate governance of a company:

- Individual ethics and corporate culture
- Internal control and incentive mechanisms
- External monitoring & bonding mechanisms
- Regulations and their enforcement

The amount of public laws and regulations that a country needs depends to some extent on individual ethical standards and corporate cultures, as well as the effectiveness of existing governance mechanisms. Law and regulation ensure the minimum standard of behavior. The fair market competition can take care of some governance issues.

Therefore, directors and the senior management should set a good example by strictly adhering to these values, which will set positive corporate culture for their staff. According to the principles of the Organization for Economic Corporation and Development (OECD), we should focus on the interests of the company as a whole instead of the interests of a privileged few. The benefits of good corporate governance are tangible. A company with higher standard of corporate governance will be able to enjoy lower financing costs and higher firm valuation and financial returns.

## Responsibilities of Shareholders and Directors

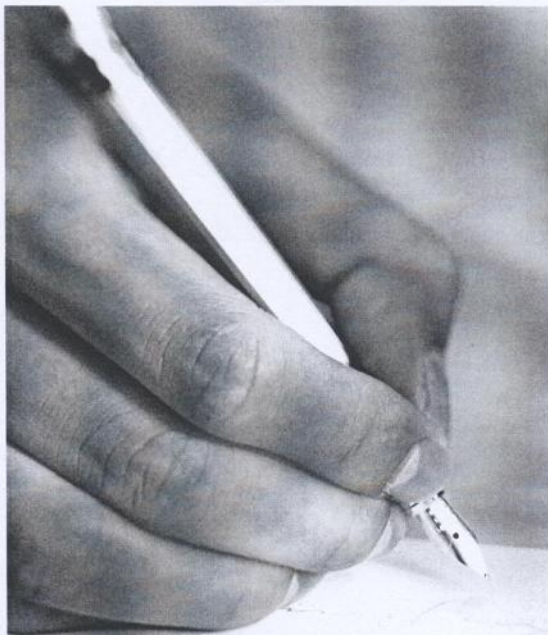
In accordance with the Companies Ordinance (CO), all limited companies must enact a Memorandum and Articles of Association (M & A), and elect a board of directors that is accountable to all shareholders. Likewise, the professional managers should be accountable to the board of directors.

Unless specified in a company's M & A, a shareholder, as a financier, primary stakeholder, and residual claimant, usually possesses the following residual rights via the shareholders' general meetings:

除非公司組織章程大綱及公司細則另有規定，股東如同時身為融資人、主要利益相關者及剩餘申索人，一般可透過股東大會行使以下剩餘權利：

- 選出及解僱董事及核數師；
- 有關企業活動及計劃的知情權；
- 出席股東大會以及在會上提出議事項目、發言及投票；
- 委任代表；
- 修改公司章程及公司資本結構；
- 宣派股息；及
- 將公司清盤。

經股東決定下，公司可增加有關權利。然而，股東如參與董事會決策，將成為實際或影子董事，須承擔由此產生的法律責任。



- To elect and sack directors and auditors;
- To be informed about corporate activities and plans;
- To attend, propose agenda items, speak up, and vote at shareholders' general meetings;
- To exercise proxies;
- To amend a company constitution and its capital structure;
- To declare dividends; and
- To liquidate the company.

Holding any additional rights is decided by shareholders. But if shareholders participate in board decisions, they would become director (de facto or as shadow) themselves, and bear the resulting legal responsibilities.

The board has the overall decision and oversight responsibility. The directors' duties and responsibilities are mainly derived from case law, not from the statutory Company Ordinances. We should note that company directors, whether executive or non-executive, or whether in private or listed companies, have to bear basically the same legal responsibilities. Other duties of a board director include:

- Exercise care, skills and diligence
- Ensure adequate resources and protect them
- Select, guide, monitor and compensate the senior management
- Provide timely and accurate reports to all stakeholders to which it is accountable
- Act in good faith for the benefit of the organization as a whole
- Not to delegate powers except with proper authorization
- Avoid conflicts of interests
- Not to gain personal advantage from use of position

Shareholders can remove directors, but not vice versa. Usually less serious misbehavior would not cause the court to disqualify a director. An incompetent director who is guilty of serious negligence is likely to be disqualified as this would show their 'total incompetence'. Hence, a director who can satisfy the standard of the common law duty of care is unlikely to be removed. There is emerging global trend the board of directors is *accountable* mainly to owners, but *responsible* for successful relations with all stakeholders.

董事會擁有整體決策權及監察責任。董事職責的定義源自判例法，而並非經公司條例規定。我們應注意，公司董事（不論執行或非執行董事，亦不論私人或上市公司董事）須承擔的法律責任基本相同。董事的其他職務包括：

- 以適當的技巧審慎勤勉行事
- 確保公司資源充足及保護公司資源
- 挑選合適人士擔任高層管理人、指引與監察他們工作及釐定薪酬
- 及時向所有利益相關者提供確切報告
- 為整體公司利益忠誠行事
- 僅在獲得適當授權下將職權下放
- 避免利益衝突
- 不得利用職權謀取個人利益



### Improving Governance for SMEs

When an enterprise expands with its ownership structure and business operations becoming more complicated, its governance institutions and board structure have to adjust accordingly. A more formal, systematic and comprehensive set of policies, procedures and measures should be adopted, including an accounting and internal control system, a long-term strategic plan, more detailed performance indicators and a more comprehensive risk management system. When an enterprise grows, attention should also be paid to its legal structure, financial structure, sources of capital, recruitment of outside talent, and transparency to match the changes.

To solve the typical corporate governance issues that are faced by SMEs, controlling shareholders should gradually hand over more controlling rights to outside professional managers, setting a good example themselves to build the appropriate corporate culture, vision and core values for the company, carefully planning ahead and adopting appropriate control and reward measures, and maintaining commitment to good corporate governance. A specific succession plan must also be put in place to avoid future controversies amongst family members and long-serving senior managers about the division of ownership and controlling rights.

For those smaller private companies with satisfactory performance records that are eligible for listing, initial public offers (IPOs) are naturally their next expansion plan. The most important consideration at this stage is whether the IPO will make the existing shareholders' agreement contract invalid and

股東有權開除董事，但董事則不可撤換股東。除非嚴重行為不檢，否則法庭不會隨便取消董事資格。然而，如董事表現不稱職、嚴重疏於職守，則可能可佐證其工作「完全不符合要求」，有可能會被取消資格。換言之，董事只要符合普通法謹慎責任標準，被取消資格的機會極低。全球各地的發展趨勢是：雖然董事會主要對公司東主負責，但亦須對所有利益相關者（如成功確立關係）負責。

### 提升中小企的管治

當公司擴充業務，擁有權結構和業務運作漸趨複雜，便有需要調整公司的管治制度及董事會架構。此外，公司亦應採納更加正規、有系統和全面的政策、程序及措施，包括問責及內部監控制度和長期策略計劃，以及訂立更仔細的表現指標及更全面的風險管理系統。當企業擴張時，應多加留意其法制架構、財務架構、集資渠道、公司透明度及是否需招聘吸納外界人才，以配合公司發展作出相應調配。





為解決一般中小企面對的公司管治問題，控股股東應按部就班地將控權移交外聘專業管理人才，樹立好榜樣，以利建立合適的企業文化、公司抱負及核心價值，審慎計劃及採取適當的監控及獎勵措施，以及維持良好的企業管治。為避免家族成員間或高層元老日後就擁有權及控權分立有任何爭拗，公司應制定具體的繼任安排。

部分小型的私人公司由於業績理想而具備上市資格，籌備初次公開招股順利成章成為業務擴充計劃的下一步。此階段最重要的考慮因素是，初次公開招股會否令現有股東協議合約失效及對部分股東利益造成不利影響。於決定是否進行初次公開招股之前，肯定需要考慮極多因素，例如上市後對法規監督、資料披露、董事會獨立性、公司透明度及問責制要求更嚴格。目前，除公司條例外，上市公司亦受到《證券及期貨條例》及香港聯合交易所有限公司的《上市規則》所監管。

總括而言，中小企的良好公司管治不能單單依賴加強立法及執法工作，提高市場參與者的道德標準、確保管理高層貫徹執行良好的公司管治，以及建立健康的企業文化及核心價值更為重要。事實上，許多具有潛質的中小企由於在轉型之際未有把握機會提升公司管治模式，以致逐漸失去相對優勢，最終業務發展停滯不前甚至倒退，實在教人惋惜。■

adversely affect the interests of some shareholders. Undoubtedly, a multitude of factors should be taken into account before making the IPO decision, such as the stricter requirements of compliance, information disclosure, independence of the board of directors, transparency and accountability. Besides Company Ordinances, listed companies are also regulated by the Securities and Futures Ordinance and the Listing Rules of the Stock Exchange of Hong Kong.

In summary, good corporate governance for SMEs cannot rely on stringent legislation and enforcement. Raising the ethical standard of market participants, securing top management's commitment to good corporate governance, and cultivating a healthy corporate culture and core values are also important. It is rather a pity to see so many promising SMEs failing to grasp the opportunity to modify their mode of corporate governance when they can, and gradually losing their comparative advantages, eventually stagnating or even shrinking their business during their transformation. ■

The English original was contributed by Professor Simon S.M. Ho.  
Chinese translation was arranged by ECIC.