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INSIDE THIS EDITION	Page
Data Security and Business Confidentiality – How to use Video Conferencing Services Securely? *Barbara Mok & Wilson Yip*	**2-3**
Directors - the power to refuse registration of a share transfer *Caroline De Souza*	**4-6**
Opportunities for individuals and businesses in Australia: Migration and Tax Update *Hamish Wallace, Megan Arends, Taya Hunt and Arabella Searle*	**7-9**

Welcome to our latest bulletin featuring various legal and market updates

- Data Security and Business Confidentiality – How to use Video Conferencing Services Securely?;
- Directors - the power to refuse registration of a share transfer; and
- Opportunities for individuals and businesses in Australia: Migration and Tax Update.

We hope that you find this edition informative and we welcome your comments and suggestions for future topics.

If you have any questions regarding matters in this publication, please refer to the contact details of the contributing authors.

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Data Security and Business Confidentiality – How to use Video Conferencing Services Securely?

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Since the outbreak of COVID-19 globally, working from home policies and gathering restrictions have been widely imposed by governments or adopted by businesses to prevent the spreading of the disease through face to face contact. Businesses have to adapt to remote working environments and rely on video conferencing platforms to ensure business continuity. Certain video conferencing platforms have achieved great popularity in the past few months. However, the rapid uptake has given rise to certain data protection concerns.

These concerns were brought into sharp focus recently when it was reported that some platforms had been subject to cyber security attacks which affected many users. In light of the public concerns, the Privacy Commissioner for Personal Data (PCPD) published a statement in response to the media enquiry regarding the security issues in Zoom.[1] PCPD warned of the risks of using Zoom and suggested alternative video conferencing platforms. In recognising the need for specific guidance, PCPD also published practical guidelines for video conferencing, which recommended procedures for businesses to mitigate against security risks when utilising these services.

In this article, we summarise the PCPD guidelines from the perspectives of the video conference organisers and the participants, respectively.

Data security measures for the organiser or host of video conferences:-

- All meeting participants should undergo "mandatory quarantine" (identity verification) in the "Waiting Room".
- Get a meeting ID specifically for a meeting, and use different IDs for different meetings.
- Use a password for joining a meeting, and send the password separately to meeting participants only.
- When the expected participants have arrived, select the "Lock Meeting" function to prevent anyone else from joining.
- Only allow sharing screen on a need basis during a meeting.
- Disable file transfer function to avoid anyone sending files with virus or malware.
- Disable telephone dial-in function as it is more difficult to authenticate telephone participants.
- Ensure the network connections are safe and secure (e.g. do not use public Wi-Fi, and set encryption for Wi-Fi network).
- Store all tracking data and records with encryption, and destroy the personal data collected as soon as possible after the data has fulfilled the original purpose of collection.

Participants of video conferences should:-

- Avoid using misleading names or online nicknames to make it easier for the host to identify.
- Keep a close watch of any unusual activity on the account.
- Document any damage incurred to facilitate any necessary follow-up action.

We also set out below some useful tips from the National Cyber Security Centre (NCSC) of the United Kingdom to help users select and configure video conferencing services, such as Zoom and Skype, within the organisation.[2]

Choosing a video conferencing service

Using your existing services

- Ensure that the video calls themselves and any other data (such as messages, shared files, voice transcriptions and any recordings) are protected.
- Perform due-diligence or security risk assessment of the existing video conferencing services.

Using existing video conferencing services has the following benefits:

- Staff will be familiar with administering and using the service, which will reduce training and deployment costs.
- Using the existing (well-configured) authentication provider.
- Maintain compliance with data handling legislation (including any requirements associated with regulated industries).

[1] 'Response To Media Enquiry Or Report' (PCPD.org.hk, published 9th April 2020) https://www.pcpd.org.hk/english/media/response/enquiry_20200409b.html accessed 28 August 2020..

[2] 'Video Conferencing Services: Security Guidance For Organisations' (Ncsc.gov.uk, published 21st April 2020) https://www.ncsc.gov.uk/guidance/video-conferencing-services-security-guidance-organisations accessed 28 August 2020.

Considering new services

- Perform a security risk assessment across a shortlist of providers by following NCSC's SaaS security guidance, and/or requesting copies of any independent assessments or audits.

> The results of this assessment, combined with the provider's terms and conditions (and privacy statement), will give you an understanding of how the provider implements basic security controls, and where your data is held.

- If you need video conferencing for more sensitive meetings, follow NCSC's Cloud Security Principles to determine whether a service meets your security needs. NCSC recommended this approach for government use (such as handling official data), regulated industry sectors, and organisations that handle personal data.

Configuring the service

Configuring user accounts

- Implement single sign-on where possible, and integrate the video conferencing service with your existing corporate identity. This means that the service will inherit the same identity protections as your other corporate services. It will significantly improve the user experience by reducing the number of times that authentication is required.

> If you can't deploy single sign-on, you should ensure that you configure the service in line with NCSC's password guidance, and include multi-factor authentication (also known as two factor authentication, or 2FA).

Configuring access to meetings and conferences

- Being able to control who can join (or initiate) meetings will help protect the confidentiality of the discussions, and prevent unwanted interruptions.
- Hold unauthenticated users in a waiting area (often referred to as 'the lobby'), and only admit them into the meeting once their identity has been verified by a trusted participant.

Configuring video conferencing apps and software

- Organisations should limit the app's access to contact lists, location data, documents and photos. If the app can access this data, make sure that you understand what data is shared with the service provider, that you accept the sharing, and are confident that it is appropriately protected by such service provider.

There may be serious legal and economic consequences to video conference organisers and participants alike if business confidentiality or personal data protection is breached in the process. We hope that this article will alert you to the need to adopt good practice when using video conferencing services in business. There is no shortage of publicly available helpful, practical tips on enhancing data security and protecting privacy for such purposes. Stay on top and use modern technology safely!

Directors - the power to refuse registration of a share transfer

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Can the directors of a Hong Kong company refuse to register a share transfer?

The short answer is yes. The starting point is to check the company's articles of association. They will usually confer a right on the directors to refuse to register a share transfer.

Historically, the articles of association typically conferred on the directors a general right to refuse registration of a share transfer. However, Article 64(1) of the Model Articles for private companies limited by shares[1] empowers the directors to refuse to register a share transfer if:

(a) the instrument of transfer is not lodged at the company's registered office (or such other place that the directors have appointed for such purpose);

(b) the instrument of transfer is not accompanied by the share certificate(s) to which it relates, or other evidence the directors reasonably require to show the right of the transferor (or some other person making the transfer on the transferor's behalf) to make the transfer; or

(c) the transfer is in respect of more than one class of shares.

With a public company limited by shares that has adopted the Model Articles[2], the directors will, in addition to relying on any of the above three grounds (a) to (c), be able to refuse registration of a transfer if the share is not fully paid up.

Other documents, such as a shareholders' agreement, may also contain terms that are relevant to the question of whether a company can validly refuse to register a transfer of shares. For instance, private companies will often give existing shareholders a right of first refusal (**ROFR**) in the event of any proposed transfer of shares and prohibit any transfer unless the agreed ROFR procedure has first been complied with. Since the directors are nominated and appointed to the board by the shareholders, the directors will generally be guided by the shareholders and any contractual parameters that may have been agreed in the shareholders' agreement (if any). Further, if the company itself is a party to the shareholders' agreement, the directors will take into account the company's obligations under the agreement when performing their duties.

What are the statutory requirements under the Companies Ordinance?

Under section 150(1) of the Companies Ordinance (Cap. 622 of the Laws of Hong Kong) (**CO**), a company shall not register a share transfer unless a proper instrument of transfer is delivered to the company. The CO does not define "proper instrument of transfer", but an instrument of transfer means an instrument by which any Hong Kong stock is transferred and includes a letter of renunciation[3]. English legal authority[4], which is persuasive in the Hong Kong courts, shows that a "proper instrument of transfer" means an instrument which will attract stamp duty.

In practice, companies require sight of the (original) duly stamped instrument of transfer in order to register the transfer shares in the name of the transferee. Therefore, a duly stamped instrument of transfer is one in respect of which stamp duty has been paid in accordance with the Stamp Duty Ordinance.

After the instrument of transfer is lodged with the company, the company has two months to:

- register the transfer; or
- send to both the transferee and transferor a notice of refusal to register the shares[5].

If the company fails to do so, the company, and every responsible person of the company (including its directors and officers), commits an offence punishable by a fine at level 4 (currently HK$25,000) and a daily fine of HK$700 for each day during which the offence continues.

Does the CO allow a company to impose any restrictions on the transfer of shares?

Yes, a company may impose any reasonable restrictions on the transfer of its shares which it considers necessary to guard against losses arising from forgery[6].

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[1] Schedule 2, Companies (Model Articles) Notice, Cap. 622H of the Laws of Hong Kong
[2] Model Articles for public companies limited by shares, Schedule 1, Companies (Model Articles) Notice, Cap. 622H of the Laws of Hong Kong
[3] Section 2(1), Stamp Duty Ordinance (Cap. 117 of the Laws of Hong Kong)
[4] *Re Paradise Motor Co Ltd [1968] 1 WLR 1125*
[5] Section 151(2), CO
[6] Section 157(1), CO

The company has refused to register the share transfer. What next?

If the company has refused to register the transfer, the transferee or transferor should first request a statement of the reasons for the refusal[7].

Within twenty eight days of receiving such request, the company must either send a statement of the reasons to the requesting party, or register the share transfer[8]. Any contravention of this requirement is an offence for which the company and every responsible person is liable, on conviction, to a fine of HK$25,000 and a daily fine of HK$700 for each day during which the offence continues.

An aggrieved transferee or transferor who has received a statement of reasons should consider engaging a solicitor to analyse whether the reasons given by the company can justify the refusal of registration. If they do not, an application can be made to the Court for an order compelling the company to register the share transfer.

Can the company refuse to give a statement of reasons if the articles provide that it does not have to do so?

No. If a transferee or transferor requests a statement of reasons, then the company must comply with section 151(4) of the CO within twenty-eight days of receiving the request notwithstanding anything to the contrary in its articles[9]. In other words, within twenty-eight days of receiving the request, the company must either register the transfer or provide a statement of reasons for refusal to register.

The Court's power to order registration of transfer

First, an application must first be made to the Court. If the application is well-founded[10], the Court may order the company to register the transfer.

For an understanding of what "well-founded" means, it is necessary to study the case law. The general judicial approach in Hong Kong is as follows:

- The Court may consider whether the reasons provided by the directors can justify their decision not to register the share transfer[11].
- The Court will not interfere with the exercise by directors of a discretion not to register a transfer unless their decision is not one which a reasonable board of directors can *bona fide* believe to be in the best interests of the company or that such power was exercised for collateral purposes[12].
- If the directors' decision is one which a reasonable board can consider to be in the best interests of the company, then the Court will presume that they acted in good faith and had good grounds for their decision[13].

In what situations has the Court ordered a company to register a share transfer?

The success of any application to the Court will depend on the unique factual matrix of the case. The following cases are just some examples in which the Court has ordered the company to register the transfer:

- Ngan Kwing Sun v Top Well Industrial Ltd[14] - The company alleged that the transferor was not the beneficial owner of the shares. However, the Court held that this was not a valid ground for refusing the register the transfer because the company's articles entitled the company to treat the registered owner of the shares as the absolute owner. The decision of the directors to refuse registration was also found to be invalid because the board of directors was not properly constituted due to insufficient numbers.
- Hero Rich International Ltd v Benefun International Holdings Ltd & Ors[15] - The directors' refusal was primarily rooted in a third party allegation of forgery and deception which raised concerns as to how the transferor had come to own the transferred shares in the first place. The transferor's application was successful because the board of directors failed to adduce sufficient evidence to support the third party allegation. A mere complaint is not sufficient justification for blocking the transfer.
- Triumph Access Limited v Redford International Ltd[16] - The transferee had presented for registration the duly stamped instrument of transfer and bought and sold notes. Two of the

[7] Section 151(3), CO
[8] Section 151(4), CO
[9] *Cheng Chien Kuo v New Resources Holdings Ltd [2017] HKCU 1558* at paragraph 17
[10] Section 152(2), CO
[11] *Re Yuen Kiu Kwan [2009] 3 HKLRD 371*
[12] *Cheng Chien Kuo v New Resources Holdings Ltd, Ibid*
[13] *Tett v Phoenix Property Co Ltd [1984] BCLC 599*
[14] [2019] HKCU 4808
[15] [2010] 2 HKC 231
[16] [2016] HKCU 390

directors raised certain queries concerning the ownership of the plaintiff and requested, as a condition for approving the registration of the transfer, a confirmation letter from the plaintiff to confirm several matters. That confirmation letter was duly provided, but certain directors (as opposed to the board) indicated that they would only register the transfer if the plaintiff acknowledged that the plaintiff and the transferor are to be treated as one single member of the company for the purposes of the quorum requirement under the company's articles. The plaintiff argued that there was no basis for imposing such condition and that, in any event, the demand had been made without the approval of the board. The Court concluded that the refusal of the directors to register the transfer was defective. The power to refuse registration of a transfer is vested in the board of directors and must be exercised by a resolution of the board.

Will the Court uphold a decision by the directors to refuse registration?

Yes, if the Court considers that the application to reverse the directors' decision is not well-founded.

Cheng Chien Kuo[17] is just one example in which the applicant was unsuccessful in reversing the directors' decision not to register the transfer. In this case, the main reasons given for the refusal of registration was that the transferee and his nominee were of bad character and the transfer itself was tainted by usury. The company claimed that the plaintiff was either a member of or connected with a criminal syndicate. The claim was supported by newspaper reports detailing the alleged criminal activities of the syndicate and the fact that the plaintiff had been charged with offences in connection with such activities. The plaintiff was also a wanted person in Taiwan. The transferee challenged the board's decision by arguing that the directors had not acted *bona fide*. Without making any ruling as to whether the plaintiff and his nominee were in fact of bad character, the Court found that, on the facts, the plaintiff had failed to show that the reasons given by the directors were unreasonable. The share transfer was not registered.

[17] Ibid

Opportunities for individuals and businesses in Australia: Migration and Tax Update

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The Australian government is focussed on attracting business and talent to Australia. Recent Australian government announcements present new opportunities for businesses and investors who want to expand their presence into Australia, as well as skilled individuals who can provide talent and innovation to Australia's key sectors.

This article provides an overview of these visa opportunities, and considers the tax implications for individuals and companies making the decision to expand into Australia.

Announcements regarding opportunities for Hong Kong passport holders in Australia

In July 2020, the Australian government announced new visa arrangements for Hong Kong passport holders to enable highly talented individuals to relocate or expand their expertise into Australia.

Hong Kong students who choose to undertake study in Australia will be eligible to apply for a 5 year Temporary Graduate visa in Australia on completion of their studies (provided the other visa criteria are met).

Skilled Hong Kong passport holders who are sponsored by an employer for a temporary skilled visa to Australia will now be eligible for a 5 year stay.

The Australian government has also announced that Hong Kong passport holders will be eligible for permanent residency at the completion of their 5 year stay in Australia, provided they pass character, security and health checks. Those who choose to study, live and work in regional Australia will be eligible to transition to permanent residency after 3 years.

New Taskforce to attract international businesses to Australia

On 4 September 2020, the Australian government announced a whole-of-government Global Business and Talent Attraction Taskforce designed to bring international businesses and talent to Australia.

The Taskforce will be focussed on emerging industries in Australia, and will initially focus on the key sectors of advanced manufacturing, financial services and FinTech, and health.

As part of this new taskforce, eligible individuals and businesses will be offered streamlined pathways to permanent residency in Australia.

Existing pathways for businesses to consider

All non-Australian passport holders must hold a valid visa in order to enter Australia. To be able to work in Australia, that visa must contain appropriate work rights entitlements. Businesses who wish to send workers to Australia need to ensure their workers obtain the appropriate visa for their circumstances. Penalties apply to both a visa holder and their employer if a visa holder is found to be working in breach of their visa conditions.

The standard visa programs have a number of requirements that need to be met, including providing market salary for the position, advertising for the position, and the applicant meeting certain skill and qualification requirements and demonstrating English language proficiency.

If a business' circumstances do not fit within the standard visa programs, there are a number of alternate solutions available.

The **Global Talent Employer Sponsored** program is designed to attract highly skilled migrants into niche occupations to help innovate established Australian business and contribute to Australia's developing start-up economy.

Labour Agreements are available to Australian established businesses who need to fill skill shortages where the standard visa programs are not suitable.

Designated Area Migration Agreements **(DAMAs)** are specific agreements covering regional areas of Australia, to enable businesses from those regions to access skilled and semi-skilled overseas workers.

Current pathways for individuals to consider

Australia's skilled migration program comprises three main categories: independent skilled visas,

employer sponsored visas and business innovation and investment visas.

Independent skilled visas are available to highly skilled applicants with an occupation on one of Australia's skilled occupation lists. This is a competitive program that requires an invitation to apply.

Employer sponsored visas are available to skilled applicants who are sponsored by their employer to work in Australia on a temporary or permanent basis.

Business Innovation and investment Visas are available to successful business owners and investors who wish to invest or do business in Australia. The four main pathways through this program are:

- Business Talent – Significant Business History (subclass 132a) visa: this is a permanent visa to purchase, invest in or establish a business in Australia. Applicants must demonstrate they own and operate a business (or two businesses) with an annual turnover of at least ~HKD$17million for 2 of the last 4 years. Applicants must be willing to transfer at least ~HKD$8.5million to Australia;
- Business Innovation Visa (subclass 188a): this is a provisional visa (with a pathway to permanent residency) for experienced business owners to purchase, invest in or establish a business in Australia. Applicants must demonstrate they own and operate a business (or two businesses) with an annual turnover of at least ~HKD$3million for 2 of the last 4 years. Applicants must be willing to transfer at least ~HKD$5.5million to Australia;
- Investor Visa (188b): this is a provisional visa (with a pathway to permanent residency) for experienced investors or business owners to invest ~HKD$8.5million into Australian State/Territory government bonds;
- Significant Investor Visa (188c): this is a flexible, provisional visa (with a pathway to permanent residency) requiring a ~HKD$28million investment into a managed fund.

Tax considerations for visa holders and overseas businesses

As well as understanding the various visa pathways, individuals hoping to relocate to Australia need to understand what that will mean for them from an Australian tax perspective. The first step will be determining whether they will become an Australian tax resident and, if they do, whether they will satisfy the requirements to be a 'temporary tax resident'.

The Australian tax authorities devote significant audit resources to testing claims of residency and non-residency by individual taxpayers to ensure the correct amount of tax is being declared. This includes liaising with Australian customs officials and visa authorities. Given the penalties that can be imposed for non-compliance, it is critical that individuals obtain appropriate tax advice to confirm their residency status at the time of relocating to Australia and the consequences of their tax status having regard to their personal circumstances.

Some of the key questions an individual visa holder will need to consider include:

- **Will I become an Australian tax resident?** A resident is subject to Australian tax on their worldwide income – that is, income which has a source in Australia and income which has a source overseas. This includes gains from the sale of overseas assets. A non-resident is subject to Australian tax only on Australian-sourced income.

  There is a statutory test for determining whether someone is a resident, which looks at the ordinary meaning of 'reside', whether the person's 'domicile' is in Australia, and the time they spend in Australia during an income year. It is a highly fact-specific exercise and no two circumstances will be the same.

- **Will I become an Australian 'temporary resident'?** There is a special category of tax resident called a 'temporary resident'. A temporary resident is taxed similarly to a non-resident, although any employment income they derive whilst they are a temporary resident will be taxable in Australia (regardless of whether they work in Australia or overseas). An individual will be a temporary resident if:

  - they hold a temporary visa granted under the *Migration Act 1958;*
  - they are not an Australian resident within the meaning of the *Social Security Act 1991* (i.e. a person who resides in Australia and is either an Australian citizen, the holder of a permanent visa or a special category visa holder who is a protected SCV holder); and
  - do not have a spouse that is an Australian resident within the

meaning of the *Social Security Act 1991.*

It follows that an individual's visa pathway into Australia will have a direct effect on whether they can qualify as a 'temporary resident' for Australian tax purposes.

- **What does it mean if I am a temporary resident**? An individual who qualifies as a 'temporary resident' should not be subject to Australian tax on their foreign-sourced income (other than employment-type income). It follows that if someone has significant sources of overseas income – such as interest on overseas investments, rental income from overseas property – qualifying as a 'temporary resident' can have a material bearing on their Australian tax exposure. It also means that the individual will not be subject to Australia's anti-deferral rules, which can apply to tax the individual on an annual accruals basis where they hold a controlling interest in a foreign company and the company does not distribute income or gains to the individual during the tax year.
- **What does it mean if I am a tax resident?** If an individual is an Australian tax resident, including an individual who obtains permanent residency on expiration of their visa, they will be taxable on their worldwide income. This means that income derived from overseas investments and assets, which may have been non-taxable so long as they qualified as a temporary resident, would become taxable. Furthermore, certain tax rules which may have been 'switched off' during a period of temporary residency, such as anti-deferral accruals rules, can now apply, and any assets that the individual holds (other than those which qualify as taxable Australian property) will be brought into the capital gains tax net.

Individuals who have relocated to Australia and have a controlling interest in a foreign company should also be aware that their relocation could result in that company becoming an Australian tax resident, notwithstanding that it has been incorporated overseas. A company will be an Australian tax resident where it is incorporated in Australia or, if it is not incorporated in Australia, it carries on business in Australia and has either its central management and control in Australia, or its voting power controlled by shareholders in Australia. The Australian Taxation Office takes the view that if a company carries on business and it satisfies the central management and control test, it will be deemed to carry on business in Australia notwithstanding that its trading or investment activities are not carried out in Australia. Where a company is a tax resident, it will be subject to tax on income and gains from Australian and foreign sources, and will have associated tax filing obligations.

As discussed above, the visa pathway program is also designed to encourage international businesses to expand their operations into Australia. This will inevitably create a number of Australian tax compliance obligations – for example, if a business relocates employees to Australia it will need to register for Australian employment taxes, and will need to withhold tax from salary payments and make employer social security contributions (called superannuation guarantee). The business itself may also have tax filing obligations depending on what structure it chooses to adopt to expand into Australia and whether its activities in Australia results in the creation of a 'permanent establishment' (taxable presence).

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本版内容	页
资料的安全和商业机密 - 如何安全地使用视像会议服务？ *莫玮坤和叶伟光*	**2-3**
董事 – 拒绝股份转让登记的权力 *Caroline De Souza*	**4-5**
澳大利亚个人和企业的机会：移民和税收政策更新 *Hamish Wallace, Megan Arends, Taya Hunt and Arabella Searle*	**6-7**

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- 资料的安全和商业机密 - 如何安全地使用视像会议服务？；
- 董事 – 拒绝股份转让登记的权力；和
- 澳大利亚个人和企业的机会：移民和税收政策更新。

我们希望本通讯为您提供有用的资料，并欢迎您对日后通讯的内容提出意见和建议。

如果您对本通讯有任何疑问，请参阅作者的联系方式。

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资料的安全和商业机密 - 如何安全地使用视像会议服务？

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自从全球爆发 2019 冠状病毒病，为了防止疾病经面对面接触传播，政府和商界都广泛实施或执行在家工作的政策和限制聚集的措施。商界要适应远程工作的环境和依靠视像会议（或称视频会议）平台来确保维持业务的运作。在过去的几个月中，某些视像会议平台获广泛使用，但是，急速的大量采用视像会议也引起了关于保障资料安全的忧虑。

最近有报导称，某些视像会议平台受到了网络安全攻击，因而对许多用户造成影响，事件令资料的安全是否获得保障的问题成为了焦点。鉴于公众的关注，香港个人资料私隐专员公署（私隐公署）发表了一份声明，就媒体对 Zoom 的个人资料安全问题的询问作出回应。[1] 私隐公署就使用 Zoom 的风险发出警告，并建议使用其他的视像会议平台。另外，因应社会对于特别指南的需要，私隐公署发表了视像会议实用指南，该指南向商界推荐了一些措施，降低使用这些服务的风险。

在本文中，我们分别从视像会议组织者和与会人员的角度概述私隐公署发布的指南。

以下者是从视像会议组织者或主持人的角度出发的资料保安措施：

- 在会议或课程开始之前使用虚拟等候室功能，对所有会议参与者进行「强制检疫」（身份验证）。
- 使用一个专门用于该会议的会议登入帐号。不同的会议应使用不同的登入帐号。
- 设置密码供加入会议用，密码须单独发送，并仅提供予与会者。
- 当所有人已进入会议，启动「锁上会议」（Lock Meeting）功能，避免无关人士进入会议。
- 只在有需要的情况下才在会议期间共享屏幕。
- 关闭文件传输功能，以避免任何人发送带有病毒或恶意软件的文件。
- 关闭电话拨入功能，因为电话参与者的身份难以验证。
- 确保网络连接安全可靠（例如切勿使用公共 Wi-Fi，并对 Wi-Fi 网络设置加密）。
- 所有追踪数据和记录均应加密存放，而当这些资料已达致原来目的的实际所需后，应尽快删除所收集的个人资料。

参加视像会议者应：

- 避免使用误导性名称或网上昵称，让主持人更容易识别与会者。
- 密切注意帐户任何异常活动。
- 保留所造成的任何损失的纪录，以便将来有需要跟进时，仍有记录可循。

我们亦在下文概述英国国家网络安全中心给予的一些实用的提示，帮助使用者在组织或团体内选择和设置视像会议服务，例如 Zoom 和 Skype。[2]

选择视像会议服务

使用您现有的服务

- 确保视像通话本身以及任何其他资料（例如讯息、共用的文档、语音转录和任何录音）均受到保护。
- 对现有的视像会议服务作彻底的检查或保安风险的评估。

使用现有的视像会议服务有以下的好处：

- 员工熟悉服务的管理和使用，可减少培训和装设新服务的成本。
- 使用现有的（设置优良者）身份验证供应商。
- 维持了对资料处理法律（包括与受管制行业相关的任何要求）的遵守。

考虑新的服务

- 遵循英国国家网络安全中心的 SaaS 的保安指南，和/或索取任何独立评估或审查的副本，对候选名单上的供应商进行保安风险的评估。

是项评估的结果，加上供应商的条款和条件（以及私隐声明），可以让您了解供应商如何执行基本的保安措施以及储存资料的位置。

[1] 见香港个人资料私隐专员公署的《公署回应传媒查询有关 Zoom 的保安议题》(只有英文), 2020-04-09 [2020-08-28], (https://www.pcpd.org.hk/tc_chi/media/response/enquiry_20200409b.html)

[2] 见英国国家网络安全中心的《视像会议服务：组织或团体的安全指南》(只有英文)，2020-04-21 [2020-08-28] (https://www.ncsc.gov.uk/guidance/video-conferencing-services-security-guidance-organisations)

- 如果您需要以视像方式举行敏感的会议，则应遵循英国国家网络安全中心的「云保安原则」来确定有关的服务是否能满足您的保安需要。英国国家网络安全中心建议政府用途事项（例如处理官方资料）、受监管的行业以及处理个人资料的组织遵循英国国家网络安全中心的「云保安原则」来选择服务。

设置服务

设置用户帐号

- 尽可能设立单一登入，并将视像会议服务与您现有的公司身份结合，这样可使视像会议服务得到与您的其他公司服务相同的身份保护。通过减少要求身份验证的次数，可大大改善使用者的体验。

如果您无法设立单一登入，则应确保按照英国国家网络安全中心的密码指南设置服务，并包括多重身份验证（也称为双重身份验证或2FA）。

设立参加会议的限制

- 能够控制谁可以参加（或发起）会议有助于保护讨论的机密性，并防止不必要的干扰。
- 应该让未经身份验证的使用者在等候处（通常称为「大厅」）等候，只有在其等的身份得到可靠的参与者验证后才可获准加入会议。

设置视像会议应用程式和软件

- 组织或团体应该对该应用程式取得参加会议人士的名单、位置的资料、文檔和照片设立限制。如果应用程式可以取得该等资料，请确保您了解与服务供应商分享了哪些资料、您是否接受分享并相信服务供应商已对该等资料作适当的保护。

如果商业机密或个人资料在会议进行中被泄露，无论对组织抑或参加视像会议的人均可能造成严重的法律和经济后果。我们希望本文能够提醒您在公务中使用视像会议服务时要保持良好的使用习惯。关于提高个人资料的安全和保护隐私，不乏可供公众参考的实用技巧。请保持对个人资料安全的警惕及安全地使用现代科技！

董事 – 拒绝股份转让登记的权力

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香港公司的董事可以拒绝登记转让股份吗？

简短的回答是可以的。第一步是查看公司的组织章程细则。组织章程细则通常都会授予董事拒绝登记股份转让的一般权力。

一直以来，组织章程细则通常都有授予董事拒绝股份转让登记的一般权力，然而，私人股份有限公司的《章程细则范本》第 64(1)条 [1]授权董事在以下情况下拒绝登记股份转让：

(a) 转让文书没有递交至公司的注册办事处（或董事为该目的而指定的其他地点）；

(b) 有关的转让文书并没有附随与其相关的股份的证明书，亦没有附随董事合理要求的其他证据，以证明出让人（或其他代出让人转让股份的人）具有股份转让的权利；或

(c) 有关的转让涉及超过一个类别的股份。

除了上述 (a) 至 (c) 三个理由中的任何一个之外，一家采用了《章程细则范本》[2]的公众股份有限公司的董事还可因有关股份未缴足股款而拒绝股份转让登记。

其他文件，例如股东协议，也可能包含与公司是否可以有效拒绝股份转让登记的问题之相关条款。 例如，私人公司通常会给予现有的股东在任何拟进行的股份转让中有优先购买权 （以下简称「**优先购买权**」），除非约定的优先购买权程序已获遵守，否则禁止任何转让。由于董事是由股东提名的，而且也是由股东委任其进入董事会的，因此董事通常都会按股东的意思及股东协议（如有）中可能约定的任何合约标准行事。此外，如果公司本身是股东协议的一方，董事在履行其等的职责时也会考虑公司在该协议下的责任。

《公司条例》下有什么法定要求？

根据《公司条例》（《香港法例》第 622 章）(以下简称「**《公司条例》**」) 第 150(1)条的规定，除非已向公司交付了一份妥善的转让文书，否则公司不得登记股份转让。《公司条例》没有对"妥善的转让文书"下定义，但转让文书是指藉以转让任何香港证券的文书，包括放弃书 [3]。根据对香港法院有说服力之英国判例 [4]，"妥善的转让文书"是指要缴纳印花税的文书。

在实践中，公司要看到已加盖适当印花的转让文书（正本），才会以受让人的名义登记转让股份。因此，已加盖适当印花的转让文书是已根据《印花税条例》缴付印花税的文书。

转让文书递交予公司后，公司有两个月的时间去采取以下的任何一项行动：

- 登记有关的转让；或
- 向受让人和出让人发出拒绝登记股份的通知 [5]。

如果公司没有采取上述的任何一项行动，则该公司及该公司的每名责任人（包括董事及高级人员）即属犯罪，可被处以第 4 级的罚款（现时为 25,000 港元）及在该罪行持续期间被处以每日 700 港元的罚款。

《公司条例》允许公司在转让股份上施加限制吗？

是的，公司可以对其股份的转让施加其认为必需的任何合理的限制去防止伪造文件所造成的损失 [6]。

公司已拒绝登记股份转让，接下来是？

如果公司拒绝办理转让登记，受让人或出让人应首先要求得到一份说明拒绝理由的陈述书 [7]。

公司必须在接获该要求后的二十八天内，向提出要求的一方送交一份说明理由的陈述书，或者登记有关的股份转让 [8]。对该规定的违反均属犯罪，公司及每名责任人都要为此负上法律责任，一经定罪，可被处以第 4 级的罚款(25,000 港元）及在该罪行持续期间被处以每日 700 港元的罚款。

若受让人或出让人在收到理由陈述书后有异议，应考虑聘请律师分析公司提出的拒绝登记的理由是否成立，如果不成立的话，可向法院申请命令，强制公司登记有关的股份转让。

如果章程细则规定公司无须给予理由陈述书，公司可以拒绝这样做吗？

不可以。如果受让人或出让人要求一份理由陈述书，则尽管公司的章程细则中有任何相反的规定，公司也必须在收到要求后的二十八天内遵守《公司条例》第 151(4)条的规定 [9]。换言之，在

[1] 《香港法例》第 622H 章《公司（章程细则范本）公告》的附表 2
[2] 《香港法例》第 622H 章《公司（章程细则范本）公告》的附表 1，《公众股份有限公司的章程细则范本》
[3] 《印花税条例》（《香港法例》第 117 章）的第 2(1)条
[4] *Re Paradise Motor Co Ltd [1968] 1 WLR 1125*
[5] 《公司条例》第 151(2)条
[6] 《公司条例》第 157(1)条
[7] 《公司条例》第 151(3)条
[8] 《公司条例》第 151(4)条
[9] *Cheng Chien Kuo v New Resources Holdings Ltd [2017] HKCU 1558* 第 17 段

收到要求的二十八天内，公司必须登记有关的转让或提供拒绝登记理由的陈述书。

法院命令作出转让登记的权力

第一，必须首先向法院提出申请。如果申请有充分的理据[10]，法院可命令公司登记该转让。

要明白何谓"有充分的理据"，就必须了解判例法。香港的司法取向大致如下：

- 法院可以考虑董事所持的理由是否足以支持其作出的不对股份转让进行登记的决定[11]。
- 法院不会干涉董事不进行转让登记的酌情决定权，除非其等的决定不是一个合理的董事会可以真诚地相信属符合公司最佳利益的决定，或是为附带目的而行使该权力[12]。
- 如董事的决定是一个合理的董事会可以认为属符合公司最佳利益的决定，则法院将推定他们已真诚地行事并且有良好的理由作出该决定[13]。

在哪些情况下法院曾命令公司登记股份转让？

向法院提出的任何申请之成败取决于案件各自的案情。下列案件仅为一些法院命令公司登记转让的例子：

- Ngan Kwing Sun v Top Well Industrial Ltd[14] – 公司指称出让人不是股份的实益拥有人，然而，法院认为这个拒绝登记转让的理由不能成立，因为公司的章程细则赋予公司视股份的登记拥有人为绝对拥有人的权力。董事拒绝登记的决定也因董事会由于人数不足而没有恰当地组成被认为是无效的。
- Hero Rich International Ltd v Benefun International Holdings Ltd & Ors[15] - 董事的拒绝主要缘于第三方提出了伪造和欺骗的指控，由此引起对出让人当初是如何拥有被转让的股份的疑问。转让人的申请之所以成功，是因为董事会未能援引足够的证据来支持第三方的指控。 光凭反对不足以构成阻止转让的理由。
- Triumph Access Limited v Redford International Ltd[16] – 受让人提交了已加盖适当印花的转让文书和买卖单据作登记之用。其中两名董事就原告的所有权提出了一些疑问，并要求原告出具确认函确认若干事项，作为批准转让登记的条件。原告正式提供了该确认函，但某些董事（而非董事会）表示，他们只会在原告承认就公司的章程细则下对法定人数之规定而言，原告及出让人会被视为公司的单一成员的条件下才会登记转让。原告作出申辩，认为施加这种条件是没有根据的，而且无论如何，这项要求是在没有得到董事会批准的情况下提出的。法院的结论是，董事拒绝转让登记是不妥当的。拒绝转让登记的权力属于董事会，必须通过董事会的决议行使。

法院会支持董事拒绝登记的决定吗？

是的，如果法院认为推翻董事决定的申请是没有充分根据的。

Cheng Chien Kuo[17]一案只是申请人未能推翻董事不登记转让之决定的其中一个例子。在该案中，拒绝登记的主要理由是受让人及其代名人皆品格不良，且转让本身是因高利贷而起。该公司指原告是犯罪集团的一员或与之有关联。该说法有报章的报道为据，这些报道有该集团被指其所涉及之犯罪活动的详情，而且事实上，原告曾经被起诉，与起诉有关的罪行就是关于前述之该集团的活动。原告在台湾也是一名通缉犯。受让人反对董事会的决定，称董事没有真诚地行事。法院没有对原告及其代名人是否品格不良作出任何裁决，但法院认为，根据本案的案情，原告未能证明董事提出的理由是不合理的。股权转让最终没有获得登记。

[10] 《公司条例》第 152(2)条
[11] *Re Yuen Kiu Kwan [2009] 3 HKLRD 371*
[12] *Cheng Chien Kuo v New Resources Holdings Ltd*，同上
[13] *Tett v Phoenix Property Co Ltd [1984] BCLC 599*
[14] [2019] HKCU 4808
[15] [2010] 2 HKC 231
[16] [2016] HKCU 390
[17] 同上

澳大利亚个人和企业的机会：移民和税收政策更新

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澳大利亚政府正致力于吸引企业和人才到澳大利亚。澳大利亚政府最近发布的声明为希望将业务拓展到澳大利亚的企业和投资者以及能够为澳大利亚关键行业提供才能和创新的技术型人才带来新的机遇。

本文概述了这些签证的机会，并探讨了对于决定赴澳的个人和公司而言，在税负方面的影响。

关于香港护照持有人在澳大利亚的机会的公告

2020 年 7 月，澳大利亚政府宣布了香港护照持有者新的签证安排，以使有高水平人才能够移居澳大利亚或在澳大利亚扩展他们的专业技能。

选择在澳大利亚留学的香港学生在完成学业后将有资格，在满足其它签证标准的前提下，在澳大利亚申请一个 5 年的毕业生临时签证。

由雇主担保持临时技术型签证赴澳的技术型香港护照持有人，现在将有资格享有 5 年的逗留时间。

澳大利亚政府还宣布，只要这些香港护照持有人在澳大利亚 5 年逗留期满之时，通过性格、安全和健康检测，他们将有资格获得永久居留权。那些选择在澳大利亚地区（Regional Australia）学习、生活和工作的人将有资格在 3 年后过渡到永久居留。

吸引跨国企业到澳大利亚的特设小组

2020 年 9 月 4 日，澳大利亚政府宣布成立一个全政府管控的全球商务及人才吸引特别工作组，旨在为澳大利亚吸引跨国企业和人才。

该特别工作组将专注于澳大利亚的新兴产业，最初将重点关注先进制造业、金融服务业和金融科技以及健康等关键行业。

作为该新设计划的一部分，符合条件的个人和企业申请澳大利亚永久居留权的手续将简化。

供企业考虑的现有途径

所有非澳大利亚护照持有人必须持有有效签证才能进入澳大利亚。为了能够在澳大利亚工作，签证必须包含适当的工作权利。希望向澳大利亚派遣劳务人员的企业需要确保被派遣人员获得适合他们情况的签证。如果签证持有人被发现做违反其签证条件的工作，则签证持有人及其雇主均将受到处罚。

标准签证计划有许多需要满足的要求，包括提供该职位的市场工资、发布该职位的广告、申请人满足一定的技能和资格要求并证明英语水平流利。

如果企业的情况不符合标准签证计划，也有许多可供选择的替代方案。

全球人才雇主担保计划旨在吸引高技能移民进入小众职业，帮助老牌澳大利亚企业进行创新，并为澳大利亚发展中的初创经济做出贡献。

在标准签证计划不适用的情况下，需要填补技能短缺的澳大利亚老牌企业可获得**劳动协议**。

指定地区移民协议（**DAMAs**）是涵盖澳大利亚各地区的特定协议，以使这些地区的企业能够获得具有高技能及中等技能的海外劳动力。

供个人考虑的当前途径

澳大利亚的技术移民计划主要包括三类：独立技术签证、雇主担保签证和商业创新和投资签证。

独立技能签证开放给拥有澳大利亚技术职业清单中某一职业的高技能申请人。这是一个竞争性项目，申请人需先获得邀请。

雇主担保签证开放给由雇主担保在澳大利亚临时或永久工作的高技能申请人。

商业创新和投资签证开放给希望在澳大利亚投资或经营的成功企业主和投资者。该计划主要有以下四个申请途径：

- 商业人才-杰出经商历史（132a 子类）签证：这是在澳大利亚收购、投资或设立企业的永久签证。申请人必须证明自己在过去 4 年中有 2 年拥有并经营一家（或两家）年营业额至少为 1700 万港币的企业。申请人必须愿意将至少 850 万港元左右的资金转移至澳大利亚；
- 商业创新签证（第 188a 子类）：这是一种针对有经验的企业家在澳大利亚收购、投资或设立企业的临时签证（可继而申请永久居留权）。申请人必须证明自己在过去 4 年中有 2 年拥有并经营一家（或两家）年营业额至少在 300 万港币左右的企业。申请人必须愿意将至少 550 万港币左右的资金转移至澳大利亚；
- 投资者签证（188b）：这是一种针对购买价值约 850 万港币的澳大利亚州/地区政府债券的有经验投资者或企业家的临时签证（可继而申请永久居留权）；
- 重大投资者签证（188c）：这是一种灵活的临时签证（可继而申请永久居留权），需要向管理基金投资约 2800 万港币。

签证持有人和海外企业的税务考虑

在了解各种签证选择的同时，希望移居澳大利亚的个人还需要从澳大利亚税收的角度了解这对他们意味着什么。第一步是确定他们是否会成为澳大利亚税务居民，如果是的话，他们是否会满足成为"临时税务居民"的要求。

澳大利亚税务机关投入大量的审计资源来测试个人纳税人的居民纳税申请及非居民纳税申请，以确保申报的税额正确无误。这包括与澳大利亚海关官员和签证部门联络。鉴于违规行为可能受到的处罚，对考虑赴澳的个人来说，获得适当的税务建议以确认其移居至澳大利亚时的税务居民身份，并根据其个人情况确认其税务状况至关重要。

个人签证持有人需要考虑的一些关键问题包括：

- **我会成为澳大利亚税务居民吗？**税务居民对其全球收入（即来源于澳大利亚的收入和来源于海外的收入）缴纳澳大利亚税。这包括出售海外资产的收益。非税务居民只需就来源于澳大利亚的收入缴纳澳大利亚税。

  确定某人是否为居民，有一个法定标准，即考虑"居住"的一般含义，此人的"住所"是否在澳大利亚，以及他们在一个收入年度中在澳大利亚停留的时间。该标准的适用将根据具体情况具体分析，并不能一概而论。

- **我会成为澳大利亚"临时居民"吗？**有一种特殊的税务居民被称为"临时居民"。临时居民的纳税方式与非居民类似，但是他们作为临时居民而获得的任何工作收入都将在澳大利亚纳税（无论他们是在澳大利亚工作还是在海外工作）。在下列情况下，个人将成为临时居民：

  - 他们持有根据《1958 年移民法》发放的临时签证；
  - 他们不是《1991 年社会保障法》所指的澳大利亚居民（即居住在澳大利亚且是澳大利亚公民、永久签证持有人或受保护的特殊类别签证（SCV）持有人）；以及
  - 没有配偶是《1991 年社会保障法》所指的澳大利亚居民。

  因此，个人进入澳大利亚的签证将直接影响到他们是否能够成为澳大利亚税收意义上的"临时居民"。

- **如果我是临时居民，这意味着什么？**符合"临时居民"资格的个人不应就其来源于外国的收入（雇佣类收入除外）缴纳澳大利亚税。因此，如果某人拥有大量来源于海外的收入（如海外投资利息、海外地产的租金收入），那么符合"临时居民"资格，可能会对该人士在澳大利亚的纳税情况产生重大影响。这也意味着，个人将不受澳大利亚反递延规则的约束。当个人持有外国公司的控股权益，且公司在纳税年度没有向个人分配收入或收益的情况下，则适用该规则，按年度应税制对个人征税。

- **如果我是税务居民，这意味着什么？**如果某人是澳大利亚的税务居民（包括在签证期满后获得永久居留权的个人），则应对其全球收入征税。这意味着，对临时居民免税的海外投资和资产的收入，现在需要纳税。此外，某些暂时居留期间可能被"排除"的税收规则（例如反递延应计规则）现在可以适用，并且该人拥有的任何资产（符合澳大利亚应纳税财产的除外）将被征收资本利得税。

已移居澳大利亚并在外国公司拥有控股权益的个人也应意识到，尽管公司是在海外注册成立的，他们的移居可能导致该公司成为澳大利亚税务居民。如果公司在澳大利亚注册成立，或者如果公司不在澳大利亚注册成立，但在澳大利亚开展业务，且其核心管理和控制权在澳大利亚，或者其表决权由澳大利亚股东控制，则该公司将成为澳大利亚税务居民。澳大利亚税务局认为，如果一家公司开展业务并符合核心管理和控制标准，那么，即使其未在澳大利亚开展贸易或投资活动，该公司仍将被视为在澳大利亚开展业务。如果一家公司是税务居民，则该公司来自澳大利亚和外国的收入和收益均需纳税，并有相关的纳税申报义务。

如上所述，签证计划也旨在鼓励跨国企业将其业务扩展到澳大利亚。这将不可避免地产生一系列澳大利亚税务合规义务——例如，如果一家企业将员工迁往澳大利亚，则需要注册澳大利亚就业税，并需要在支付工资时扣缴税款，并缴纳雇主社会保障金（称为养老金保障）。企业本身也可能有纳税申报义务，这取决于它选择采用何种结构将业务扩展到澳大利亚，以及其在澳大利亚的活动是否会导致"常设机构"（应纳税实体）的建立。

铭德及有关办事处：

阿德莱德 奥克兰 北京 布里斯班 堪培拉 达尔文 黄金海岸 香港 伦敦 墨尔本 珀斯 上海 悉尼 乌兰巴托 惠灵顿