COMMENTHK

Policy pathways for Web 3.0 economy in Hong Kong

Duncan Chiu says there are legislative means to create better laws for vital elements of the high-tech transition

As technologies drive new business and service models, regulatory leaders are faced with a key challenge: how to best protect citizens and ensure fair markets, while allowing these new technologies and businesses to flourish? The advancement of some technologies, particularly in the commercial sector, has gone beyond the scope of the existing regulatory framework. For this reason, in LegCo, I always advocate revamping laws to keep up with them, hence maintaining the confidence of the public and presenting clarity to innovators and investors.

In The Law Society of Hong Kong's 5th Belt and Road Conference, which was held on Nov 10, I raised several legislative paths to create better laws for four vital elements in the upcoming Web 3.0 economy. Below are the main points.

First, intellectual property (IP) such as works of digital art, music and software code have been protected by Copyright Ordinance since 1997. Several attempts at strengthening copyright protection in the digital environment failed due to political chaos and irrational disputes within society. As a result, Hong Kong's copyright regime is unfortunately over a decade behind international developments. The strategy to develop Hong Kong into a regional IP trading center under the national 14th Five-Year Plan (2021-25) has stalled.

Since improving the electoral system last year, enabling the executive and the legislature to resume rational interaction, a bills committee has been formed under the new LegCo to review the Copyright (Amendment) Bill 2022. It strikes a proper balance between the interests of copyright owners and users, and serves the best interests of Hong Kong. Such progress demonstrates how legislators keep pace with the times.

Second, Hong Kong does not have specific legal requirements on the cybersecurity of critical information infrastructures (CII). Among them, Section 161, "Access to computer with criminal or dishonest intent", of the Crimes Ordinance (Cap 200) was enacted in 1993. So it is high time to revive the long-behind and incomplete cybersecurity legislative revamping exercise.

The government submitted a paper in April to LegCo about plans to introduce a cybersecurity law to define the cybersecurity obligations of CII operators and promote the establishment of a management system for the safe operation of their information systems and networks. I expect a public consultation to be launched by early 2023.

In addition, The Law Reform Commission (HKLRC) has recently finished public consultation on legislation addressing five types of cyber-dependent

Duncan Chiu
The author is a Legislative Council member representing the Technology and Innovation Functional Constituency, the non-official member of the Digital Economy Development Committee, a tech entrepreneur, and a veteran tech investor.

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crimes. HKLRC and I jointly organized a conference for industry stakeholders. Through mutual communication, we aimed at tackling the protection of netizens' rights and the establishment of new industry working practices.

Third, how should we handle the data generated by all these enterprises? From a regulatory perspective, the key compliance remains data protection and privacy, which is now regulated by The Personal Data (Privacy) Ordinance. However, the ordinance is less stringent with respect to regulatory guidance and enforcement, when compared with other major jurisdictions such as the EU.

Therefore, in LegCo, I raised a concern about reforming the current regulatory systems. One possibility would be a data security law which regulates the collection and processing of data based on its potential impact on privacy invasion and national security. On top of this fundamental law, the amended Copyright Bill and the proposed new cybersecurity law will address specific data application challenges such as the content posted on metaverse platforms and keeping our CII out of the hands of hostile actors.

Besides data, virtual assets (VA) are the fourth vital element. As a medium of transaction and value storage, cryptocurrencies and non-fungible tokens (NFTs) have flourished significantly and become new asset classes. Many countries note with concern the growing impact of VAs on the real economy. Questions remain due to its evolving, interconnected nature: How to define its property rights? How to regulate its issuing, trading and settlement properly? Therefore, it is welcome news that the government works on regulatory clarity and provisions for its right development direction.

In June, the HKSAR government gazetted the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022, which introduced a new licensing regime for VA exchanges. Moreover, the Securities and Futures Commission published a circular on the possibility of having VA futures exchange-traded funds (ETFs) in Hong Kong. Recently, the government issued its "Policy Declaration on the Development of Virtual Assets in Hong Kong" during FintechWeek 2022. The financial secretary called for a greater emphasis on openness and proper supervision when dealing with VAs. Measures include a new licensing regime for VA service providers, tokenization of green bonds and a public consultation on retail access to VA products. To further address the potential risk of online crowdfunding activities, the SAR government plans to consult the public in late 2022.

There are innumerable examples of how new technology can raise new legal issues — and how our current regulatory regime has not yet adapted to this new reality. Take NFTs as an example. Metaverse experts expect that they can be developed as proof of ownership of a physical asset; proof of ownership after tokenization of a physical asset; proof of digital assets created by humans; proof of digital assets created by AI; or proof of membership or subscription of service.

In the second instance above, how can we prove someone has the right to issue NFTs when he or she owns only part of the original work? In the fourth instance above, should we grant copyright to AI which in turn is created or trained by humans? A recent court case in Singapore judged, for the first time, that NFTs are property, and that a "smart contract", which is a transaction protocol built with blockchain technology, should be treated as a legally binding contract.

All this reveals that technology and innovation are limitless. One reality is that, usually, lawmakers cannot predict new technologies before they emerge. Thus, the law is forced to play catch up after the fact. The government is challenged with creating regulations, enforcing them, and communicating them to the public at a previously undreamed-of speed. The target is striking a balance between the protection of citizens' rights, offering transparency for investors and enterprises, and facilitating growth in the tech industry. Such open, mature and forward-looking policy direction will cultivate an ecosystem of Web 3.0 businesses and reinforce Hong Kong's status as an international technology hub.

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Tailor-made strategies key to attracting virtual assets talent

Though the cryptocurrency exchange FTX filed for bankruptcy recently, the importance of virtual assets (VA) and fintech is self-evident. The policy statement on the development of VA issued by the Hong Kong Special Administrative Region government on Oct 31 set out the government's stance and approach toward developing a vibrant sector and ecosystem.

The next day, the FinTech Talent Study Report revealed an urgent need to nurture more talent according to a survey of the local industry. At the same time, the chief executive vowed to "snatch" global talent. But what kind of talent does Hong Kong need in the crypto field? What blind spots must Hong Kong avoid when training and recruiting talent? I think there are two critical considerations as follows:

First, locally bred talent should be the first priority.

In recent years, fintech has been inseparable from the blockchain technology, which can be regarded as a database with encryption technology to ensure information security. Its decentralized record of transactions allows all participants to view information, and its immutability generates trust without a need for a trusted third party. These characteristics have made blockchain the core technology of VA such as bitcoin.

So where is the talent for blockchain coming from? According to the Best Universities for Blockchain 2022 rankings by CoinDesk, a crypto asset news platform, the Hong Kong Polytechnic University stood out among 240 universities worldwide with the greatest impact on blockchain.

Among the top 50 schools, Hong Kong universities occupy a total of five seats. In addition to PolyU (first), there are University of Hong Kong (11th), City University of Hong Kong (17th), the Chinese University of Hong Kong (20th), and Hong Kong University of Science and Technology (38th). Singapore and the Chinese mainland also performed strongly, with two universities (second and 10th) for the former and seven for the mainland, including Tsinghua University (sixth).

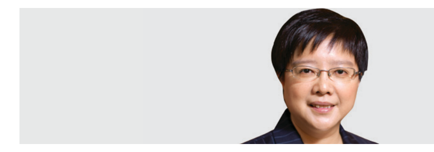
This annual ranking is based on four major criteria: (1) an institution's strength in research and academic contributions to advancing the field; (2) the existing blockchain offerings on campus, whether in the form of classes, educational centers, clubs; (3) employment and industry outcomes; and (4) overall academic reputation.

PolyU ranks first because it started the city's first degree program in blockchain four years ago, followed by master's degree and doctoral programs. The university also established the first research center in Hong Kong for interdisciplinary research on blockchain; these initiatives are forward-thinking.

However, the employability of local graduates is poor. PolyU, for example, was ranked strongly in most metrics but was in the bottom 25 percent of the top 50 schools on the employment and industry indicator.

Therefore, the authorities should speed up their formulation of policies for the VA industry and the promotion of the ecosystem to retain locally-bred elite talent, and not just emphasize the importance of attracting overseas talent.

Second, do not underestimate women's power.



Winnie Tang
The author is an adjunct professor in the Department of Computer Science, Faculty of Engineering; Department of Geography, Faculty of Social Sciences; and Faculty of Architecture, the University of Hong Kong.

The essence of VA is diversity which allows different people, including small investors, to participate. However, in reality, most VA companies lack diversity within their own teams.

According to a report by social media LinkedIn, net hires into the industry shot up 73 percent from two years earlier in the United States, while the net number of hires in traditional finance industries declined 1 percent over the same period. But crypto firms' rapid hiring growth is not even between genders, with the vast majority of the increase being men (90 percent). In fact, women only accounted for 30 percent of new hires in the industry last year, compared with 43 percent in the traditional banking and financial industry. Women have always been a minority in the VA industry, and the situation is worsening, decreasing from 31 percent in 2018 to 26.5 percent in 2021.

Some female CEOs in the industry have pointed out that female crypto enthusiasts usually use pseudonyms in order to get a fairer view when discussing issues such as new projects or currency fluctuations in online forums. Some netizens have also criticized the inequality in media exposure. Female leaders in the crypto field rarely get the same media coverage as their male counterparts. Vitalik Buterin, a co-founder of Ethereum, and Michael Saylor, the head of Microstrategy, are frequently quoted in news stories. The former has had over 100,000 Google News search results so far, while the latter has had nearly 60,000. What about their female counterparts? Kathleen Breitman, a co-founder of Tezos, had below 1,800, and XLM co-founder Joyce Kim fewer than 300.

The SAR government should pay more attention to this phenomenon when training and recruiting talent. If favorable conditions for women can be created, it may help Hong Kong snatch talent in the increasingly fierce global competition while the nature of the crypto business has made it more diverse and inclusive in the geographic sense than other industries in a few ways. For example, BlockFi, a cryptocurrency lending startup, headquartered in the US, employed 850 people in 25 countries, including in hubs like Singapore, Argentina, Poland and the UK. PayPal, the payment platform having joined the crypto business, is looking for other places in addition to the existing hubs in Silicon Valley, New York, Austin, Scottsdale and Chicago.

Therefore, a tailor-made talent acquisition strategy according to the characteristics of designated industry and market conditions is expected. By doing so, the government can achieve better results.

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Rising geopolitics makes it more imperative for SAR to boost trade ties

At the 29th Asia-Pacific Economic Cooperation Economic Leaders' Meeting, Chief Executive John Lee Ka-chiu once again expressed his wish for Hong Kong to join the Regional Comprehensive Economic Partnership pact.

Ever since the RCEP was initiated, Hong Kong has made it clear that it aspires to become a stakeholder in the region's economic integration, an attempt that has the strong backing of the central government and is in alignment with the Basic Law and the RCEP rules.

As Hong Kong is one of the few highly open economies in the world, there is virtually no obstacle to Hong Kong becoming a member of the RCEP block since no major adjustments are required for its economic regulations and systems. Besides, the city is on par with a developed economy, which not only enables it to withstand potential economic shockwaves from other RCEP members but also to take in capital, technology, and talents from them.

For Hong Kong, the resistance to joining the pact comes from negative external factors. A few RCEP members that are

Zhou Bajun
The author is a senior research fellow of China Everbright Holdings.

unfriendly toward China are not receptive to a Hong Kong membership, which they claim would build up China's overall influence in the RCEP network. The US, although not a member of the RCEP, has exerted influence on some members of the pact. Establishing the Indo-Pacific Economic Framework (IPEF) to rive the RCEP is a case in point.

RCEP is composed of 10 Association of Southeast Asian Nations member states plus China, Japan, South Korea, Australia and New Zealand. All of them except three ASEAN countries are also members of APEC. RCEP is therefore compatible with the free trade area of the Asia-Pacific. IPEF, on the other hand, differs greatly from RCEP and other regional economic integration associations. While the latter group is committed to realizing the gradual and holistic integration of members, IPEF only selects and includes industries and sectors preferred by Washington so as to create a small economic clique that caters to the interests of the US. Therefore, IPEF is aimed at not only dismembering ASEAN but also breaking up APEC and RCEP. What's more, Washington aims to use IPEF to build a high wall between China and its neighbors to isolate the country and curb its resurgence.

Despite Washington's obsession with IPEF, no one suspects its commitment to hindering Hong Kong from participating in RCEP. Since IPEF is designed to hold back China's rise, the White House surely will not stand idly by, allowing anything (including the RCEP) that benefits Hong Kong and thus the Chinese mainland.

To counteract the hostile maneuvers of the US, Hong Kong — in addition to pursuing RCEP membership — will need to scrutinize the geopolitical landscape and cooperate with the State in expanding high-level opening-up.

Ever since they took office, John Lee and his administration have launched new measures to contain the spread of COVID-19 while gradually resuming and facilitating both inbound and outbound personnel exchanges. The city has successfully hosted several major international events such as the Global Financial Leaders' Investment Summit and the Hong Kong Sevens rugby tournament. International audiences are delighted to see the Pearl of the Orient regain its glamor.

Nonetheless, the Hong Kong community should keep a clear head in assessing the country's anti-pandemic policy. There are voices of opposition to the country's dynamic zero-COVID strategy in Hong Kong. These critics failed to appreciate the imperative of putting people's lives first amid the onslaught of a once-in-a-lifetime pandemic. They mistakenly believe that the right way to cope with the pandemic is to "live with the virus", the prevalent approach in the West that has been adopted only because of its institutional flaws and social conditions. Their misjudgments have led to an erroneous evaluation of Hong Kong's anti-pandemic strategy, asserting that the city has isolated itself from the outside world for three years.

Since the United States adjusted its global strategy to regard China as its major rival in late 2017 and launched an all-around campaign to contain China's rise, Hong Kong's effort to expand global connectivity has suffered setbacks because of the interference and sabotage of the US and its allies. The 2019 "black-clad" riots incited by external forces not only disrupted the city's social order but also tarnished its international image. John Lee's emphasis on telling Hong Kong's story well is more or less a tactical response to restore the city's international stature.

The COVID-19 pandemic has further damaged its global connectivity aside from bringing personnel exchanges with the Chinese mainland to a halt and hindering Hong Kong's integration into national development. Hong Kong's priority now is to carefully size up its situation, reaffirm its commitment to being fully open to the world and step up its effort to dovetail its own development with national development in the face of the US containment strategy.

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