

The Provision of Unsecured Loan or Financial Assistance

留心上市公司沒有抵押的放貸或財務協助

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Thomas Atkinson, Executive Director of the SFC, in his keynote speech delivered on 10 October 2018, referred to last year's "nefarious networks" which he described as a group of highly organised people who own or control listed companies, licensed dealers, money lenders, financial advisory services and placing agents. David Webb also reported that some listed companies used money lending transactions for questionable activities.

Money lending business is an issue that directors, naturally including INED, should be wary of.

Many 2nd and 3rd tiers listed companies, as well as those listed on the GEM Board, have been issuing announcements relating to disclosable transactions for the "Provision of Loan" or "Financial Assistance". Such announcements are made due to the requirement under the relevant listing rules which constitute

them as disclosable transactions. The loan advance is usually conducted through a wholly-owned subsidiary of the listed company which has a money-lender license. A simple search using the keywords "provision of loan" or "provision of financial assistance" on the Stock Exchange of Hong Kong website would show a large number of such announcements.

At first glance, there is nothing wrong with having a money lending business or the provision of loans, even though its main business may not be in money lending. However, upon further reading of many of the announcements relating to the borrower, often they would state that the borrower or its guarantor is "to the best of the directors' knowledge, information and belief, having made all reasonable enquiries, is an independent third party". And that "the loan is secured by a guarantee provided by the guarantor to guarantee the performance of the borrower's obligations under the loan agreement". The announcement would

go on to indicate that "to the best knowledge, information and belief of the directors having made all reasonable enquiries, the borrower has substantial investments and assets which support his financial capability to repay the Loan. Therefore, the lender has not sought securities or collaterals for his repayment of the loan." However, on certain occasions when the loan is due for repayment, there would be a further announcement for an "Extension of Loan".

In essence, the board of the listed company has approved the lending of a substantial amount of money to an independent third party without any collateral because the borrower claimed to have a substantial amount of assets. And when repayment is due, the listed company would deem appropriate to grant an extension of the loan. Such lending practices are not uncommon, especially among GEM Board listed companies. Conspiracy theorists would say that these unsecured loans are made for the benefit

SPRG

/AS-PEE-ER-GEE:/

noun

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of the major shareholder or “friends” of the major shareholders, even though the borrower claimed to be an independent third party. There is also suspicion that whenever the first loan is due for repayment, another loan would be granted to another independent third party, and soon afterwards the first loan would somehow be repaid in full. Should the borrower be found to be related or in some way connected to the director of the company and not duly disclosed in the original announcement: at the very least, this would be in breach of Section 384 of the Securities & Futures Ordinance (“SFO”) which prohibits false or misleading information being given to the Stock Exchange of Hong Kong Limited and the Securities & Futures Commission (“SFC”) in compliance with legal requirements, and in the worst scenario this could be considered as misappropriation of funds.

One of the major responsibility of a director, whether an ED, NED and INED, of a listed company is to ensure appropriate protection of shareholders’ interests. On a risk-based approach, directors should ask whether a simple personal guarantee from the borrower/guarantor is sufficient to ensure security for repayment of such a large loan, and they should raise questions such as:

- Does the company have any procedure and policy to monitor possible disposal of assets by the borrower (or guarantor) during the loan period? i.e. the borrower/guarantor may sell off all its assets immediately after the drawdown of the loan rendering any guarantee meaningless.
- How did this borrower, supposedly an independent third party, came to

know the lender and subsequently drew up a lending agreement between them? Was the borrower a walk-in customer or introduced by someone? As the loan amount is usually substantial to warrant an announcement, directors should make prudent inquiries relating to know-your-client information obtained by the lender, including the borrower’s purpose and use of the loan.

- Directors should also make appropriate in-depth inquiries into the financial background and assets of the borrower, and not just to their best knowledge, information and belief. Such inquiries should also be extended to the guarantor if the guarantor is a different entity to the borrower.
- As the lender is a wholly-owned subsidiary of the listed company, directors should explore the current practice of its lending business, i.e. Are all loans lent by the lender merely secured by a personal guarantee without collateral? Such question should be raised to ensure a prudent and risk-based business practice of the lender is established.

As members of the board of directors, directors are expected to play a major role in providing an independent voice and acting as a safeguard against unscrupulous lending practices, misfeasance, and above all, directors must exercise reasonable care, skill and diligence.

Directors are reminded that under Section 214 of SFO, the Court may make orders disqualifying a person from being a company director for up to 15 years, if the person is found to be responsible for

the company’s affairs having been conducted in a manner involving defalcation, fraud or other misconduct. Furthermore, the SFC had brought cases to the Courts using section 214 of the SFO which the SFC had succeeded in securing from the Courts, not only a disqualification order of the directors but also a compensation order against the directors. A simple search on the SFC website www.sfc.hk using the keywords “compensation orders” would list out cases which the SFC had taken actions against executive directors as well as INEDs. 



監會執行董事魏建新於2018年10月10日在專題演講中指去年出現了一些「惡毒網絡」。

他指的是一群擁有或控制上市公司、持牌交易商、貸款商、財務顧問服務和配售代理的高度有組織人士。David Webb亦有報導這些利用貸款交易進行有問題活動的上市公司。

貸款業務是董事（當然包括獨立非執行董事）應該警惕的事情。

很多第二類和第三類上市公司及在主板上市的公司都有就有關「提供貸款」或「財務協助」的應披露交易發出公告。這類公告是按上市規則的披露原則發出。貸款通常是透過持有放債人牌照的上市公司全資附屬公司借出。只要在港交所網站輸入「提供貸款」或「提供財務協助」作簡單搜尋，便會顯示大量有關公告。

驟眼一看，若主營業務未必是放債，提供債務或貸款沒有什麼不妥。不過，只要進一步細閱很多有關借入人的公告，便會察覺公告通常會提述借入人或其保證人是「董事作出一切合理查詢後盡其所悉、所知及所信是獨立第三方」，而「貸款是在保證人作出保證

下獲取，以保證借入人會按照貸款協議履行責任」。公告並會註明「董事作出一切合理查詢後盡其所悉、所知及所信，借入人有大量投資和資產可支持其償還貸款的財務能力。因此，貸款人並無要求借入人就償還貸款提供抵押物或擔保物」。不過在某些情況下，當貸款到期償還時會再發出「延長貸款公告」。

簡言之，上市公司的董事會批准大數額貸款予沒有任何擔保物的獨立第三方是因為借入人聲稱有大量資產。當到期償還貸款時，上市公司視批准貸款延期為恰當。這類借貸方式並不少見，尤其可見於主板上市的公司。即使借入人聲稱是獨立第三方，陰謀論者會認為這類無抵押貸款是提供予大股東或大股東的「朋友」。另外亦懷疑每當第一筆貸款到期償還便會向另一名獨立第三方批予另一筆貸款，隨後不久第一筆貸款便悉數清還。如果借入人被發現跟公司董事有關連或在某方面有聯繫並且沒有在原本的公告中披露（最起碼的披露），便會構成違反《證券及期貨條例》第384條。該條文禁止遵從法定要求提供資料時向港交所及證監會提供屬虛假或具誤導性的資料，情況嚴重者可能會被視為挪用公款。

上市公司董事（不管是執行董事、非執行董事或獨立非執行董事）的其中一項主要責任是確保股東的權益得到適當保護。從風險角度來看，董事應該查問由借入人／擔保人作出簡單的個人擔保是否足以保障如此大額的借貸獲償還，並且應該提出下列一類問題：

- 公司有否制定程序及政策監察借入人（擔保人）以防其在借貸期內處置資產？換言之，借入人／擔保人可能會在提用借貸後隨即出售其所有資產，令擔保變得毫無意義。
- 該借入人（假設是獨立第三方）是如何認識放貸人及其後雙方訂立借貸協議？借入人是否自來客戶還是經人介紹？由於貸款額通常龐大而需要發出公告，董事應該謹慎審查放貸人獲取的認識您的客戶資訊，包括借入人的貸款目的及用途。
- 董事不應僅依賴其所悉、所知及所信，應該對借入人的財務背景和資產進行適當的深入審查。如果擔保人跟借入人是不同的實體，這類審查還應該延伸至擔保人。

- 由於放貸人是上市公司的全資擁有附屬公司，董事應該瞭解其借貸業務的現行做法，即是放貸人借出的所有貸款是否僅依靠個人保證而沒有擔保物？必須提出此問題，以確保放貸人制定有審慎的風險為本作業。

作為董事會的成員，董事應該在提供獨立意見方面擔當主要角色，並且防止不誠實借貸方式及濫用職權，最重要的是必須盡責地以技巧合理小心行事。

謹此提醒各董事，如果發現有關人士是負責處理公司事務但以涉及虧空公款、欺詐或其他失當行為的方式行事，法庭可能會根據《證券及期貨條例》第214條指令取消該人出任公司董事的資格最長達15年。此外，證監會曾引用《證券及期貨條例》第214條向法庭提出訴訟，不單止成功獲法庭頒令取消董事資格，還可能勒令有關董事作出賠償。只要在證監會的網站輸入關鍵字「賠償命令」，證監會過去對執行董事和獨立非執行董事採取行動的個案便會列出。 



Members' Milestones 會員里程碑

The contents here are based on submissions from members. If you wish to share your latest news and movements, please submit one to two photos along with captions of no more than 50 words to: magazine@hkiod.com.
內容根據會員所提供的資料。歡迎會員通知本會您的最新動態。來稿請包括1至2張照片及不多於50字的文字描述至magazine@hkiod.com。

Congratulations 祝賀

Dr Kelvin Wong JP DBA FHKIoD

Dr Kelvin Wong has been appointed by Government of the HKSAR as Chairman of the Financial Reporting Council effective 15 December 2018.

黃天祐博士 JP DBA FHKIoD

香港特別行政區政府委任黃天祐博士為財務匯報局主席，任期由2018年12月15日起生效。



Mr Lin Sun Leung, Alfred FHKIoD

Mr Lin Sun Leung, Alfred, was elected Chairman of Hong Kong Chiu Chow Chamber of Commerce Ltd.

林宣亮先生 FHKIoD

本會資深會員林宣亮先生獲選為香港潮州商會主席。

Mr Anson Lam

HKP Inspector Anson Lam, former Senior Projects Executive of HKIoD, married Ms Mak Kam Yee. The wedding ceremony took place on 25 October 2018. Anson worked at HKIoD for five years.

林豪華先生

本會前高級項目主任林豪華督察與麥錦儀小姐共諧連理。婚禮在2018年10月25日舉行。林先生曾於香港董事學會任職五年。



In Memory 懷念



Dr. Joseph Ming-kuen Chow OBE JP FHKIoD (1941–2018)

Our former Council Member Dr. Joseph Ming-kuen Chow passed away peacefully on 13 October 2018. We will sadly miss him and pray that he now rests in peace.

周明權博士 OBE JP FHKIoD (1941–2018)

本會前理事周明權博士於2018年10月13日離世。我們永遠懷念周博士，願他安息長眠。

Vistors 訪者

Representatives of Chartered Institute of Arbitrators (East Asia Branch) (CIArb (EAB)) visited HKIoD and gave a talk to members on 29 October 2018. Pictured with HKIoD's Dr Carlye Tsui and Ms Miriam Yee are Ms Mary Thomson, Chair of CIArb (EAB) (on the left) and Ms Camilla Godman, Director for Asia Pacific of CIArb (EAB) (third from the left).

特許仲裁人學會代表於2018年10月29日到訪香港董事學會，並為會員提供講座。圖中與香港董事學會的徐蔚玲博士及余海恩女士合照的為特許仲裁人學會主席林美麗女士（左一）及亞太地區董事Camilla Godman女士（左三）。



Representatives of Australian Institute of Company Directors (AICD) visited HKIoD and shared updated market trends on 4 December 2018. Pictured with HKIoD's Dr Carlye Tsui are (from left) Ms Katie Harris, International Events Executive of AICD, Mr Edward Palmisano, Head of International of AICD, Mr Angus Armour, Managing Director & CEO of AICD and Dr Garry Willinge FHKIoD, Chairman of HK Advisory Committee of AICD.

澳洲公司董事學會於2018年12月4日到訪香港董事學會，交流兩地最新市場資訊。

SME Forum 中小企業論壇

A forum for small and medium enterprises (SMEs) entitled "SME Growth Stage" was held in 20 November 2018. Speakers and panellists included:

- Ir Prof. John Mok, Chairman, AML Holdings Limited; Chairman, HKIoD SME Committee
- Mr. Wilson Wan, PR Director & Chief Consultant, Jacob Walery
- Mr. Francois Chabaudie, CEO of NEOMA

本會於2018年11月20日舉辦了主題為「中小企成長階段」的中小企業論壇。論壇講者包括：

- 藝美達集團主席 及 香港董事學會中小企委員會主席 莫建鄰教授
- 威來利有限公司公關董事兼首席顧問 溫思聰先生
- NEOMA行政總裁 Francois Chabaudie先生



此為提供予香港董事學會會員的定期資訊，摘要報導有關董事履行企業管治職責的現時政策課題。

21 Dec 2018 2018年12月21日

I. Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Bill 2018 gazetted

《2018年稅務及強積金計劃法例（關於年金保費及強積金自願性供款的稅務扣除）（修訂）條例草案》刊憲

The Government published the Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Bill 2018 in the Gazette on December 7. The Bill seeks to implement the 2018-19 Budget initiative of introducing tax deductions for deferred annuity premiums and Mandatory Provident Fund Tax Deductible Voluntary Contributions (MPF TVCs) to encourage voluntary savings for retirement.

政府十二月七日在憲報刊登《2018年稅務及強積金計劃法例（關於年金保費及強積金自願性供款的稅務扣除）（修訂）條例草案》，以推展二零一八至一九年度《財政預算案》措施，為延期年金保費及強積金可扣稅自願性供款提供稅務扣除，以鼓勵自願儲蓄作退休之用。

Source 資料來源：Financial Services and the Treasury Bureau 財經事務及庫務局

II. HKMA amendments to Guideline on Anti-Money Laundering and Counterfinancing of Terrorism (For Authorized Institutions)

有關《打擊洗錢及恐怖分子資金籌集指引》（認可機構適用）的修訂

The Hong Kong Monetary Authority (HKMA) published in the Gazette (G.N. 7769 of 2018) the revised Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Authorized Institutions) 1 (AML/CFT Guideline) under section 7 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) and section 7(3) of the Banking Ordinance. The revised AML/CFT Guideline will be effective on 1 November 2018.

Source 資料來源：The Hong Kong Monetary Authority 香港金融管理局

For more information 詳情：

<https://www.hkma.gov.hk/media/chi/doc/key-information/guidelines-and-circular/2018/20181019c1.pdf>

III. SFC concludes further consultation on the financial resources rules

證監會總結財政資源規則的進一步諮詢

The Securities and Futures Commission (SFC) released conclusions to the further consultation on proposed amendments to update the Securities and Futures (Financial Resources) Rules (FRR) on 19 Oct. After considering the comments received, the SFC will implement the proposed changes, the main purpose of which is to update the computation basis of the financial resources requirements in response to market developments and to facilitate the business operation of licensed corporations.

證券及期貨事務監察委員會（證監會）十月十九日就更新《證券及期貨(財政資源)規則》（下稱《財政資源規則》）的建議修訂的進一步諮詢文件，發表總結。經考慮所接獲的意見後，證監會將落實建議修改。有關修改的主要目的是更新財政資源規定的計算基準，以應對市場發展，及利便持牌機構經營業務。

Source 資料來源：Securities and Futures Commission 證券及期貨事務監察委員會

For more information 詳情：

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/corporate-news/doc?refNo=18PR122>

此為提供予香港董事學會會員的定期資訊，摘要報導有關董事履行企業管治職責的現時政策課題。

21 Dec 2018 2018年12月21日

IV. SFC sets out new regulatory approach for virtual assets

證監會闡述有關虛擬資產的新監管方針

The Securities and Futures Commission (SFC) issued a statement setting out a new approach which aims to bring virtual asset portfolio managers and distributors of virtual asset funds under its regulatory net on 1 Nov. It also sets out a conceptual framework for the potential regulation of virtual asset trading platforms.

證券及期貨事務監察委員會（證監會）十一月一日發表聲明，闡述新的監管方針。新的方針旨在將虛擬資產投資組合管理公司及虛擬資產基金分銷商納入證監會的監管範圍。該聲明亦載述有關可能規管虛擬資產交易平台的概念性框架。

Source 資料來源：Securities and Futures Commission 證券及期貨事務監察委員會

For more information 詳情：

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/corporate-news/doc?refNo=18PR122>

V. SFC concludes consultation on OTC derivatives and conduct risks

證監會就場外衍生工具及操守風險發表諮詢總結

The Securities and Futures Commission (SFC) today released consultation conclusions on proposals to enhance the over-the-counter (OTC) derivatives regime and to address conduct risks posed by dealings with group affiliates and other connected persons on 12 Dec.

證券及期貨事務監察委員會（證監會）十二月十二日就加強場外衍生工具制度及處理在與集團聯屬公司和其他有關連人士進行交易時引致的操守風險的建議，發表諮詢總結。

Source 資料來源：Securities and Futures Commission 證券及期貨事務監察委員會

For more information 詳情：

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR141>

VI. SFC announces agreement to enhance the exchange of information under Stock Connect

證監會宣布協議加強股票市場交易互聯互通機制下的信息交換

The Securities and Futures Commission (SFC) has entered into an agreement with the China Securities Regulatory Commission (CSRC) to enhance the exchange of information under Mainland-Hong Kong Stock Connect.

證券及期貨事務監察委員會（證監會）與中國證券監督管理委員會（中國證監會）簽署協議，加強內地與香港股票市場交易互聯互通機制下的信息交換。

Source 資料來源：Securities and Futures Commission 證券及期貨事務監察委員會

For more information 詳情：

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR138>

此為提供予香港董事學會會員的定期資訊，摘要報導有關董事履行企業管治職責的現時政策課題。

21 Dec 2018 2018年12月21日

VII. Exchange publishes its latest review of listed issuers' corporate governance practices and updates its guidance material on ESG reporting

聯交所刊發最新審閱上市發行人企業管治常規的結果及更新環境、社會及管治報告指導材料

The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), today (Friday) published the findings of its latest review of listed issuers' corporate governance practices (the Review) and updated guidance material on environmental, social and governance (ESG) reporting.

香港交易及結算所有限公司（香港交易所）全資附屬公司香港聯合交易所有限公司（聯交所）十一月十六日刊發最新審閱上市發行人企業管治常規（審閱報告）所得的結果，並更新環境、社會及管治報告的指導材料。

Source 資料來源：The Stock Exchange of Hong Kong Limited 香港交易及結算所有限公司

For more information 詳情：

https://www.hkex.com.hk/News/News-Release/2018/181116news?sc_lang=en

VIII. HKEX to add mini- HSCEI options to after-hours trading from tonight

香港交易所收市後交易時段今晚起納入小型恒生國企指數期權

Hong Kong Exchanges and Clearing Limited (HKEX) is adding Mini-Hang Seng China Enterprises Index (HSCEI) Options to its after-hours trading (AHT) from 3 Dec evening.

香港交易及結算所有限公司（香港交易所）十二月三日晚起會將小型恒生中國企業指數期權（小型恒生國企指數期權）納入收市後交易時段。

Source 資料來源：The Stock Exchange of Hong Kong Limited 香港交易及結算所有限公司

For more information 詳情：

https://www.hkex.com.hk/News/News-Release/2018/181203news?sc_lang=en

IX. Companies Registry Results of “Best Service Award 2018-19” and “Best Counter Staff Award 2018-19”

公司註冊處「2018-19年度最佳服務獎」及「2018-19年度最佳櫃檯職員獎」的結果

The Companies Registry has announced the results of “Best Service Award 2018-19” and “Best Counter Staff Award 2018-19”.

公司註冊處公佈了「2018-19年度最佳服務獎」及「2018-19年度最佳櫃檯職員獎」的結果。

Source 資料來源：Companies Registry 公司註冊處

For more information 詳情：

<https://www.cr.gov.hk/tc/about/event.htm>

The 21st Century DIRECTOR 董事

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