

Momentum

The Chamber of Hong Kong Listed Companies Magazine 香港上市公司商會雜誌

Short Sale Activists: Heroes or Villains?

激進沽空：是正是邪？



An Interview with Mr Chen Shuang, CEO, China Everbright Ltd.

中國光大控股有限公司首席執行官陳爽先生專訪

Are You Ready for Regulatory Investigations? Some Practical Tips

監管調查您準備好了嗎？實用要訣事例

Navigating America's Economic-Policy Shocks

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Tricolor Investor Services Limited

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Share Registration Public Office

Level 22
Hopewell Centre
183 Queen's Road East
Hong Kong
Tel: (852) 2980 1333
Fax: (852) 2810 8185
Email: is-enquiries@hk.tricorglobal.com

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- 02 Chairman's Message 主席之言
- 04 Editor's Column 編輯的話
- 06 Cover Story (Part 1) 封面故事 (第一部份)
Short Sale Activists: Heroes or Villains?
激進沽空：是正是邪？
- 11 Cover Story (Part 2) 封面故事 (第二部份)
The Guardian's Duty
監護人的責任
- 16 Talking Points 論點
From Shareholder Primacy to Stakeholder Model: New Mindset and
Practical Measures
從股東至上到持份者模式：新思維與實際措施
- 20 Corporate Tips 企業啓示
Are You Ready for Regulatory Investigations? Some Practical Tips
監管調查您準備好了嗎？實用要訣事例
- 24 Economic Insights 經濟透視
Navigating America's Economic-Policy Shocks
應對美國經濟政策衝擊
- 27 Member in the Spotlight 會員聚焦
Building an Asset Management Powerhouse with a Global Vision
— An Interview with Mr Chen Shuang, CEO, China Everbright Limited
建構產業多元全球佈局之資產管理巨頭
— 專訪中國光大控股有限公司首席執行官陳爽先生
- 32 FRA Column 財經事務及監管政策委員會專欄
Risk Management: From Listed Companies to Law Firms
風險管理：從上市公司到律師事務所
- 37 In Review / Past Activities 活動重溫

Chairman: Francis Leung Pak To

Vice Chairmen: Dr K S Lo, Patrick Sun, Zheng Yong, Eirene Yeung

Editorial Committee: Mike Wong, Vincent Kwan, Amy Leung, Gina Miller

Published by: The Chamber of Hong Kong Listed Companies
Room 3710, 37th Floor, Hopewell Centre, 183 Queen's Road East, Wanchai, Hong Kong
Tel: (852) 2970 0886 Fax: (852) 2970 0555
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Tel: (852) 3796 3060 Fax: (852) 3020 7442
Email: enquiries@ninehillsmedia.com Website: www.ninehillsmedia.com

Publisher: Paul Davis
Email: paul@ninehillsmedia.com

Editor: Gina Miller
Email: gina@ninehillsmedia.com

Advertising Sales Tel: (852) 3796 3060
Frank Paul Email: frank@ninehillsmedia.com
Jennifer Luk Email: jennifer@ninehillsmedia.com

Amy Leung at CHKLC Secretariat (For CHKLC members)
Tel: (852) 2970 0886 Email: amyleung@chkclc.org

Design: Portia Le
Email: portia@ninehillsmedia.com

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主席: 梁伯韜

副主席: 羅嘉瑞醫生、辛定華、鄭勇、楊逸芝

編輯委員會: 黃明偉、關保鈺、梁瑞群、Gina Miller

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香港灣仔皇后大道東183號合和中心37樓3710室
電話: (852) 2970 0886 傳真: (852) 2970 0555
電郵: info@chkclc.org 網址: www.chkclc.org

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香港上環德輔道中199號無限極廣場12樓
電話: (852) 3796 3060 傳真: (852) 3020 7442
電郵: enquiries@ninehillsmedia.com 網址: www.ninehillsmedia.com

出版經理: 戴保祿
電郵: paul@ninehillsmedia.com

編輯: Gina Miller
電郵: gina@ninehillsmedia.com

廣告電話查詢: (852) 3796 3060
Frank Paul 電郵: frank@ninehillsmedia.com
陸靜兒 電郵: jennifer@ninehillsmedia.com

梁瑞群 — 商會秘書處 (會員廣告查詢)
電話: (852) 2970 0886 電郵: amyleung@chkclc.org

設計: 李小平
電郵: portia@ninehillsmedia.com

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Dear Members,

The Securities and Futures Commission ("SFC") has issued an interim report on the Listing Regulatory Reform Consultation and presented it to the Panel on Financial Affairs of the Legislative Council on April 18. It was revealed that over 8,000 submissions have been received, a huge amount of response. Prior to the Panel meeting, the Chamber issued a media statement reiterating our stance that the proposed changes were

unnecessary, would yield negative effects to market development, and very importantly, as the law professors from the University of Hong Kong pointed out, the proposed changes contravened the legislative intent of the Securities and Futures Ordinance where the SFC, having reserved powers over the HKEX's decisions, was designed to play a back-end regulator role. The proposed changes were thus "ultra vires". At the Panel meeting, similar concerns were raised by the legislative councilors. We very much hoped that the SFC would take heed of these views.

An objective of the listing regulatory reform was generally believed to be inhibiting market irregularities, such as heavy share price volatility of some presumptive shell companies on the GEM board. Yet, recently this problem has been partly addressed by the SFC intervening in the IPO process of certain GEM candidate companies. In a way, this has reduced the urgency of the reform. Besides, HKEX has stated it would conduct a market consultation about creating a new board as well as reviewing the positioning of the GEM board. The outcome of this consultation will inevitably have effects on the regulatory approach. We therefore believe the SFC should put the listing regulatory reform on hold, pending a holistic review of the listing market structure and associated regulatory approach and requirements.

Also on regulation, we have recently met with Mr Thomas Wilkinson, Executive Director of Enforcement of the SFC and heard him explain the enforcement functions of the Commission under his leadership. In addition to monitoring excessive share price volatility as mentioned above, Mr Wilkinson said the SFC has noticed cases where listed issuers provided false or misleading financial information. He stressed this was a serious matter and that not only the companies but also their sponsors had the responsibility to ensure the accuracy of published information. A team within the SFC has been set up to monitor the sponsors' performance in this area. We agree that the integrity of financial information is most important to the quality of our market and will affect investor confidence. We urge companies and their sponsors to be very truthful with the information they publish or they would face serious consequences.

On June 28, the Chamber will hold its annual general meeting to review and approve its financial accounts of the latest financial year, and to elect General Committee Members for the coming term. I encourage members to nominate themselves to become a General Committee Member and contribute their knowledge and experience to the running of the Chamber. Relevant forms and documents will be mailed for your attention.

Yours sincerely,

Francis Leung Pak To
Chairman

各位會員：

證監會於4月18日就上市監管改革諮詢向立法會財經事務委員會呈交了中期報告，當中指出收到大量回應，一共逾8,000份。商會在委員會會議召開前發出一份傳媒聲明，重申我們的立場，指出有關建議沒有必要，並會為本港的市場發展帶來負面影響，更重要的是，正如香港大學法律學者指出，建議有違證券及期貨條例的立法原意，即證監會擁有後備權利，扮演後線監管者角色。因此，有關建議是逾越法律的。在有關委員會會議上，不少議員發言時也作出相近意見。證監會務必小心聆聽這些聲音。

證監會之所以推出這樣的改革建議，一般相信是要壓抑一些市場不良情況，譬如一些被假定为殼股的創業板公司的嚴重股價波動。但隨著證監會近日介入某些創業板上市申請人的上市程序，此類情況已有所收斂，故此，有關改革建議的迫切性已大大降低。此外，港交所亦正在籌備就設立第三板和檢討創業板定位諮詢市場。諮詢結果必定對監管方針帶來改變。因此我們建議證監會擱置改革諮詢工作，留待與探討整體市場架構及相關監管方向和要求之工作一併檢討。

此外，商會最近約見了證監會法規執行部執行董事魏建新，向我門講解在他領導下證監會的法規執行情況。魏先生表示，除了監察市場出現的過度股價波動之外，證監會還留意到有些上市發行人可能提供虛假或誤導的財務資料。他強調這是一件嚴肅的事情，除了上市公司，相關的保薦人也有責任確保公司所發佈消息的真確性。證監會成立了專責隊伍，監察保薦人這方面的表現。商會認同資料的真實性對市場質素和投資者信心至關重要，我們呼籲公司和保薦人必須確保發佈的資料真確無誤，否則需要面對嚴重後果。

商會今年的周年會員大會將於6月28日舉行，審閱和通過最近一個財政年度的財務報表，並選出新一屆的常務委員會委員。本人鼓勵有志服務商會的會員踴躍參與常務委員會的選舉，以進一步貢獻自身的知識和經驗。相關表格和文檔將於日內郵寄給全體會員。

誠致謝意。

梁伯韜
主席



Independence

Your Professional Internal Control Consultant

Our Spring cover has a slightly different look from our previous issues – and that's because our feature story offers two perspectives on a phenomenon that many of our readers find troubling: short-sale activists.

To a corporate, a short sale activist is something like a hacker: looking for weaknesses inside a company in order to destroy share price by publicly attacking any faults – real or imagined. Most corporates hear the phrase “short sale attack” with the same horror a surfer would feel hearing “shark attack”.

On close examination, short sale activists can be powerful research teams, willing to dedicate thousands of hours to investigate companies and build a market position against them. They are not whimsical, they are generally savvy, professional, intelligent market players, and they are part of the ecosystem.

So part one of our main feature reviews the risks and responses that companies should be aware of in the event of a short sale call. Part two is by guest writer Soren Aandahl, the Director of Research of Glaucus Research Group (an activist investor company) that has had a significant impact on the Hong Kong market. Mr Aandahl addresses Independent Directors, and explains precisely what is on the line – and what they should do – in the event of short call.

In our regular columns, Jill Wong and Ivan Chik – respectively a Partner and Trainee Solicitor with Howse Williams Bowers – write on what corporates should do in the event of a regulatory investigation in our Corporate Tips section. Professor Simon SM Ho, President of Hang Seng Management College writes on the shift in market mind set from shareholder primacy to stakeholder value, in our Talking Points column, and Shang-Jin Wei, a former chief economist of the Asian Development Bank, writes on navigating the murky waters of America's economic-policy shocks in our Economic Insights column.

In our FRA column, Vincent Kwan, the Chairman of the FRA Committee for CHKLC has contributed the first in a two-part series on risk management.

Finally, in our Member in the Spotlight this month, we turn our attention to China's multi-national powerhouse: China Everbright (0165.HK). Writer Jimmy Chow speaks with Chen Shuang, CEO of China Everbright about the company's shift from a state-owned enterprise to an international asset management and investment conglomerate.

We believe our Spring issue offers considerable food for thought, and many viewpoints to consider. We trust you will enjoy some air-conditioned reading as we move from spring into our humid Hong Kong summer.

Yours sincerely,

Gina Miller
Editor

本刊春季期的封面與以往稍有不同，因為本期《封面故事》就一個令不少讀者有所疑慮的「激進沽空者」現象提出了兩項見解。

對一家公司而言，激進沽空者與黑客無異。他們看準公司的弱點，透過公開狙擊其任何過失（不論真實或捏造），致使其股價下跌。大部分公司對「沽空狙擊」一詞聞之色變，其驚嚇程度就像弄潮兒聽到有鯊魚襲擊一樣。

若仔細觀察，會發現激進沽空者可能是強大的研究團隊，他們熱衷於日以繼夜對不同的公司進行調查，並建立與該等公司敵對的市場地位。他們並非烏合之眾，而往往是聰明機智的專業市場參與者，是市場生態系統的一部分。

《封面故事》首部分探討沽空風險，以及當遇到沽空時公司應有何對策。第二部分由特約作者 Soren Aandahl 撰寫，他於激進投資者公司 Glaucus Research Group 擔任研究總監，該公司對香港市場亦有深遠影響。Aandahl 先生明確闡述了獨立董事在出現沽空時會面對的風險以及應如何作出應對。

今期的其他定期專欄包括，何韋鮑律師行合夥人黃紫玲及見習律師植宇軒在《企業啟示》一欄討論了公司應如何應對監管調查。恒生管理院校長何順文教授在《論點》專欄論述了市場態如何從「股東優先」轉變為「利益相關者價值為重」。而在《經濟透視》欄目中，亞洲開發銀行前首席經濟學家魏尚進就美國經濟政策衝擊造成的不明朗局面發表其觀點。

《財經事務及監管政策委員會專欄》將一連兩期刊登有關風險管理系列，該文由本會財經事務及監管政策委員會主席關保銓執筆。

最後，本期《會員聚焦》的主角是中國跨國龍頭企業光大控股（0165.HK）。作者周振雄與光大控股行政總裁陳爽討論了該公司如何從一家國有企業轉型為國際資產管理及投資大集團。

我們相信本刊春季期提供了大量發人深思的精神食糧，以及不少值得細味的觀點。春去夏來，希望各位讀者在炎炎夏日能享受一邊「嘆冷氣」一邊閱讀的樂趣。

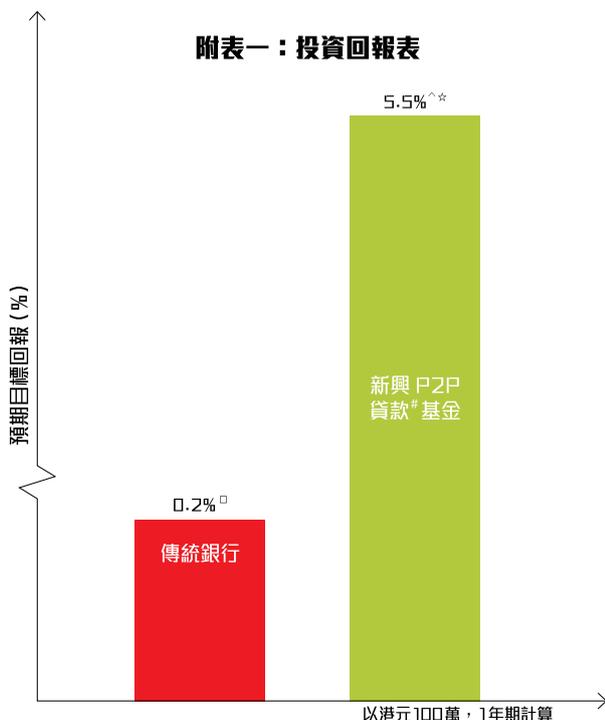
誠致謝意。

Gina Miller
主編

共享經濟

如何為上市企業的存款增值

近年來，共享經濟的影響力日益擴大，而 P2P、眾籌更成為目前共享經濟中快速發展的一種全新金融服務模式，未來，更有望成為繼銀行信貸、IPO 和債券市場直接融資外，實行共享金融理念，服務中小企業和大眾市民的重要融資方式。上市企業如何受惠於共享經濟帶來的可觀機遇？據統計，上市公司囤積數千萬，甚至數億元現金，若上市公司希望將過剩的現金進行投資，並賺取穩定回報提升業績，以盛滙商舖基金(Bridgeway)的全港首個 P2P 貸款[#]基金為例，此基金由盛滙透過集體投資計劃向專業投資者集資，然後經由放債人牌照持牌人 MoneySQ.com 貸款予借款人。若以 1,000 萬投資金額計算，預期一年可獲得約 55 萬目標回報^{^*}，有效為閒置資金穩定增值，有助上市公司業績穩健增長。



盛滙商舖基金投資服務部董事郭志偉先生談到盛滙商舖基金與 MoneySQ.com 聯手推出全港首個眾籌^{*}+ 網貸平台[◇]，聯盟至今約一年間，已成功獲得超過 2 億 5 千萬港元認購，能夠短期內成為投資者及機構投資之選，投資服務部董事郭志偉先生稱多數投資者認為現時環境並不適合進行高風險投資，與其在銀行投放閒置資金去換取低於一厘回報，倒不如投資賺取穩定可觀的回報，同時分散投資風險。

有關眾籌集資：

BRIDGEWAY | 盛滙
盛滙商舖基金管理有限公司
查詢電話：2830 1111 電郵：cs@BWfund.com
網址：www.BWfund.com

企業擬定投資策略 穩健提高回報

郭志偉先生受詢時表示，香港的上市公司大多擁有充裕的流動資金，若選擇合適的投資項目，將大大提高資產回報率。郭志偉先生續分享一例子，如香港某上市公司坐擁逾 1 億元流動資金，打算運用當中 2 千萬作投資用途，佔企業流動現金約 20%，投資 P2P 貸款[#]基金，有可能賺取 5.5%^{^*} 目標回報即約 110 萬。

香港上市公司 A 投資策略分析案例

	銀行定期存款	新興 P2P 貸款 [#] 基金
投資本金	\$20,000,000	\$20,000,000
1 年投資回報	0.2% [□] 即約 \$40,000	5.5% ^{^*} 即約 \$1,100,000

創新的融資模式 為投資者把關

談及投資項目的風險，郭志偉先生表示：「盛滙商舖基金管理有限公司持有香港證監會(第 9 類牌照 — 即資產管理)，可依法營運集體投資計劃，而 MoneySQ.com 創辦人兼行政總裁李根泰先生及其團隊均擁有近 20 年貸款市場經驗，精通貸款市場運作。」盛滙的資產管理經驗，與及 MoneySQ.com 團隊豐富的借貸網絡，兩者聯盟，定能為投資者把關。

創辦人提供個人擔保 令保障更全面

為更進一步保障投資者，MoneySQ.com 與香港唯一信貸資料庫環聯(TransUnion)合作，採用其風險控制系統及大數據分析市場環境，將客戶違約率掌握在預期中，同時 MoneySQ.com 創辦人兼行政總裁李根泰先生對該 P2P 貸款[#]基金附設個人擔保[△]以保障投資者利益。

未來展望

聯盟成立一週年，被問及未來計劃，郭志偉先生認為：「首階段專業投資者不可選擇貸款人，但隨着市場對 P2P 眾籌平台的認識加深，風險管理進一步完善後，或可讓專業投資者與貸款人自由配對，達至真正 P2P 經營模式。」另一方面郭表示來年將持續改善客戶體驗，並繼續以「透過分享，增值財富」為使命，協助投資者及借款者把握每個財富增值的機遇。

[#] 此為間接 P2P 網貸模式。P2P 借貸可採用由投資者直接貸款予借款人的模式，即直接借貸模式，或採用由中介人向投資者籌款然後貸款予借款人，即間接借貸模式。
[△] 該回報率由 MoneySQ.com 創辦人兼行政總裁李根泰先生作出個人擔保
[□] 該回報率以一年期一般定期存款港幣 \$1,000,000 作為參考數據，資料來源：
<https://www.hsbc.com.hk/zh-hk/personal/deposit-accounts/hong-kong-dollar-time-deposit.html>
^{*} 眾籌集資由香港證監會持牌法團盛滙(Bridgeway) 安排
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Short Sale Activists: **Heroes** or **Villains?**

激進沽空：**是正是邪？**

In the realm of politics, the term “activist” can be provocative. Its essential meaning is “a person who campaigns to bring about political or social change”. A “judicial activist” on the other hands, is a pejorative term that implies a judge has failed to apply an impartial interpretation of the law, by applying personal views, rather than basing rulings on precedent.

And then there are the “short-selling activists”, which to someone who doesn’t understand the market, sound like a gaggle of do-gooders, exposing market misconduct. To those more familiar with the market – and to companies who have fallen afoul of activist short sellers, they are usually perceived as a scourge of ruthless operators, trampling good corporate reputations to gain on their position.

But the facts are that short selling provides liquidity to the market, and prevents stocks from being bid up to high levels on hype and blind-optimism; they provide a check and balance to potential corruption.

“Fraud” News Frenzy

The trouble with short-seller activist reports is that markets are as vulnerable to rumour, as President Trump is to complaining about “fake news”. One investor suggested that a short-sale attack was akin to shouting “fire” in a crowded theatre – initiating chaos and sending investors scrambling for the exits.

Most short attacks are delivered via the media: short sellers release their reports to investors, journalists and activists, and then proceed to a public takedown of their target in press interviews and articles.

Investors realise that short-sellers only gain when the company’s shares fall, but once the panic ensues, most will be tempted to at least consider selling their stock before prices fall. And who loses in this equation? The company does, its vendors, subcontractors and subsidiaries might, and shareholders who decided to Hold and got caught when the ship sank – most definitely.

This was most certainly the case of Huishan Dairy Holding stockholders, who saw their share values tumble from HK\$2.80 in December 2016 (where it was holding relatively steady, despite a short sale attack by Carson Block of Muddy Waters) to HK\$0.42 in March 2017.

“I felt bad for the shareholders,” Mr Block said. “But they had three months [since Muddy Waters’ report was released] to sell.”

Following the March plunge of Huishan Dairy, Mr Block enjoyed a little fear mongering. “We have been doing a lot of work on Hong Kong-listed companies, and there might be a big call in the coming weeks,” he said.

They’re Coming for You

It’s all part of the game: inflammatory language and rhetoric swiftly gathers public attention and short sellers increase their stake in the game. So what does management need to know to avoid falling foul of short sellers?

在政治領域，「激進者」一詞頗具爭議。其基本涵義是「為實現政治或社會變革而開展運動的人」。另一方面，「司法激進者」則是一個貶義詞，暗指法官以個人觀點為基礎，而非將先例作為判決依據，未能公正地詮釋法律。

還有一種稱為「激進沽空者」，不了解市場情況的人也許覺得他們是一群揭露市場失當行為的好人，而對於較為了解市場的人和被激進沽空者糾纏的公司而言，他們通常被視為一群冷酷無情的經營者，靠踐踏良好的企業聲譽獲利。

但事實是，沽空為市場提供流動性，防止有人炒作抬高股價及盲目地樂觀；他們對潛在的腐敗行為發揮制衡作用。

「欺詐」消息狂潮

激進沽空者發表的報告所帶來的麻煩是，市場很容易受到謠言的影響，正如美國總統特朗普所抱怨的「假新聞」效應。一位投資者指出，沽空狙擊如同在擁擠的劇院中大喊「火燭啦」，引發混亂，並導致投資者爭先恐後地離場。

大多數沽空狙擊是透過媒體實行的：沽空者向投資者、記者及激進者發表報告，然後在傳媒採訪及文章中公開打擊其目標。

投資者明知沽空者只有在公司股價下跌時才能獲利，不過一旦恐慌襲來，多數人仍忍不住至少考慮在股價下跌前賣出股票。誰會是當中的輸家？公司首當其衝，其次可能是供應商、分包商及附屬公司，而決定堅守並在「船沉」時被套牢的股東必定蒙受損失。

輝山乳業控股股東的遭遇正是如此。該公司股價由2016年12月的2.80港元（當時儘管遭到Muddy Waters的Carson Block的沽空狙擊，但股價仍相對靠穩）暴跌至2017年3月的0.42港元。

Block先生表示：「我很同情那些股東，但 [自Muddy Waters發表報告後，] 他們有三個月的時間去賣出股份。」

3月份輝山乳業股價暴跌之後，Block先生享受了一點製造恐慌帶來的樂趣。他說：「我們針對香港上市公司做了大量研究，在未來數週可能會有大動作。」

下一個目標可能是貴公司

沽空者先用煽動性的言辭迅速引起公眾的關注，然後增加其在遊戲中的賭注，這都是遊戲的一部分。那麼管理層需要注意甚麼，以免遭受狙擊呢？

亞洲著名財經公關集團—金融公關集團（Financial PR Group）高級合夥人韓風先生指出了幾個容易引起沽空者注意的「紅旗」警示風險。

Mr Fung Hon, Senior Partner of Financial PR Group, a leading financial communication group in Asia, points up a few red flags that draw the attention of short sellers.

“From past cases, I would say the short sellers or at least the short selling report researchers are looking at companies who are either seen as ‘too good to be true’ or where reports have indicated questionable credibility on financial figures and company businesses”, he said.

Short sellers do in-depth studies on most available public information, he explained, “including annual reports, sales figures that listco’s subsidiaries filed to the tax bureau, on-site observations, and even interviews with low-to-mid level staff, who may be unaware of their intentions”, said Mr Hon.

And this can lead to devastating results.

“While allegations (of potential corporate fraud) may generally be refuted just as quickly as they are released, companies are often seemingly so stunned and unprepared that they have little time to respond in sufficient detail to quell rising concerns amongst shareholders and regulators”, wrote Chris Fordham, EY Asia-Pacific Fraud Investigation & Dispute Services Managing Partner, in his article “Avoiding Direct Hits from Activist Short-Seller Attacks” published by Momentum in our Spring 2016 Edition.

“And without a timely and persuasive response from the companies, the damage soon becomes entrenched, causing a prolonged drop in the share price, applications for share trading to be halted, calls for independent investigations, lengthy delays in resumption applications and ultimately loss of investor confidence”, he warned.

Some companies are at greater risk than others, said Mr Hon. “Most of the companies under the microscope of short selling players are companies listed in Hong Kong but operating in mainland China”, he said.

“The increase in transparency demands in enhanced auditor’s reports may add to the work burden of the professionals doing the reports but they are critical, because the short sellers will do their own homework and they will identify the companies who are fragile or weak as short selling targets.”

Mr Hon notes there are basic safety measures companies should take to avoid such attacks. First, he suggests that companies check and assess financial details that they may have overlooked in the past. Second, Mr Hon suggests that companies review their own shareholding structure and the mix of individual and institutional investors. “Diverse shareholding will attract short sellers if they discover a financial weakness in the company”, he warns.

他說：「從以往情況來看，我認為沽空者，或至少是沽空報告研究人員，會瞄準那些看起來『好得難以置信』或報告顯示財務數據及公司業務的可信度存疑的公司。」

韓先生解釋，沽空者會對大多數可獲取的公開資料進行深入研究，「包括年度報告、上市公司的附屬公司向稅務局提交的銷售數據、現場觀察，甚至與中低層員工進行面談，而該等員工可能並不知道他們的意圖。」

後果可能不堪設想。

安永亞太詐騙審查及糾紛協調服務主管合夥人霍德傑（Chris Fordham）在其登載於本刊2016年春季期的《嚴防惡意沽空》一文中寫道：「雖然（有關公司可能涉及欺詐行為的）指控通常都能在消息發放後很快被一一澄清，不過，受影響的公司往往顯得驚惶失措，無法於短時間內作出詳盡的回應，以釋除股東和監管機構的疑慮。」

他警告道：「一旦公司未能作出及時和具說服力的回應，其受害程度會迅速惡化，導致股價長期受壓、需申請暫停股票交易、面對做獨立調查的訴求、復牌申請長時間延期等等，最終令投資者失去信心。」

韓先生表示，有些公司面臨的風險尤為巨大。「沽空機構所密切注視的大多均為於香港上市但在中國內地經營的公司。」

「提高核數師報告透明度的要求可能會加重編製報告的專業人士的工作負擔，但這項工作舉足輕重，因為沽空者會做足功課，將脆弱或較差的公司定為沽空目標。」

韓先生指出，各公司應採取一些基本的安全措施以免遭受沽空狙擊。首先，他建議公司檢查和評估過去可能忽視的財務細節。其次，韓先生建議公司檢討自身的股權架構及個人和機構投資者的比例。他警告：「如果沽空者發現公司的財務弱點，股權分散將吸引沽空者。」



Third, Mr Hon urges companies to be cautious about presenting the company's business status and prospects, and finally, he suggests that all companies prepare a contingency plan for potential short selling attacks.

"A lack of transparency is often a red flag for activist short sellers looking to take aim" said Mr Fordham. "Experience tells us that companies that can demonstrate and communicate a zero tolerance to fraud, bribery and corruption, together with strong and visible ethical policies and procedures, are at less risk of becoming the target of an activist short seller attack. If the company is too hard to crack, an activist short seller will move on to an easier target."

He notes, however, that even with the best compliance programmes in place, a company may still face an activist short seller attack, and that it is essential to develop an action plan to deal with the attack.

Defending the Field

Australian corporate law firm Gilbert + Tobin (G+T) recommend caution in responding to a short attack, and notes that directors need to be aware of the public optics of spending shareholder's money to entrench their own position. That does not mean that a company should play dead until their attacker goes away.

"Appoint an investigative committee", suggests G+T. "To the extent you don't know the nature and accuracy of the short attack, you may establish a committee of independent directors (and potentially external members) to review the nature of the attack and assess the general sentiment of investors. This can give confidence to the market that the short sellers' issues are being taken seriously but be mindful of the implications of announcing to the market that a more formal investigation is being undertaken."

The firm also suggests that companies engage external advisers and investor relations firms with experience in responding to short attacks. There are more aggressive measures a company can take, says Mr Hon.

"Consider a trading halt", he said. "A short trading halt may buy time for the company to respond and study the selling rationales from the short sellers or short reports in detail in order to respond directly and in detail", he said.

"Companies should ensure that their response statement is clear and loud, and take proactive approach rather than reactive", said Mr Hon. "and companies can consider other actions, including share buybacks, or redemption of share-back loan by major shareholders".

Finally, if a company wishes to draw blood as well, an increase in dividends might have a positive share price impact and may increase the cost to short sellers if they borrowed shares from other shareholders, suggests Mr Hon.

Is it Enough?

"It has been proven time and time again that bare denials of the claims by an activist short seller are not enough. Companies need to demonstrate concrete proof to refute the claims", said Mr Fordham.

第三，韓先生敦促公司審慎呈列自身的業務狀況和前景。最後，他建議所有公司針對潛在的沽空狙擊制訂應變計劃。

霍德傑先生認為：「若上市公司透明度欠奉，很容易會成為激進沽空者的獵物。根據以往經驗，只要上市公司表明對欺詐、行賄和腐敗等行為零容忍，再加上嚴謹清晰的道德規範和執行情序，激進沽空者能乘虛而入的機會自然大減。如果上市公司沒甚麼痛腳可抓，激進沽空者會另覓一個較易於下手的目標。」

不過，他亦指出，儘管上市公司已經制定了一套最佳的合規守則，仍有可能受到狙擊，那麼擁有一套周詳的應變計劃就十分重要。

積極防守

澳洲企業律師事務所 Gilbert+Tobin (G+T) 建議謹慎應對沽空狙擊，並指出董事需留意公眾如何看待他們以股東的資金鞏固公司自身的地位。這並不意味著公司應該裝死，直至狙擊者離開。

G+T建議：「委任調查委員會。在不知道沽空狙擊的性質和準確性的情況下，可以設立獨立董事（並可能包含外部成員）委員會，調查狙擊的性質並評估投資者的普遍情緒。這可以讓市場相信你們在認真對待沽空狙擊，但同時要注意向市場宣佈進行更正式的調查所帶來的影響。」

該律師事務所亦建議公司聘請具有應對沽空狙擊經驗的外部顧問及投資者關係公司。韓先生認為，公司還可以採取更積極的措施。

「可以考慮停牌。短暫停牌能為公司爭取時間，就沽空者或沽空報告提出的沽出理由作出應對和詳細研究，以便直接詳盡回應。」

韓先生表示：「公司應確保他們的回應聲明清晰有力，並積極主動表態，而非被動應付。公司還可以考慮其他措施，包括股份回購或大股東贖回股份抵押貸款。」

最後，韓先生建議，若公司想先發制人，增派股息也會提升股價，而沽空者如向其他股東借入股份，則會增加沽空成本。

這些措施足夠嗎？

霍德傑先生指出：「事實也一再證明，若上市公司發出的澄清內容空泛，僅僅否認激進沽空者的指控是不足夠的，公司需要拿出實際證據來逐點反擊。」

但韓先生認為，如掌握有力證據，且訂有應變計劃，沽空狙擊反而在某程度上會對公司帶來正面影響。

他說：「沽空一家公司會引起公眾的注意，如公司能巧妙化解，並用事實證明沽空理由沒有任何依據，投資者可能會對該公司的真正價值感興趣。」

But if the proof is available, and a plan of action in hand, a short sale attack may have some (limited) upside, said Mr Hon.

“Short selling of a company will draw public attention and if the company acts with skill, and shows factually that the short selling rationale is no ground, investors may become interested in looking at the true value of that company”, he said.

And there is hope in the form of the Securities’ and Futures Commission (SFC) as well. Although short selling is allowed by regulation, activists that violate regulations and the Securities & Futures Ordinance are subject to the weight of the law and subsequent investigation and judgment by the Market Misconduct Tribunals (MMT).

The most recent case in point was the MMT’s finding that US short seller Andrew Left was culpable of market misconduct for a report that his Citron Research firm published about Evergrande Real Estate Group Ltd. (now China Evergrande Group).

Citron’s report was “false and/or misleading as to material facts or through omission of material facts”, and Mr Left was either “reckless” or “negligent” in putting the report together, said the MMT. As a result, Mr Left was ordered to repay the HK\$1.6 million in profits it had made on the short call, and was banned from the Hong Kong market for five years.

“Having regard to what it considers to be the profound mischief this type of activity can cause, the tribunal is unanimously of the view in this particular instance that this cold shoulder order be for the maximum period of time”, Michael Hartmann, Chairman of the MMT, said.

Fair and Balanced Reporting

While holding a long position and putting out an inaccurate promotional report on a security could be considered (and proven) as market manipulation and illegal, short sellers still add value to the market. The primary source of information on a public company’s financial health is the company’s own public disclosure, and short-sellers provide a market check for investors.

And short sellers have a vested interest in being correct, so it matters little how loud or abrasive their language or reports may seem, the best of them will frighten less-sophisticated corporates into working harder to present bulletproof reports and improve their corporate governance.

Without targets, short selling activists don’t make money. It is, therefore, within every listco’s power to deny them the opportunity. **M**

— Gina Miller
Editor



另外亦可寄望於證券及期貨事務監察委員會（「證監會」）的監管。雖然法例上允許沽空，但違反監管規例和證券及期貨條例的激進者仍會受法律及市場失當行為審裁處相關調查和裁決所約束。

最新的一個例證是市場失當行為審裁處發現美國沽空投資者 Andrew Left 須就其 Citron Research 公司針對恒大房地產集團有限公司（現稱中國恒大集團）發表的報告承擔市場失當行為責任。

市場失當行為審裁處認為，Citron 的報告「在重大事實方面或因遺漏重大事實而屬虛假及 / 或具誤導性」，而 Left 先生提交報告時是「魯莽」或「疏忽」的。因此，Left 先生被勒令償還從沽空中國恒大集團賺取的 160 萬港元利潤，並被禁入香港市場五年。

市場失當行為審裁處主席 Michael Hartmann 表示：「考慮到這種行為可能造成的嚴重損害，審裁處在此特殊情況下一致認為，應把此冷淡對待判令至最長處罰期限。」

公平公正的報告

儘管持有好倉及就證券發佈不準確的宣傳報告可能被視為（及證明屬）操縱市場和非法，但沽空者仍為市場作出了貢獻。上市公司財務健康狀況的資料主要有賴公司自身的公開披露，相當於沽空者為投資者進行了市場監察。

沽空者須所言屬實才能獲利，因此他們的言辭或報告如何激烈或刻薄並不重要，至少他們會嚇得不太成熟的公司花費更多精力提交經得起審查的報告並改善企業管治。

激進沽空者要獲利就會尋找目標。因此，每家上市公司需盡其所能杜絕他們有任何可乘之機。 **M**

— Gina Miller
主編

The Guardian's Duty

監護人的責任

What should an independent non-executive director do when a short seller publishes a negative opinion about a public company? The initial instinct of many independent non-executive directors may be to dismiss, out of hand, a short seller's opinion and rally blindly behind management. But this is a mistake.

Independent non-executive directors have a fiduciary duty to shareholders to engage in an honest, critical and independent assessment of any evidence presented by short sellers of company misconduct. It is our opinion that in most cases, independent non-executive directors are too close to management, too dismissive of short seller claims and too scared to fulfil their duties. But directors ignore evidence of corruption, accounting malfeasance or misconduct at their own risk. Ignoring such evidence or dismissing it out of hand will only increase the liability and shame on a director once the truth comes to light.

The Reasonable Bias of Short Sellers

There are many misconceptions about short sellers, but perhaps the biggest is that a short seller's opinion should be dismissed because they are biased. First of all, any good short seller will immediately admit that because they have a short interest in a company's stock, they are biased. However, just because they are biased, it does not follow that they are wrong.

Independent public company directors, just like investors, must recognise that everyone with a financial interest in the company's stock is equally biased. Company management is biased towards promoting their company's stock. The banks which produce "sell-side research" on a public company are equally biased towards promoting public companies – they know that negative research will risk losing coveted investment banking business, so they are strongly incentivised towards only issuing positive research. Even auditors (especially auditors close to management), are biased towards avoiding any evidence that their past audits may have missed evidence of fraud or misconduct. Shareholders, whether they admit it or not, are as biased as a short seller in seeing a company's share price go up.

So simply dismissing a short seller as biased is a disservice to the role of independent non-executive directors in protecting shareholder interests. The other problem with dismissing shorts is that such an attitude ignores the time, effort and intelligence it takes to produce consistently excellent short ideas.

當沽空者對上市公司發表負面看法時，獨立非執行董事應該做些甚麼？很多獨立非執行董事的第一反應可能是不假思索地否定沽空者的意見，盲目地支持管理層。但這是錯誤的。

獨立非執行董事對股東負有受信責任，應該對沽空者就公司不當行為提出的任何證據進行誠實、審慎及獨立的評估。我們認為，在大多數情況下，獨立非執行董事與管理層過於親密，太過輕視沽空者的質疑，也不敢履行職責。但若果董事無視腐敗、會計濫職或不當行為的證據，風險自負。一旦真相大白，忽視或第一時間否定有關證據只會加重董事的責任及恥辱。

沽空者的合理傾向

市場對沽空者存在許多誤解，但也許最大的誤解是沽空者的意見有特定傾向，因此應該不予理會。首先，凡是善意的沽空者都會立即承認，由於他們在有關公司的股票中擁有沽空利益，因此他們的意見具有特定傾向。然而，不能單憑具有特定傾向而斷定這些意見是錯誤的。

上市公司的獨立董事與投資者一樣必須認識到，在公司股票中擁有經濟利益的每個人同樣具有特定傾向。公司管理層偏向提高公司的股價。提供上市公司「賣方研究」報告的銀行同樣傾向於抬高上市公司的股價，他們很清楚，負面研究報告有可能導致失去令人垂涎的投資銀行業務，所以他們有極強的動機僅發佈正面的研究結果。即使是核數師（尤其是與管理層關係密切的核數師），在面對任何證據表明他們之前的審計過程可能忽略了欺詐或不當行為等證據時，亦傾向於選擇迴避。股東（無論他們承認與否）與沽空者一樣也存有偏頗，希望公司的股價上升。

因此，單單以存在偏頗為由而不理會沽空者的意見，會損害獨立非執行董事在保障股東利益方面發揮的作用。而另一個問題是，這種態度無視沽空者在發表一貫合理的沽空意見時所運用的時間、精力及才智。

我們在企業管理不善調查方面的投入

沽空者通常會耗費數百小時去研究一家上市公司，然後才公开发表其投資意見。這個研究過程往往很繁複。沽空者一般從全面的量化篩查過程開始，以識別上市公司財務報表中的異常數據。他們試圖尋找一些「紅旗」風險警示，可能是股價三年內無故上升逾200倍，或是利潤率與同處商品化環境的同行有明顯差異等各種問題。

Our Investment in Corporate Mismanagement

A short seller usually spends hundreds of hours researching a public company before it ever speaks publicly about its investment opinion. This research process is often arduous. Short sellers typically begin with a comprehensive quantitative screening process that identifies outliers in a public company's financial statements. They are looking for red flags. This can be anything: a stock price which has inexplicably appreciated over 200 times in three years, or profit margins that are significantly different from a peer in a commoditised space.

For example, in 2013 Glaucus conducted research into China Metal Recycling (HK: 773), one of the largest frauds ever to trade on the Hong Kong Stock Exchange. Following the Glaucus report, China Metal Recycling was delisted and subsequently liquidated. Judge Jonathan Harris, who presided over the liquidation, said that there was "compelling evidence... of industrial-scale fraud".

Glaucus initially focused on China Metal Recycling because, in its quantitative screening process, it noticed that the company claimed to generate US\$11million of revenue per employee; this was a worker productivity rate that was eleven times the revenue generated by its closest competitors, and almost six times the revenue per employee generated by the tech-giant Apple Inc. (at US\$2million per employee) – generally regarded as one of the world leaders in yield per employee.

This was simply not believable. By industry standards, China Metal Recycling's performance was so fantastic that it appeared too good to be true. But short sellers do not just stop at discovering one red flag. Rather, finding a red flag is often the starting gun, kick-starting a months-long investigation to understand a public company.

From Red Flag to Data Mining

After quantitative screening, the second step is an in-depth analysis of a public company's financial statements, annual reports, disclosures, investor presentations, and conference-call transcripts. This step is long and arduous, but is necessary to understand a public company and the reason that any investor might have to buy its stock.

Finally, short sellers typically look to publicly available sources of independent data, such as data from China's ministry of environmental protection or the SAIC (the State Administration for Industry & Commerce) offices. For example, in the case of China Lumena (HK: 0067), SAIC filings from the company and its largest customer revealed that Lumena's sales and profitability were 90% less than it was reporting to investors. Lumena was subsequently delisted and liquidated by its creditors.

Independent non-executive directors need to understand that for most of the professional short sellers, hundreds of hours of time, research and effort go into formulating an investment opinion. They should also understand that short sellers never speak lightly and rarely really (rely?) on one single data point; most short opinions are based on the cumulative weight of a mountain of independent evidence. Short sellers do not just short on one red flag alone, but typically multiple, independent data points which each suggest the same conclusion: that a public company's trading price deviates significantly from the underlying value of the company's stock.

例如，2013年 Glaucus 對中國金屬再生資源（HK：773）進行研究，這是港交所上市公司最大的欺詐案例之一。於 Glaucus 發表報告之後，中國金屬再生資源被除牌，最終被清盤。主持清盤的法官 Jonathan Harris 表示有「產業規模欺詐的……有力證據」。

Glaucus 一開始留意中國金屬再生資源，是由於在量化篩查過程中注意到該公司聲稱每名僱員創造的收入為 1,100 萬美元；該工人生產率是該公司最大競爭對手所得收入的 11 倍，幾乎是科技巨頭蘋果公司（它通常被視為全世界每名僱員所創收入最高的公司之一）每名僱員所創收入（即每名僱員 200 萬美元）的 6 倍。

這根本不可信。按照行業標準，中國金屬再生資源的表現超卓，業績之佳令人難以置信。但是沽空者並不會只發現一個「紅旗」風險警示便收手。相反，這僅僅是個開始，為期數月的調查隨後啓動，以透徹分析一家上市公司。

從「紅旗」風險警示到數據挖掘

量化篩查之後，第二步是深入分析上市公司的財務報表、年度報告、披露資料、投資者簡報及電話會議記錄。這個步驟既漫長且繁重，但卻是個必要的步驟，以了解某家上市公司以及任何投資者要買入其股票的理由。

最後，沽空者通常會調查公開的獨立數據，例如來自中國環境保護部或國家工商行政管理總局辦公廳的數據。例如，在中國旭光（HK：0067）案例中，該公司及其最大客戶向國家工商行政管理總局提交的資料顯示，旭光的銷售和利潤率較其向投資者匯報的數額低 90%。最終旭光遭除牌，並被其債權人清盤。



Independent non-executive directors also need to understand the courage it takes for a short seller to issue a contrarian opinion. It is often a lonely job of speaking in a public forum in which almost all of the other parties (management, the auditor, shareholders, investment banks, other analysts) are predisposed to disagree and attack the short seller.

If an independent non-executive director appreciates the lengthy and careful due diligence process that is behind a short opinion from a professional investor, they would not be so quick to dismiss it.

INED's are there to Serve the Market

Independent non-executive directors must remember the function they serve in the capital markets. It is tempting to appear at board meetings a couple times per year and rubber stamp the actions of management, but the role of an independent non-executive director is so much more important. Independent non-executive directors are gatekeepers, and in theory, they safeguard and protect shareholders by holding management accountable. And because independent non-executive directors have access to much more information than any investor or shareholder, they are in the best position to ensure that management is transparent and honest.

So if a short seller knocks on the door, independent non-executive directors should not dismiss critical opinions or negative evidence out of hand. First, they should seek independent counsel or attorney who can offer a fair and unbiased evaluation of not only the short seller's opinion, but also management's response. If management is highly aggressive, sensitive to criticism, and prone to lashing out at short sellers, it is an indication that management is hiding something. After all, great companies do not care if someone is criticising them – they focus on building a great business and know that in the long run, their stock price will reflect the quality of their work.

If the advice of independent counsel indicates that the short sellers raised credible questions with regard to the company's disclosures, conduct or integrity, it is then incumbent on independent non-executive directors to appoint an outside auditing firm to conduct a truly independent inquiry into the evidence of misconduct or malfeasance.

This work is generally required to fulfil an independent non-executive director's fiduciary duties; more importantly though, it is good for the company. If an outside firm conducts a rigorous and independent inquiry, then a positive result will only enhance shareholder conviction that the company is healthy and management honest.

So the next time a short seller comes calling, independent non-executive directors should open their minds, abandon their defensive instincts, and embrace their roles: which is not to rubber stamp management, but to be a truly independent voice defending the interest of shareholders. **M**

— Soren Aandahl

Director,
Research of Glaucus Research Group
CIO,
Glaucus Investments.

獨立非執行董事們要知道，就大多數專業沽空者而言，形成投資意見需要投入數以百小時的時間、研究及精力。他們亦須明白，沽空者從來不會輕率地、也很少依賴單一個數據點發表意見；大部分沽空意見乃依據大量的獨立證據反覆論證得出。沽空者不僅僅就一個「紅旗」風險警示進行沽空，而通常是根據多個獨立的數據點，且每個數據點均得出相同結論：即上市公司股票的成交價與其相關價值相差甚遠。

獨立非執行董事也要明白，沽空者發表逆向意見所需的勇氣。在公開場所，幾乎所有其他方（管理層、核數師、股東、投資銀行、其他分析師）均傾向於反對並攻擊沽空者，因此沽空者往往孤立無援。

若獨立非執行董事了解到專業投資者提出沽空意見背後的冗長而謹慎的盡職審查過程，就不會這麼快地予以否定。

獨立非執行董事應為市場服務

獨立非執行董事必須牢記他們在資本市場上的職能。每年在董事會會議上露幾次臉和例行公事地批准管理層的行動確實十分吸引，但獨立非執行董事的職責相對重要得多。獨立非執行董事是守門員，理論上要透過責成管理層忠於職守，以維護及保障股東。由於獨立非執行董事可獲得的資料遠多於任何投資者或股東，他們是確保管理層透明及誠實的最佳監督者。

因此若沽空者發出警示，獨立非執行董事不應不假思索地忽略批評意見或負面證據。首先，他們應尋求獨立顧問或律師的意見，該等人士可以對沽空者的意見及管理層的回應進行公平和不偏不倚的評估。倘管理層反應激烈，對批評敏感，而且偏向抨擊沽空者，則顯示管理層有所隱瞞。畢竟，優秀的公司不會在乎是否有人批評他們，他們只專注於建立一家出色的企業，並且知道長遠而言他們的股價將反映其努力成果。

假如獨立顧問的意見表明，沽空者對公司的披露資料、行為或誠信提出的質疑可信，獨立非執行董事就有義務委任外部核數師行對不當行為或瀆職行為的證據進行真正獨立的調查。

這項工作通常是為履行獨立非執行董事的受信責任而做；但更重要的是，這對公司有益。外部核數師行進行嚴格、獨立的調查後，如果得出正面結果，只會令股東更加確信公司發展健康且管理層誠實可信。

所以下一次當沽空者發出警示時，獨立非執行董事應敞開心胸，放棄自我保護的本能，勇於承擔自己的職責，不要例行公事地聽命於管理層，而要以真正獨立之言維護股東利益。 **M**

— Soren Aandahl

研究總監
Research of Glaucus Research Group
資訊總監
Glaucus Investments

HONG KONG
Corporate Governance
EXCELLENCE AWARDS 2017 香港公司管治卓越獎

Venue : Ballroom, Conrad Hong Kong

Date : 14 December 2017 (Thur)

Hong Kong Corporate Governance
Excellence Awards 2017
2017年度香港公司管治卓越獎

表揚卓越公司管治和持續發展表現
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2. 恒生綜合指數成份股公司 (不包括角逐類別一之公司)
3. 其他主板及創業板公司
4. 恒生中國(香港上市)100指數成分股公司(不包括角逐類別一之公司)
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截止提名期為八月十八日；評選結果將於十二月十四日公佈。

* 新上市公司指於參選獎項年份前三年內上市

詳情及下載提名表格，請登入 www.chkcl.org

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香港上市公司商會秘書處



Simon SM Ho
President
Hang Seng Management College
何順文
恒生管理學院
校長

TALKING POINTS 論點

From Shareholder Primacy to Stakeholder Model: New Mindset and Practical Measures

從股東至上到持份者模式：新思維與實際措施

In the past few decades, the single-minded pursuit of short-term profits and maximised shareholders' values (MSV) demonstrated by many corporate executives at the expense of the interests of non-shareholder stakeholders (such as employees, customers, the community and the environment) has been responsible for many problems of today's rotten capitalism. Such behaviour has led to market instabilities, wider income gaps, and more conflicts between corporations and the general public.

One major faulty assumption of this MSV belief is that directors and executives are, by law, the agents of shareholders only, with a fiduciary duty to maximise their values only. The truth is that MSV is merely a common practice or market norm, rather than a law or a regulation. Recent new "constituency statutes" and court cases in North America clearly indicate that directors and executives have fiduciary duties to all relevant stakeholders.

To maintain the legitimacy and sustainability of capitalism, over the past decade, reflections, explorations and movements have emerged in the European and North American countries in the direction of actively converting the "shareholder primacy" model to the "shareholder-based" governance model. There is growing belief by the public that corporate executives should balance the interests of various stakeholders, apart from shareholder interests.

Fallacy and Consequences of MSV

Shareholder primacy and MSV both rest on the assumption that markets are highly efficient and function in a state of free and fair competition. Sadly, this is not the case in today's complex and distorted business environment in which imperfect markets and market failures prevail. Even making money legally and ethically can harm certain social interests, generating social costs such as environmental pollution and unemployment.

在過去幾十年，很多企業高層只顧單一地追求短期利潤和股東價值最大化（Maximizing Shareholders' Values，簡稱MSV），犧牲了非股東持份者（如員工、顧客、公眾及環境）的利益，是導致今天許多腐敗資本主義問題的原因。這些行為已導致市場不穩定、收入差距擴大、以及企業與公眾之間的更多衝突。

MSV信念的一個錯誤假設是董事及管理高層在法律上只是股東的代理人，只向股東負上受信責任確保股東價值最大化。但事實上這只是一個習慣觀念或市場常規而非法規。近年北美一些新的州立法及法庭個案已清楚說明董事及高層必須向所有不同持份者負受信責任。

為了維持資本主義的正當性及可持續性，過去十多年歐美各國出現了一些反思、探索和運動，積極將「股東至上」模式轉變為「持份者為本」管治模式。大眾越來越相信企業高層不應只專注於股東利益，亦應平衡不同持份者的利益。

MSV的謬誤和後果

股東至上和股東價值最大化均假設市場非常有效率，並在自由和公平競爭的狀態下運作。不幸地，在今天複雜和被扭曲的商業環境中，情況並非如此，不完全市場與市場失效乃司空見慣。即使守法合德地賺錢也可能損害某些社會利益，產生社會成本，如環境污染和失業。

自20世紀中，視股東至上和追求MSV的概念在商界頗為普遍，並在商學院內廣泛傳授。一些長期存在的誤解導致了MSV被廣泛依從，包括認為法律上董事及管理高層，只向股東負上受信責任。

Since the mid-twentieth century, the belief in shareholder primacy and MSV has been embedded in the business sector, and is widely taught in business schools. Certain long-standing misconceptions have contributed to the broad adherence to MSV, including the belief that directors and executives are, perceived by law, the agents of shareholders alone with a fiduciary duty to maximise their value.

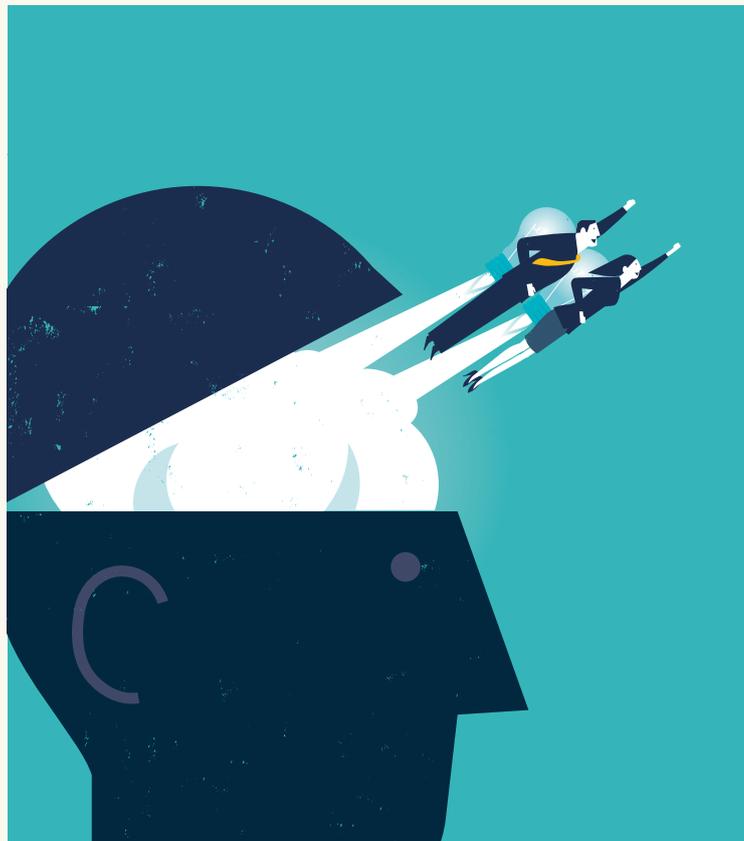
In fact, corporate laws in most markets have granted certain privileges to shareholders, including the right to sell their shares at any time, while other stakeholder groups are unable to terminate their relationship with corporations at any time so easily.

One of the unfortunate consequences of the MSV fallacy is that many senior executives focus on the stock market alone, overlooking the importance of the product market. Executive remuneration and share-option schemes have offered excessive and unjustified compensation to senior executives (for instance, in 2012, CEO compensation in the US could be 350 times that of a regular employee), encouraging them to take high risks to pump up the share price in the short term. In line with the MSV concept, corporations have the propensity to implement policies that allow for a surge in corporate borrowing, high dividends and frequent share repurchases, and reduced investments in product R&D.

A study published in *The Economist* found that the doubling of stock repurchases in recent years had led to an 8% fall in corporate R&D spending. Furthermore, under the impetus of MSV, the average stockholding period of institutional investors in S&P 500 companies has fallen from an average of eight years in the 1960s to just four months today. The average lifespan of corporations has also declined, falling from 55 years in the 1950s to 15 years at present. Several empirical studies have shown that a singular focus on MSV leads to myopic management, and adverse effects on long-term shareholder gains, growing macroeconomic instability and financial market fluctuations.

Social Contract and Balance of Interests

In fact, corporations (or “companies”) have existed for around 2,000 years. They originated in Western Europe where only companies dealing in public utilities (such as water supply or canal construction) were eligible to incorporate as a legal person, and their operations were restricted in terms of business duration and scale. They initially served as essential social institutions, obliged to adhere to a social contract, which consider the interests of a range of stakeholder groups as well as lawfully making profits.



事實上，很多經濟體的公司法已給予股東一些特權，包括股東可隨時變賣其股份，但其他持份者並不能隨時及容易地終斷他們與公司的關係。

MSV 謬誤的其中一個不幸後果，就是導致很多企業高層只專注於虛擬的股市而輕視真實的產品市場。過份或濫用的高管股票期權薪酬計劃令到管理層過份冒險以爭取短期股價上升，也導致過高不合理的薪酬（例如在美國2012年，一個CEO的薪酬可以是一個普通員工的350倍）。在MSV的理念下，企業傾向實行高借貸、高股息及頻密回購股份的政策，但減少產品創新研發的投資。

《經濟學人》有證據顯示，近年的雙倍回購股份支出令企業的研發支出減少約8%。此外，MSV也令機構投資者對S&P500公司的持股期由60年代的平均八年跌至現今的四個月，而企業的平均壽命由50年代的約55年減至現今的15年。實證研究結果也顯示，企業單一著重MSV導致很多短線投機行為，對股東的長遠回報反而有負面影響，也嚴重導致宏觀經濟不穩和金融市場的大幅波動。

社會契約與平衡利益

註冊有限公司（Corporations or Companies）已有二千年的歷史，起初在西歐只有公用事業組織（如供水或興建運河）可獲此法人註冊資格，其營運有一定

Corporations today, by contrast, enjoy a variety of privileges hitherto unavailable. These include unlimited lifespan, limited liability and the right to own shares in other corporations. Unfortunately, many have gradually become mainly moneymaking machines orientated towards the profits of shareholders. Only through a return to the original concept of corporations can we forge mutual trust and beneficial relationships amongst corporations, governments and societies.

Accordingly, there have been growing calls to return to a corporate concept that has fallen out of vogue, that is, social contracting theory and stakeholder model. There is also growing belief by the public that corporate executives should not concentrate solely on shareholder interests through profit maximisation, but should also balance the interests of various stakeholders to earn reasonable and sustainable (rather than maximised) profits. Stakeholder theory posits that non-shareholder stakeholders should be consulted on the major decisions that companies take.

R. Edward Freeman, one of the first advocates of stakeholder theory, defined stakeholders as all parties engaging in a reciprocal relationship with the corporation and who are vital to its survival and success. He identified six such stakeholder groups: shareholders, management, employees, customers, suppliers and the local community (including the environment). These groups have the right to demand the management to take certain actions, and they expect not to be treated as the mere means to an end.

Based on stakeholder theory, Freeman further developed the Doctrine of Fair Contracts with the purpose to provide a fair and efficient way of dealing with the potential conflicts of interests that may arise among stakeholders. The parties involved in developing policies and agreements should not be able to predict the effects that those policies/agreements will have on themselves and others, thus helping to ensure fair treatment for all parties.

Despite its rigorous arguments and practical feasibility, however, stakeholder theory has several limitations. For example, difficulties may be encountered in determining who should be classified as a relevant stakeholder, and it is difficult to determine whose interests should be accorded priority. Therefore, academia needs to continue develop guidelines and practical methods based on the theory.

Advocating Stakeholder-based Governance

Over the past decade, a number of companies have been practising charitable corporate social responsibility (CSR) and creating shared value (CSV) initiatives, both of which aim to improve the public impression of business and to increase public values. However, if a corporation is predominately concerned with shareholders' interests, and has little regard for other stakeholders' perspectives, pouring resources into CSR/CSV is likely to have little effect as the root cause of many current problems still remain.

In sum, we need to put an end to shareholder primacy and create a new social norm. To these ends, the author of this paper has been advocating a new stakeholder-based governance model including at least the following practical measures:

年期和規模的限制。它們是社會的一個重要組成機關 (Social Institution)，要遵從一些社會契約 (Social Contracting)，除守法賺錢外，還要照顧不同持份者的利益。

相比之下，現今企業擁有一些以前沒有的特權，這包括無限壽命、有限責任及可以擁有其他公司股份的權利。不幸地，不少企業逐漸演變成股東盈利主導的賺錢機器。只有透過回到公司的最原始概念，我們才可以構建企業、政府與社會之間的互信共贏關係。

因此，社會上不斷有爭議應重回昔日曾採用的企業理論，即社會契約論與持份者理論。大眾越來越相信企業高層不應只專注透過利潤最大化來保障股東利益，亦應平衡各持份者的利益以賺取合理和可持續利潤（而不是「賺到盡」）。持份者理論認為企業作重大決策時應諮詢非股東持份者的意見。

費里曼 (R. Edward Freeman) 是最早推動持份者理論的其中之一人。他界定「持份者」為所有與企業有相互關係並對企業成敗有重要影響的人。他的模式包括六類持份者：股東、高層、員工、顧客、供應商及社區（包括環保）。他們對企業管理層的決策有參與權，並且期望不會只被視為賺錢工具或手段。

費里曼根據持份者理論創立「公平合約學說」 (Doctrine of Fair Contract)，以公平有效地處理不同持份者團體之間的潛在利益衝突。所有參與制訂政策或協議的單位，須在達成協議前不能預計到商議的結果，及對自己及他人有何影響。這可確保所有參與者受到公平對待。

持份者理論雖有嚴謹的論據及實務上的可行性，但它仍有一些限制。例如界定誰是有關的持份者有一定困難，也不容易釐訂那些持份者的利益應享有優先考慮。因此學界還須繼續設立一些更切實可行的框架與方法以落實持份者理論的精神。

倡議社會契約與持份者為本管治

在過去十年，一些企業從事公益性企業社會責任 (Corporate Social Responsibility, 簡稱 CSR) 及創造共享價值 (Creating Shared Value, 簡稱 CSV) 活動，兩者都旨在改善大眾對商界的印象及增加公共價值。然而，如果企業只專注於股東利益、不著重持份者的看法，即使大幅投入資源於 CSR 或 CSV，其效果可能很有限，因很多當前問題的根本原因仍然存在。

總括來說，我們需要結束以股東利益為上的市場慣例，並創造一個新的社會規範。為此，筆者倡導一個新的以持份者為本的管治模式，其中包括至少以下實際措施：

- 透過修訂相關法規，確保企業將董事及管理高層的法定受信責任擴展至其他主要持份者，以容許非股東持份者有法律權利以集體訴訟挑戰董事會決定。

- ◆ To revise relevant laws and regulations ensuring that corporations extend the fiduciary duty of directors and executives to include other major stakeholders; allowing non-shareholder stakeholders to exercise their legal rights to file class actions against board decisions;
- ◆ To reform the structure of boards of directors to include at least one representative of their employees in the board composition, with the board gradually growing to include representatives of other non-shareholder stakeholder groups;
- ◆ To form a Stakeholder Advisory Council comprising different stakeholder groups to discuss future development directions and to seek feedback on major decisions;
- ◆ To reform the executive compensation scheme which should be based on company product market performance, and non-shareholder stakeholders and other non-financial performance indicators' assessments (rather than stock price performance mainly). The issuing of executive stock options should also be phased-out gradually;
- ◆ To compensate the operational level employees reasonably by committing a minimum of some 30% of the corporation's annual net profit as staff bonus; thereby reducing pay gaps to a more reasonable level. Corporations should also set a more reasonable basic pay for front-line employees (including a competitive minimum wage) and optimise the benefits of retirees; and
- ◆ To undertake at least one sizeable social innovation project related to their core businesses at any one time to help resolve some pressing social problems and enhance corporate profits. Innovation projects could be developed by the corporation or in collaboration with other stakeholders and/or sectors, including other mainstream corporations, NGOs, social enterprises and benefit corporations.

Changes in the Values of Business as Force for All-Win

We hope the engines of global capitalism will be fundamentally revamped going forward.

Returning to the social contracting theory and the stakeholder-based governance model requires a transformation process. One way to begin the reform is for every corporation to take concrete, measurable steps. That transformation process relies on some trail-blazing businesses and academic leaders to create a reform power base.

This goal can be accomplished by educating university students on the concepts of the social contract and the participatory role of various stakeholders.

To nurture responsible global business leaders for the twenty-first century and help restore the core values of the free-market economy, we need to make a concerted effort to redefine the objectives and responsibilities of corporations. Only in this way can we attain a promising future for a free-market economy and university management education. **M**

The article only represents the author's personal views.



- ◆ 改革董事會的組成，將至少一個席位撥給員工代表，再逐步納入其他非股東持份者代表。
- ◆ 設立一個持份者諮詢議會（Stakeholder Advisory Council），由不同持份者代表組成，共同商議企業的未來發展方向和對重大決策作諮詢。
- ◆ 改革管理層薪酬獎賞制度，建議將獎賞機制與公司產品市場表現、及非股東持份者與其他非財務表現指標的評價（而非只是股價）作掛鈎，並逐漸取消發行高層股份期權獎賞計劃。
- ◆ 給予普通員工合理的薪酬，公司高層可承諾將每年的純利，如不少於百分之三十作為中下層員工花紅獎賞，因此最高層與低層員工的薪酬差距縮小至較合理水平。企業亦應給予前線低層員工更合理的待遇（包括提升最低工資），及優化員工的退休福利。
- ◆ 建議企業高層在任何一個時間推行至少一個與核心業務相關的大型社會創新計劃，以幫助解決某些急切社會問題及提高企業利潤。這些創新計劃可以由企業單獨進行，或聯同其他持份者及/或界別，包括其他企業、NGOs社企及共益企業（Benefit Corporations）。

企業追求共贏的價值改變

重回社會契約與持份者為本模式需要一個轉化過程，企業採取踏實的措施就是第一步。

此過程有賴地區內有遠見智慧的商界領袖與商學院學者作出先行者的角色，率先帶領整個運動的推進。

這個目標可以透過教育大學生有關社會契約概念及不同持份者的參與角色來實現。

要培養21世紀負責任的商界領袖及恢復自由市場的核心價值，我們必須重新確定企業的目的和責任。只有這樣，我們才可看到自由市場與大學管理教育的未來。 **M**

文章只代表筆者個人意見。



監管調查

您準備好了嗎？

實用要訣事例

Since the 2008 financial crisis, governments around the world have responded by increasing regulatory scrutiny of the financial services industry. Hong Kong, as a financial centre, is no exception to this general trend. In the past few years, our Regulatory practice at Howse Williams Bowers has seen not only more, but also more aggressive, investigations by financial regulators. These investigations need to be handled with care, otherwise the financial repercussions and reputational risks could be severe.

In this article, we take a step-by-step approach and share what proactive, rather than reactive, steps banks, corporations and financial institutions (in this category, we include Hong Kong listed companies) should take when handling regulatory investigations.

自2008年金融危機以來，世界各地政府均加強對金融服務業的監管審查。香港身為金融中心，亦無法置身於這個大勢之外。過去幾年，本行一何韋鮑律師行的法例監管團隊注意到，金融監管機構所進行的調查不僅更為頻密，而且愈趨進取。所以，您必須審慎處理此類調查，否則可能會對您的企業之財務及聲譽帶來負面影響。

在此文，我們會按部就班地，分享銀行、企業及金融機構（我們將香港上市公司納入此一類別中）在應對監管調查時可借鑒的積極（而非被動）的措施。

First: Know your Regulator

It has become increasingly common that an institution may face multiple regulatory enquiries at the same time. For instance, it is possible for a listed company to face enquiries running in parallel from the Hong Kong Stock Exchange in relation to the Hong Kong Listing Rules and from the Independent Commission against Corruption in relation to potential corruption and bribery allegations.

Accordingly, you should know precisely which Hong Kong regulators or authorities might have investigation powers over your business and activities, and understand the nature and extent of their powers.

Your senior managers will usually want to know if the institution is at risk (that is, considered a “suspect”) or if the regulator, for instance, the Securities and Futures Commission (SFC), is merely looking for provision of information (that is, considered a mere “witness”).

As an example, for a broker that is primarily regulated by the SFC under the Securities and Futures Ordinance (Cap. 571) (SFO), it is important to know the difference between a notice under section 181 of the SFO (section 181 notice) and a notice under section 183 of the SFO (section 183 notice).

A section 183 notice may indicate that the broker, or its employees, is being investigated by the SFC. A section 181 notice, on the other hand, is usually a more innocuous request for information relating to particular transactions by the broker’s client, which may indicate that it is the client who is under investigation.

Subsequently, depending on the powers invoked by the regulator, an institution’s approach – and the attitude of senior management – may differ substantially.

Second: Assess the Situation

At the start of an investigation, for instance, when an institution is presented with a search warrant or a statutory notice, the regulator is unlikely to give much indication as to the details or direction of its investigation; nevertheless, an institution should try to conduct an assessment of its case and identify any potential vulnerability. Bringing in experienced external counsel at this time, if not earlier, is often useful.

Create a Designated Team

To begin, a small and focused team, usually comprising of in-house lawyers and senior management, should be set up to handle matters related to the investigation, including liaising internally and externally with external counsel and the regulator. The fact that the institution is subject to a regulatory investigation should be kept amongst the designated team, as the institution may be bound by secrecy obligations not to disclose the existence of and the content of the investigation.

Filter Information

Information relevant to the subject of investigation should be gathered and should not be tampered with or destroyed. Once gathered, the team should consider whether assistance from IT experts or other professionals is needed, as they may be able to filter out irrelevant information quickly and efficiently, reducing the number

第一步：了解您的監管機構

今時今日，一間企業同時面對多宗監管查詢的情況越來越常見。例如，一間上市公司有可能同時接受香港聯交所就香港《上市規則》提出的調查及廉政公署就潛在貪污及賄賂指控的調查。

因此，您必須確切知道哪些香港監管者或機構有權調查您的業務及活動，並應了解其權力的性質及範圍。

一般而言，企業的高級管理人員會希望了解企業是否面臨風險（即被視為「疑犯」），或監管機構，如證券及期貨事務監察委員會（證監會）等，是否僅要求提供資料（即僅被視為「證人」。）

舉例說，對於主要受證監會根據《證券及期貨條例》（香港法例第571章）（《證券及期貨條例》）監管的經紀公司而言，有必要了解根據《證券及期貨條例》第181條發出的通知（第181條通知）與根據《證券及期貨條例》第183條（第183條通知）發出的通知有何區別。

第183條通知可能表示有關經紀公司或其僱員正被證監會調查。相反，第181條通知通常是一個相對單純，就有關經紀公司客戶所涉及的某交易的提供資料要求，並可能表示受調查方是經紀公司的客戶。

隨後，企業採取的做法及高級管理人員的態度可能因應監管機構所行使的權力而迥然不同。

第二步：評估情況

在調查開始時，例如當監管機構向企業出示搜查令或法定通知時，監管機構不會透露太多有關調查的詳情或方向；但相關企業應嘗試評估情況，以鑒別其情況有何弱點。在此時（如之前還沒有）引入有經驗的外部律師往來可以有效幫助企業處理與調查相關的事宜。

成立專責團隊

首先，為處理與調查相關的事宜，包括處理內部聯繫和與外部律師及監管機構的外部聯繫，有關的企業應成立一支小型專責小組，其成員通常由內部律師及高級管理人員組成。企業受監管調查一事應只讓專責小組成員知道，因為企業可能受保密責任所約束，不得披露調查的存在及其內容。

篩選資料

與調查項目相關的資料應被收集，並不應篡改或銷毀。資料一經收集，專責小組應考慮是否需要尋求資訊科技專家或其他專業人員的協助，他們或能夠快速、高效地過濾不相關的資料，減少需要逐份審閱文件之數量。聘用該等專家可能為一項值得花費的開支，他們或能加快及加深您對調查的了解，及儘早鎖定任何弱點或風險。

考慮司法管轄區以外的證據

香港法律一般沒有域外管轄權。例如，證監會透過第183條通知迫使某人士提供文件或出席會面的權力，在香港以外並無效力。因此，如果某些文件不在香港境內

of documents that require individual review. Engaging such experts may be a worthwhile expense in helping you to get ahead of the investigation and identify any vulnerability or risks at an early stage.

Consider Out of Jurisdiction Evidence

You should note that Hong Kong laws are generally not extra-territorial. For instance, the SFC's power to compel a person to produce documents or attend interviews under a section 183 notice does not have effect outside Hong Kong. Therefore, if certain documents are not in Hong Kong, which may be common for multinational companies, you need to consider whether they should be brought to Hong Kong and within the reach of the regulators. A word of warning here: despite these seemingly straightforward concepts, jurisdictional issues can be complicated, so do not attempt to analyse this without legal advice.

Interview the Staff

In our experience, some employees resign when they suspect the existence of an investigation, especially if they worry about their involvement in the activities being investigated. This may create a barrier to the institution's ability to gather and provide relevant information to the regulators. An institution should consider whether and how to interview outgoing employees who may have relevant information. Often, this is done with the involvement of in-house or, ideally, external counsel.

Assert Legal Advice Privilege

An institution should always consider asserting legal privilege over documents that are or have been created for the dominant purpose of seeking legal advice. The Hong Kong regulators cannot compel the disclosure of legally privileged documents.

It is interesting to note that Hong Kong law offers a wider scope of legal advice privilege than English law. Generally speaking, in Hong Kong, all documents that are produced for the dominant purpose of seeking legal advice should be protected by legal advice privilege. By contrast, in England, such privilege appears to be confined to communications between the lawyers and the employees who are authorised to seek and receive legal advice in the institution. To illustrate this, interview notes, made by lawyers during an internal investigation of the employees who are involved in an activity under regulatory scrutiny, are likely to be protected from disclosure in Hong Kong. The same scenario in England may well have a different outcome.

In addition, in multinational companies where various people may see legally privileged documents across different jurisdictions, they should pay particular attention to the privilege rules across these jurisdictions.

Assert Privilege Against Self-incrimination

Privilege against self-incrimination can be asserted in two contexts: the first is the right to remain silent. However, it should be noted that this right is abrogated in a SFC or a Hong Kong Monetary Authority interview.

In its second context: even if you do not have the right to remain silent, privilege against self-incrimination should be asserted in order



(此情況在跨國公司中可能常見)，您便需要考慮是否應將該等文件帶入香港。在此忠告：此等司法管轄權問題儘管看似簡單，但實際上十分複雜，因此，在未取得法律意見的情況下，切勿自行分析。

會見員工

根據我們的經驗，一些僱員，尤其當他們擔心自己涉及到被調查的活動時，會在他們懷疑有調查正在展開時選擇辭職。這可能會阻礙企業收集並向監管機構提供相關資料。企業應考慮是否及如何會見即將離職而又可能掌握相關資料的僱員。這些會面通常應有內部律師的參與，如有外部律師協助則更為理想。

堅持法律意見特權

對於主要為尋求法律意見而產生的文件，企業應時刻考慮堅持行使法律特權。香港的監管機構不能強制企業披露備有法律特權的文件。

值得注意的是，相比英國法律，香港法律所提供的法律意見特權範圍更為廣泛。一般而言，在香港，所有主要為尋求法律意見而產生的文件均應受到法律意見特權保護。相反，此特權在英國似乎僅限於律師與企業內獲授權尋求和接收法律意見的僱員之間的溝通。舉例說，在企業內部調查時，律師在面談有參與被監管調查之活動的僱員時記下筆記，此筆記在香港很可能受到保護免受披露。相同的情況在英國的結果卻可能截然不同。

此外，在跨國公司中，不同人士可能在不同的司法管轄區查閱備有法律特權的文件，該等人士應特別留意該等司法管轄區的法律特權法例。

行使免使自己入罪的特權

在兩種情形下，您有行使免使自己入罪的特權：第一種是保持緘默的權利。但請注意，這項權利不適用於證監會或香港金融管理局面談中。

to prevent any interview statements from being used against you in a future criminal proceeding. It (almost) goes without saying that you should have external counsel accompany you to a regulatory interview.

Third: Plan Ahead

As the investigation continues, it should become clearer to the institution what case the regulator has against it, including which aspect of the institution's conduct is subject to investigation, and what the regulator is considering as key evidence. The merits of the regulator's case should also be assessed in light of the available sanctions. This assessment would often bear strategic significance as to whether to continue defending the case or to make certain concessions to the regulator.

Under the SFO, a powerful sanction that can easily be overlooked is in section 213 of the SFO, which, amongst other things, empowers to the SFC to obtain a Court order where the SFC considers a contravention of certain provisions of the SFO "has occurred, is occurring or may occur", requiring the relevant person to take steps "to restore the parties...to the position in which they were before the transaction [in question] was entered into".

The power of section 213 is illustrated in the SFC's case against Hontex International Holdings Company Limited (Hontex), which was alleged to have overstated certain turnover amounts in its initial public offering prospectus. Halfway through trial, Hontex conceded that these amounts were materially false and misleading, and on this basis, the SFC applied to the Hong Kong Court under section 213 for an order for Hontex to repurchase shares subscribed by investors during the offer process. The Court granted the SFC's application, which effectively "unwound" the entire initial public offering.

Conclusion

Having set out in brief some of the practical tips for handling regulatory investigations, it should always be noted that the best tip for handling regulatory investigations is – avoid them!

This means, amongst other things, conducting regular reviews of the institution's internal policies and procedures, understanding "hot" topics under scrutiny, such as anti-money laundering/"Know-Your-Client" requirements and directors' duties, and keeping up with new regulatory initiatives, such as the relatively new Competition Ordinance (Cap. 619) and the SFC's new Managers-In-Charge regime. **M**

This article is for general information only and is not legal advice. The Chinese version of this article has been translated by a third party from the author's original English copy. In case of any discrepancy, the English version should be taken as correct.

— Jill Wong

Partner
Howse Williams Bowers

— Ivan Chik

Trainee Solicitor
Howse Williams Bowers

第二種情形：即使您無權保持緘默，亦應行使免使自己入罪的特權，以防止任何面談中所作的任何陳述被使用於日後針對您的刑事法律程序。重要的是，您應在外部律師陪同下出席監管面談。

第三步：策劃下一步

隨著調查進展，企業應該更加清楚監管機構所針對的事由，包括企業哪方面的行為受到調查，以及監管機構認為關鍵的證據是什麼。在考慮到監管者可能施予的制裁之前題下，您應評估監管機構案件的理據是否充分。這項評估往往對是否應該繼續申辯案件還是向監管機構作出某些讓步具策略性意義。

在《證券及期貨條例》中，《證券及期貨條例》第213條是一項容易被忽視的有力制裁，其中包括授權證監會在認為《證券及期貨條例》某些條款的違例事項「已發生、正發生或可能發生」時，取得法院命令，要求相關人士採取措施將所涉各方「回復至訂立 [所涉] 交易之前的狀況」。

證監會針對洪良國際控股有限公司（洪良）的案件正展示了第213條的權力。洪良被指在其首次公開招股章程中誇大某些營業額。在審訊中途，洪良承認這些金額實屬嚴重失實且具誤導性，因此，證監會根據第213條向香港法院申請命令，要求洪良回購投資者在要約過程中認購的股份。法院批准證監會的申請，「還原」整個首次公開招股過程。

總結

以上我們簡單說明應對監管調查的實用貼士，但其實最佳的應對要訣是讓自己的企業免受監管調查！

即是，在眾多事宜中，要定期審核企業的內部政策及程序，了解審查「熱門議題」，例如反洗錢/「認識您的客戶」之規定及董事職責，並緊貼最新的監管措施，例如相對較新的《競爭條例》（香港法例第619章）及證監會新的核心職能主管制度。 **M**

本文僅提供一般資料，並不構成法律意見。本文中文版為作者之英文原文譯本，並非由原文作者提供。如有任何差異，一概以英文版內容為準。

— 黃紫靈

合夥人
何韋鮑律師行

— 植宇軒

見習律師
何韋鮑律師行



Navigating America's Economic-Policy Shocks

應對**美國**

經濟政策衝擊

With a series of tax and trade moves being considered in the United States this year, emerging-market economies are likely to face devaluation pressure and volatility.

Three sources of US-fuelled economic uncertainty, in particular, will rattle emerging markets in 2017.

The first is a border adjustment tax that would give tax breaks to US exporters, but impose a levy – or, equivalently, disallow deductions – on imports to the US. Both President Donald Trump and the Republican-controlled US Congress have said they favour the scheme, which has a fair chance of being enacted. Such a tax, or even the anticipation of its adoption, could drive up the US dollar's exchange rate (which, ironically, would offset, at least partly, the improvement in the US trade imbalance for which the Trump administration may be hoping).

The second source of uncertainty is the possibility of more aggressive action on Chinese exports to the US. The Trump administration has said many times that it will confront China over what it considers unfair trade practices. Trump has openly mused about imposing a 45% tariff on Chinese imports. The introduction of anything close to that would generate downward pressure on the renminbi, given the resulting reduction in demand for Chinese exports.

But such a move would serve to weaken many other currencies as well. My research with Zhi Wang and Kunfu Zhu reveals that about half of Chinese exports to the US are value-added products manufactured with components from South Korea, Japan, Taiwan, Singapore, and other countries. Because products from China are often part of integrated global or regional value chains, a US restriction on its imports from China would indirectly, but very quickly, translate into reduced exports of value-added items by other countries in Asia. This slippage would likely offset any direct increase in these countries' exports to the US, at least in the short and medium term, because re-organising production chains is not a trivial matter.

A third US move that could unsettle emerging markets is faster-than-expected monetary tightening by the Federal Reserve. A large interest-rate hike would translate into US dollar appreciation, and depreciation of developing-economy currencies.

One exception may be the currencies of commodity exporters. Higher commodity prices, triggered in part by anticipation of increased demand as a result of a boost in US infrastructure spending, could cause these countries' currencies to strengthen. Even on that front, though, some commodity exporters – such as Brazil and Russia – may not see much improvement in their exchange rates, given the drag of other forces on their weak economies.

The challenges that US policy changes pose for emerging-market currencies include not only downward pressure, but also greater volatility. What, then, should emerging-market countries do to enhance their resilience in anticipation of the shockwaves?

One option is to optimize the structure of capital inflows. A second is to boost the flexibility of exchange rates.

今年美國將考慮一系列稅收和貿易動作，新興市場經濟體可能會面臨貶值壓力和波動。

特別是，三個美國引發的經濟不確定性將在 2017 年影響到新興市場。

第一是邊境調節稅。邊境調節稅將讓美國出口商獲得課稅優惠，但對美國進口商品徵稅 – 或取消抵扣，效果相同。總統特朗普和共和黨控制的國會都表示支持這一方案，它很有可能成為現實。這一稅種，哪怕是對其實施的預期，都將推高美元匯率（諷刺的是，這至少將部分抵消特朗普政府所期待的美國貿易失衡的改善）。

第二個不確定性是美國可能對中國對美出口採取更加激進的措施。特朗普政府已經多次表示，將在其所認定的不公平貿易行為上與中國針鋒相對。特朗普公開嗶嗶要對中國進口品徵收 45% 的關稅。實施任何類似的措施都將導致中國出口需求下降，從而給人民幣造成貶值壓力。

但這一動作也將導致其他許多貨幣貶值。我與王志（Zhi Wang，音譯）和朱坤福（Kunfu Zhu，音譯）的研究發現，中國對美出口中有大約一半為增值產品，零部件來自韓國、日本、台灣、新加坡等其他經濟體。來自中國的產品通常是一體化的全球或地區價值鏈的一部分，因此美國限制中國進口將間接（但十分迅速）地轉化為亞洲其他經濟體增值專案出口的下降。這下滑很可能抵消這些經濟體對美出口的直接增量，至少在短期和中期是如此，因為重新組織生產鏈絕非易事。

美國可能動搖新興市場的第三個動作是美聯儲比預期更快地收緊貨幣政策。大幅加息將轉化為美元升值和發展中經濟體貨幣貶值。

大宗商品出口國貨幣也許是例外。美國提高基礎設施支出可能引起大宗商品需求增加的預期，從而觸發價格上漲，進而導致這些國家貨幣升值。但是，即使在這些國家中，某些大宗商品出口國 – 比如巴西和俄羅斯 – 未必能夠看到匯率改善，因為它們疲軟的經濟中還有其他力量在起拖累作用。

美國政策變化給新興市場貨幣造成的挑戰不僅包括貶值壓力，還包括波動加劇。那麼，新興市場國家應該如何加強對預期中的震波的抵抗力？

一個選擇是優化資本流入結構。其次是提高匯率彈性。

對於前者，我和童輝（Hui Tong，音譯）的研究表明，嚴重依靠海外銀行或國際資本市場借貸的國家比主要依靠外國直接投資（FDI）的國家更容易受到資本外逃的影響。因此，要抵禦匯率波動或美國匯率變化，新興市場應該致力於改善營商環境以吸引 FDI，以此降低他們對短期進出的“熱錢”的依賴 – 從而降低突發性資本流逆轉對它們所造成的影響。



On the former, as my research with Hui Tong shows, countries that rely heavily on borrowing from foreign banks or international capital markets are more vulnerable to capital flight than countries that depend mainly on foreign direct investment. Therefore, to guard against exchange-rate volatility or US interest-rate changes, emerging markets should work to improve their business environments to attract FDI, which would reduce their reliance on short-term infusions of “hot money” – and thus lower their vulnerability to abrupt capital-flow reversals.

As for the second option, allowing nominal exchange-rate flexibility would enable currency values to align with underlying economic fundamentals more quickly. Such adjustment is especially important for countries with rigid labour markets. One danger of fixed exchange rates is the risk of an overvalued or undervalued currency, neither of which is good for economic stability. The chance of either scenario is elevated when the forces influencing the equilibrium exchange rate become more volatile.

While the shape and timing of future US policies are uncertain, it seems clear that capital-flow management and nominal exchange-rate flexibility amount to good preparation. To paraphrase Benjamin Franklin, if developing countries fail to prepare, they will have to prepare to fail. [M](#)

— **Shang-Jin Wei**

Former Chief Economist
Asian Development Bank
Professor of Finance and Economics
Columbia University

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對於後者，允許名義匯率彈性可以讓貨幣價值更快地與經濟基本面看齊。這一調整對於勞動力市場僵化的國家尤其重要。固定匯率的一大風險是貨幣出現高估或低估，兩者都不利於經濟穩定。當影響均衡匯率的力量波動加劇時，發生高估或低估的可能性也會大大增加。

美國未來政策的面貌和時機仍不確定，但顯然，資本流管理和名義匯率彈性都是非常好的準備工作。正如本傑明·佛蘭克林所言，如果發展中國家沒有做好準備，它們就必須做準備失敗。 [M](#)

— **魏尚進**

曾任亞洲開發銀行首席經濟學家
美國哥倫比亞大學商學院
金融學經濟學教授

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Building an Asset Management Powerhouse with a Global Vision

建構產業多元
全球佈局之
資產管理巨頭



— An Interview with Mr **Chen Shuang** CEO, China Everbright Ltd.

— 專訪**中國光大控股有限公司**

首席執行官 **陳爽**先生

This year marks the 20th anniversary of China Everbright Ltd. (“CEL”; 0165.HK) and Chen Shuang’s tenth anniversary as the company’s CEO.

“For the company and for me personally, this milestone is truly remarkable,” said Mr Chen. Over the past 20 years, CEL has metamorphosed from a state-owned financial institution with mainly investment banking and brokerage business into a multinational asset management and investment firm. The process was no easy task, but the successful transformation could be ascribed to China’s economic reform, he said.

今年是中國光大控股有限公司（「光大控股」，股份代號：0165.HK）成立二十週年，亦是陳爽擔任該公司首席執行官的第十個年頭。

陳爽表示：「對於公司和我個人而言，這個里程碑的意義非凡。」在過往的20年裡，光大控股從主營投資銀行及經紀業務的國有金融機構，徹底轉變為跨國資產管理及投資公司。轉變過程絕非易事，但轉型成功還要歸功於中國的經濟改革。

“During the first ten years, we were mainly engaged in domestic investment banking. But during the following decade, we made our way into asset management and investment business. Today, we are one of the leading asset managers and private equity groups in China, and increasingly in Asia.”

EBA Investments, a real estate private equity arm of CEL, was named the top China-focused real estate fund for three straight years (2015-2017). CEL itself has also earned numerous accolades as one of the top three-to-five private equity firms in China by several rating organisations.

Besides the private equity funds, Everbright China Focus Fund – a secondary market investment fund was awarded the Best Asian Long Only Absolute Return Fund last year. Also, CEL was one of the awardees of The Hong Kong Corporate Governance Excellence Awards presented by The Chamber of Hong Kong Listed Companies (CHKLC) last year.

As at end-2016, CEL was managing assets with an aggregate value of about HK\$87.5 billion, holding interests in roughly 105 projects. For the financial year of 2016, net profit attributable to the company's shareholders amounted to about HK\$4.07 billion.

“In China, we are also managing assets worth about 160 billion Yuan combined. I am confident in saying we are one of the leaders on the mainland. The trend is, and has always been, our friend. Ever since China opened its door to global economy, we have seized the opportunities brought by the country's economic and investment growth. The strategic One Belt One Road initiative is the new flow we are going with”, said Mr Chen.

“After nearly 40 years of economic reform, mainland Chinese have accumulated substantial wealth and there is growing demand for asset allocation, especially exposure to overseas investments.”

Apart from the money CEL is managing for its clients, the company has also accumulated an abundance of capital after years of investment activity. “We are managing our clients' money as if it were our own, as well as ours. These are the two wheels of our business turning in tandem.”

Wise Analytics

Investment decisions are based on analysis of what the big trend is, or what the next big thing is, supplemented by rigorous due diligence and risk assessment. For this, a top-down approach is crucial, explained Mr Chen. CEL would first look at the prospects of the industry before homing in on a particular business or project, he said.

One notable example Mr Chen provided was the company's decision to invest in the aircraft leasing business back in 2010. The company has been a major shareholder of China Aircraft Leasing Company Limited (CALC), which provides aircraft leasing services to airlines, since 2011.



「在第一個十年裡，我們主要參與國內的投資銀行業務。但在接下來的十年裡，我們將業務伸展向資產管理及投資業務。如今，我們是中國及亞洲的領先資產管理人及私募股權集團之一。」

光大控股的地產私募股權部門光大安石連續三年（2015-2017年）榮膺『中國房地產基金綜合能力TOP10』。光大控股自身亦獲多間評級機構屢次評為中國最頂尖之三至五間私募股權公司之一。

除私募股權基金外，光大中國焦點基金（二級市場投資基金）去年獲評為『最佳亞洲長倉絕對回報基金大獎』。此外，光大控股去年亦獲香港上市公司商會（CHKLC）頒發香港公司管治卓越獎。

截至2016年年底，光大控股所管理的資產總值約為875億港元，在約105個項目中擁有權益。2016財年公司股東應佔淨利約為40.7億港元。

陳爽表示：「在中國，我們亦管理著合計價值約為人民幣1,600億的資產。我可以自信地說我們是內地的業界領袖之一。誠如一直以來，現時形勢同樣對我們有利。由中國面向全球經濟打開國門起，我們始終能夠把握國家經濟及投資增長所帶來的機遇。富有戰略性的「一帶一路」倡議是我們要追隨的最新趨勢。」

「經過近40年的經濟改革後，中國內地已經積累了大量財富，資產配置需求持續增長，當中以海外投資尤甚。」

除了為客戶管理的資金外，光大控股經過多年的投資活動亦積累了大量資本。「我們管理客戶的資金猶如管理自己的資金，此外我們還管理自己的資金。公司營運有賴於這兩方面的協同配合。」

精明的分析

陳爽解釋說，投資決策建基於對大趨勢或下一個大事件的分析，再輔以嚴格的盡職審查及風險評估。為

“A lot of people questioned and challenged my proposals at that time. But I insisted, because I knew the aircraft leasing business is a safe and potentially profitable bet. Time has proved that I was right.”

Mr Chen explained that aircraft leasing business is able to lock in long-term cash flows, while its high asset quality makes it suitable for risk-averse investors. Aircrafts, which look like fixed assets, are actually standardised, highly liquid assets with an active secondary market. Also, because their trading values are denominated in US dollar, the company sees them as safe-haven assets against currency fluctuations.

“If I am to order an aircraft today in US dollars, when it is delivered to us after five years it probably will have seen an 5-7% increase in valuation, excluding foreign currency changes” he explained.

Most airliners have very good credit ratings. Leasing aircrafts to them can generate long-term, steady cash flow, which can then be easily packaged to raise money through securitisation. These securitised assets are much-preferred assets for banks and institutional investors to hold.

“After rounds of quantitative easing since the global financial crisis in 2008, investable assets are in shortage. Interest rates are low, and so are yields. Aircraft leasing is a prime asset to us. By the end of this year we aim to expand the fleet of CALC to over 120 aircrafts, four times bigger than when we first bought into the company” he said.

“This kind of vertical merger creates a lot of synergies. In China, there are a lot of obsolete aircrafts. We have established an aircraft demolition base to do aircraft removal and demolition services. We have solutions to extend their lifecycle, like recycling, reusing or reselling the functional parts and components disassembled from the airplanes.”

He added that plans to market China-made aircrafts, including the Comac ARJ21, to countries covered by One Belt One Road are now under way.

Branches of the Tree

Another area of growth Mr Chen highlighted is industrial machinery manufacturing. In 2014, CEL acquired a controlling stake in Burke E. Porter Machinery Company (BEP) through CEL Global Investment Fund, L.P., a private equity fund it sponsors and manages. BEP achieved rapid growth in Asia in 2016, driven by the robust progression of China’s auto market, especially electric vehicles.

In the tech sector, the company has also invested in XJet, an Israel-based tech firm that develops technology for 3D printing for metal parts through CEL Catalyst China Israel Fund, a partnership between Catalyst in Israel and CEL. It also has made an investment in Shanghai Micro Electronics Equipment Co., Ltd. (SMEE), with a stake holding of 11.98% as of last year, marking a major leap forward in its expansion into the field of smart devices.

A few years ago, Mr Chen was not quite convinced by the claim that fintech would take flight, as the regulatory framework, including licensing, guiding the development of fintech was too vague at that time.

此，必需要有一套由上而下的模式。光大控股首先會了解行業前景，然後才會專注於某項業務或項目。

陳爽舉出一個突出的例子，就是2010年公司決定投資飛機租賃業務。公司是中國飛機租賃有限公司（中國飛機租賃）的主要股東，中國飛機租賃自2011年起向各航空公司提供飛機租賃服務。

「當時，很多人質疑並反對我的提案。但我依然堅持，因為我相信投資飛機租賃業務即是下了穩妥及具有盈利潛質的賭注。時間已經證明我是對的。」

陳爽解釋說，飛機租賃業務能夠鎖定長期現金流量，同時其高的資產質素極適合規避風險的投資者。雖然飛機看起來像固定資產，但實際上是標準的高流動性資產，且擁有活躍的二級市場。此外，由於交易以美元計值，公司將飛機視為規避匯率波動的資產。

他解釋說：「例如，我今天用美元訂購一架飛機，五年後飛機交付時，不計算匯率波動在內，其估值可能提高5-7%。」

大部分航空公司獲極好的信貸評級。將飛機租賃給航空公司可產生穩定的長期現金流，這些現金流可以輕易制定一攬子計劃，透過發行證券籌資。銀行及機構投資者更傾向於持有這些抵押資產。

他指出：「自2008年全球金融危機以來，全球已推行數輪量化寬鬆政策，可投資資產短缺。利率及收益偏低。飛機租賃是我們的首要資產。到今年年底，我們計劃將中租的機隊擴展至120架以上，是我們首次買進時的四倍。」

「這種垂直兼併產生巨大的協同作用。中國有大量被淘汰的飛機。我們已成立飛機拆卸基地，提供飛機拆除及拆卸服務。我們的解決方案能延長飛機的使用壽命，例如回收、再利用或再銷售從飛機拆卸的功能組件和零組件。」

他補充道，公司目前正在籌劃將中國製造的飛機（包括Comac ARJ21）行銷至「一帶一路」沿線國家。

業務分支

陳爽強調的另一個增長領域是工業機械製造。2014年，光大控股透過其出資及管理的私募股權基金—光大控股全球併購基金，取得了美國Burke E. Porter Machinery Company (BEP)的控股權。2016年，在中國汽車市場（尤其是電動汽車）強勁發展的推動下，BEP在亞洲實現快速增長。

在技術領域，公司亦透過以色列Catalyst與光大控股的合股經營公司—光控Catalyst中國以色列基金，投資了總部設在以色列的技術公司XJet，該公司專注於研發金屬零件的3D列印技術。公司亦投資上海微電子裝備（集團）股份有限公司（SMEE），截至去年持有其11.98%的股權，標誌著其在智能裝置領域擴張的一大躍進。

“At one point there were over 2,000 self-professed P2P firms on the market. Because they did not fall into the licensing regime, they were indeed conducting illegal capital-raising activities”, said Mr Chen.

Last year, in the wake of some high-profile P2P scandals, China introduced regulations to cover most fintech activities, with most of the rules intended to make fintech safer, rather than curbing its expansion. The central bank is overseeing the creation of an online-payments clearance platform, aiming to promote transparency: all digital payments will be visible to the central bank.

“A more effective, predictable regulatory environment is conducive to the healthy development of fintech”, Mr Chen noted. “We have invested in China UnionPay for some nine years... we are also increasing our exposure to fintech firms through equity investments, joint ventures and participation in start-ups.”

Last year, Everbright-IDG Industrial Fund forayed into the third party-payment market, investing up to US\$295 million in China UnionPay Merchant Services Co., Ltd. (China UMS). Focused on the bankcard acquiring and third party services, China UMS has consistently taken the largest market share in the payments and acquiring sector.

“Internally, we have set up a fintech firm to build and maintain an online fund product sales and wealth management platform, which will include secure mobile apps, to digitalise the process and minimise the paperwork.”

“Our asset allocation is strategically diversified. While we don’t want to miss out on the growth opportunity presented by the tech sector, we also invest in a wide range of industries, from aircraft leasing and real estate to pharmaceuticals, healthcare and entertainment, as we seek to balance investments in cyclical businesses through a position in other non-cyclical or counter-cyclical firms.”

Real Estate Portfolios

In real estate, CEL acquired a controlling stake in the ALAM Group, a property private equity firm partially sponsored by Lehman Brother’s real estate property investment fund, in 2008. Recently EBA Investments, the company’s real estate private equity arm, has also become a strategic shareholder of Shanghai Jiabao Industry & Commerce (Group) Co., Ltd.

Anticipating a growing demand for high-quality elderly care services in China, last year the company acquired a 67.27% stake in Beijing Huichen Nursing Home Management Co., (“Huichen”) a leading elderly healthcare services provider in the country.

“China is facing a rapidly ageing population. Our parents and grandparents need a bigger and better home while staying connected to their sons or granddaughters, not the kind of old-fashioned, icy cold elderly care or nursing homes.”

For now, Huichen plans to build and run commercial elderly homes in first-tier cities for those who can afford them in the first stage. Afterwards, it will seek to operate more affordable

幾年前，陳爽不太相信金融科技即將一飛沖天的說法，因為當時包括發牌、引導金融科技發展在內的規管架構依然極不明確。

陳爽說：「市場上一度有2,000多家自稱是人人貸的公司。它們不受發牌制度規管，實際上進行非法的資金籌集活動。」

去年，在一些備受關注的人人貸醜聞曝光之後，中國實施覆蓋大多數金融科技活動的規管，其大多數規則旨在提升金融科技的安全性，而非扼殺其擴展。中央銀行正在監督創建網上支付清關平台，以提升透明度：中央銀行將可監察到一切數碼支付活動。

陳爽指出：「更有效、可預測的規管環境有利於金融科技的健康發展。我們已投資中國銀聯大概九年……我們亦透過股本投資、合資企業及參與成立初創企業，加強投資於金融科技公司。」

去年，光際資本產業基金進軍協力廠商支付市場，向銀聯商務有限公司（China UMS）投資高達2.95億美元。China UMS專注於銀行卡收購及協力廠商服務，在支付及收購領域的市場佔有率一直是最大的。

「在內部，我們已設立一間金融科技公司，以建立並維護網上基金產品銷售及財富管理平台，該平台將包含安全的流動應用程式，使過程數碼化及最大程度減少文書工作。」

「我們的資產配置具有策略上的多元化。雖然我們不希望錯失技術領域的增長機遇，但我們亦廣泛投資於各個行業，從飛機租賃及地產到製藥、醫療保健及娛樂，因為我們尋求透過在其他非週期性或反週期性公司中的財務狀況，平衡對週期性業務的投資。」

房地產投資組合

在房地產領域，光大控股於2008年取得亞雷投資集團的控股權，該集團是雷曼兄弟旗下房地產物業投資基金部分發起的物業私募股權公司。最近，公司的地產私募股權部門—光大安石投資亦已成為上海嘉寶實業（集團）股份有限公司的戰略股東。

預見到中國對高質素安老服務的需求將不斷增長，公司於去年收購北京匯晨養老機構管理有限公司（匯晨養老）67.27%的股權，匯晨養老是中國領先的安老服務供應者。

「中國正面臨人口急劇老化的問題。我們的父母及祖父母/外祖父母需要更寬敞、更舒適的居住環境，同時與子女或孫輩保持聯絡，而不是那種舊式的、冰冷的老年照護方式或養老院。」

目前，匯晨養老計劃第一階段在一線城市為有經濟實力的長者建立及營運商業安老院舍。匯晨養老接著會在其他二線城市，透過與當地政府或非政府組織合作，努力營運更多收費較低廉、以社區為基礎的安老院舍，包括日間照護中心。陳爽表示，公司計劃在收購之後的三年內，提供約10,000個床位。

community-based elderly homes, including day-care centres, in other second-tier cities through partnership with local governments or NGOs. Chen said the company aims to provide about 10,000 bed spaces within three years of acquisition.

Governance Achievements

As an awardee of The Hong Kong Corporate Governance Excellence Awards, CEL has implemented a stringent, multi-layered internal risk management with codes of business conduct that prescribe behaviours relating to conflicts of interest that may arise during the due diligence process, trade secrets and confidential business information.

It has a companywide system to track the day-to-day operations of the company. It has put in place a fair, transparent profit-sharing scheme for all teams and staff members to incentivise all project stakeholders while facilitating teamwork. When necessary, project owners may request financing from the company, but they are also required to put a stake in the project as a way to keep them devoted.

“Established as a state-owned entity, we have grown to be a Hong Kong-listed conglomerate with a global portfolio. In the past 10 years, we have done a lot in cross-border investments, bringing investors to China and bringing Chinese investors to the rest of the world.”

For the next decade, CEL aims to raise capital in US dollars and invest the money in global assets. In doing so, it will keep an eye on M&A opportunities with foreign banks and asset managers to extend the reach of its investment platform and enrich its product portfolio.

“From my perspective, there is no difference between state-owned enterprises and other businesses. The name of the game is how to maximise profits. For us at CEL, we will continue to endeavour to maximise profits and returns on investments for our shareholders.” **M**

— Jimmy Chow
Journalist



管治成就

作為香港公司管治卓越獎的獲得者，光大控股實施嚴格的多層次內部管理，其營商行為守則對於與盡職審查過程中可能出現的利益衝突、商業秘密及機密商業資料相關的行為均有規定。

公司的系統可以追蹤日常營運情況。公司為所有團隊及員工制定了公平、透明的利潤分享機制，除了激勵所有項目利益相關者之外還促進團隊協作。在必要時，項目負責人可向公司要求融資，但他們亦將被要求持有項目股份，以激勵他們專心工作。

「我們已經從成立伊始的國有實體，成長為擁有全球投資組合的香港上市集團。在過往10年裡，我們進行了大量的跨境投資，將投資者引入中國，並將中國投資者引向世界其他地方。」

在下一個十年裡，光大控股計劃以美元籌集資金，然後進行全球資產投資。這樣，公司可以密切留意對外國銀行及資產管理人的併購機會，從而拓展投資平台的觸角，豐富其產品投資組合。

「在我看來，國有企業與其他企業並無分別。遊戲的致勝關鍵在於如何實現利潤最大化，光大控股將持續致力於實現股東投資溢利及回報最大化。」 **M**

— 周振雄
記者

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Risk Management: From **Listed** **Companies** ^{to} **Law Firms**

風險管理：

從上市公司到律師事務所

First Studied in the Renaissance, risk is understood as uncertainty, danger, hazard, threat, or probability of failing to achieve an objective. Through the 20th century, risk and uncertainty were intensively studied in the 1920s by F. Knight (1921) in his doctoral thesis entitled "Risk, Uncertainty and Profit", by J M Keynes (1921) in his research entitled "A Treaty of Probability"; later in the 1940s and 1950s by J von Neumann and O. Morgenstern (1944) in their game theory, by H Markowitz (1952) in his "Portfolio Selection", by J Tobin (1958) in his theory on liquidity preference as a behaviour towards risk.

In the 1960s and 70s, risk was studied by W Sharpe and J Linter (1960s) in their capital asset pricing model, by K Arrow (1971) in his "Essays in the Theory of Risk Bearing", and by D Kahneman and A Tversky (1979) in prospect theory laying the foundation for behaviour economics and explaining how people make decisions in situation of risks.

Many of these economists were awarded noble prizes for their research on, and contribution to, the study of risks and decision making and behaviour under risk. Risk management as a process and as a part of the internal control system is quite recent and was first systematically studied by the US Treadway Commission formed in 1985, the very first study on corporate governance and internal control.

Risk Management Framework

Today there are many risk management frameworks or models that are used by enterprises to identify, assess and manage their risks. The most popular and widely adopted pair are:

- Enterprise Risk Management – Integrated Framework (COSO ERM Framework) developed by COSO in 2004; and
- ISO 31000:2009 Risk Management – Principles and Guidelines, developed by the International Organisation for Standardisation in 2009.

This article will focus on the COSO ERM Framework as it is commonly used by companies in Hong Kong and is referred to in the guide entitled "Internal Control and Risk Management – A Basic Framework" issued by the Hong Kong Institute of Certified Public Accountants (HKICPA) in 2005.

Background to COSO

In the wake of Savings & Loan Association crisis and corporate scandals in US, the National Commission (Treadway Commission) on Fraudulent Financial Reporting was formed in 1985 and chaired by James Treadway Jr., to review the financial reporting system in the US and to identify causal factors that can lead to fraudulent financial reporting and steps to reduce its incidence.

The Treadway Commission was sponsored and funded by five private entities, collectively called The Committee of Sponsoring Organisations (COSO) of the Treadway Commission. The Treadway Commission Report was issued in October 1987 recommending, *inter alia*:

人類自文藝復興時期開始研究「風險」，並將此詞彙理解為不確定因素、危險、災害、威脅或可能無法達成目標等意思。綜觀20世紀，曾有多位學者對風險及不確定性進行深入研究，20年代有F. Knight (1921年)的博士論文《風險、不確定性與利潤》(Risk, Uncertainty and Profit)及J M Keynes (1921年)的研究《論機率》(A Treaty of Probability)，其後40至50年代則有J von Neumann及O. Morgenstern (1944年)的博弈論、H Markowitz (1952年)的《投資組合選擇》(Portfolio Selection)及J Tobin (1958年)有關將流動資金喜好視為應對風險行為的理論。

60至70年代，學者對風險的研究從沒間斷，包括W Sharpe及J Linter (60年代)的資本資產定價模型、K Arrow (1971年)的《風險承擔理論論文集》(Essays in the Theory of Risk Bearing)以及D Kahneman和A Tversky (1979年)的前景理論，為行為經濟學奠定了基礎，並解釋了人們如何在面對風險的情況下作出決策。

上述經濟學家大部分都因其對風險、決策及應對風險行為的研究所作的努力及貢獻而獲頒諾貝爾獎。風險管理作為一項程序及內部監控系統的一環，是一種較為近代的概念，首次有系統的研究由1985年成立的美國Treadway委員會進行，是次研究亦為首次對企業管治及內部監控的研究。

風險管理架構

時至今日，不少企業均利用各種風險管理架構或模型辨認、評估及管理風險。最廣為採用的架構及模型為：

- COSO於2004年建立的《企業風險管理 – 整合架構》(COSO企業風險管理架構)；及
- 國際標準化組織 (ISO)於2009年建立的《ISO 31000：2009風險管理—原則和指引》。

由於香港公司普遍採用COSO企業風險管理架構，且香港會計師公會於2005年發佈的《內部監控與風險管理 – 基本架構》亦提及了該架構，故本文將集中討論COSO企業風險管理架構。

COSO的背景

在發生美國儲貸協會危機及多宗企業醜聞後，於1985年成立財務報告舞弊全國委員會 (Treadway委員會) 並由James Treadway Jr. 出任主席，以檢討美國的財務報告體系，並辨認可導致財務報告舞弊的根本原因及預防措施。

Treadway委員會由五家私營機構贊助及出資，統稱為Treadway委員會贊助組織委員會 (The Committee of Sponsoring Organisations, 簡稱COSO)。Treadway委員會報告於1987年10月發佈，其中作出的建議部分如下：

- (a) 「公營公司應維持內部監控，以合理確保可以預防或及早發現財務報告舞弊」；

- (a) That “public companies should maintain internal controls that provide reasonable assurance that fraudulent financial reporting will be prevented or subject to early detection”;
- (b) That audit committees should be established and composed solely of independent directors;
- (c) That “audit committees should be informed, vigilant, and effective overseers of ...the company’s internal controls”;
- (d) That “the management report should ... provide management’s assessment of the effectiveness of the company’s internal control”; and
- (e) That COSO “should cooperate in developing additional, integrated guidance on internal control”.

Pursuant thereto, COSO continues to provide thought leadership through the development of frameworks and guidance on enterprise risk management, internal control and fraud deterrence designed to improve organisational performance and governance and to reduce the extent of fraud in organisations.

Over the years, COSO has developed comprehensive framework and guidance, and thought papers, on internal control, on enterprise risk management, and on fraud deterrence. COSO Internal Control – Integrated Framework consists of five components of internal control, one of which is risk assessment with four principles.

COSO ERM Framework

COSO ERM Framework is in two volumes. The first contains the ERM Framework and the Executive Summary. This defines enterprise risk management and describes principles and concepts for use in evaluating and enhancing the effectiveness of enterprise risk management. The second volume, Application Techniques, provides illustrations of techniques useful in applying elements of the framework. Internal control and risk management are intertwined and inter-related but are independent of each other. COSO ERM Framework incorporates and expands on internal control and provides a more robust and extensive focus on the broader subject of ERM.

COSO ERM Framework is currently under review and will be replaced by Enterprise Risk Management – Aligning Risk with Strategy and Performance probably later this year. The new framework is an update to reflect recent changes in risk landscape with the introduction of 23 principles that support the framework components. The general framework and the Application Techniques remain largely unchanged.

ERM encompasses:

- ◆ Aligning risk appetite and strategy;
- ◆ Enhancing risk response decision;
- ◆ Reducing operational surprises and losses;
- ◆ Identifying and managing multiple and cross-enterprise risks;
- ◆ Seizing opportunities; and
- ◆ Improving deployment of resources.



- (b) 應成立審核委員會，且所有成員應為獨立董事；
- (c) 「審核委員會應對……監管公司的內部監控消息靈通、高度警惕且辦事得力」；
- (d) 「管理層報告應……載有管理層對公司內部監控有效性的評估」；及
- (e) COSO「應合作建立補充性的完整內部監控指引」。

作出以上建議後，COSO持續擔當思想領袖的角色，於企業風險管理、內部監控及防止舞弊各方面建立架構及指引，以改善企業表現及管治，並減低企業內的舞弊程度。

多年來，COSO已在內部監控、企業風險管理及防止舞弊各方面建立了全面的架構及指引，並發表了若干思想論文（thought papers）。COSO的《內部監控—整合架構》將內部監控分為五個組成要素，其中之一為風險評估，當中有四大原則。

COSO企業風險管理架構

COSO企業風險管理架構分為兩部分，第一部分載有企業風險管理架構及執行摘要，界定何謂企業風險管理，並對評估及提升企業風險管理有效性時使用的原則及概念作出描述。第二部分為應用技術，說明應用架構元素時可用的技術。內部監控及風險管理相輔相成，同時亦彼此獨立。COSO企業風險管理架構在內部監控上合併延伸，並更深入及全面探討有關企業風險管理更廣泛的議題。

ERM Defined

ERM deals with risks and opportunities affecting value creation or preservation and is defined in COSO ERM Framework as follows:

“Enterprise risk management is a process, effected by an entity’s board of directors, management and other personnel; applied in strategy setting and across the enterprise; designed to identify potential events that may affect the entity; and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.”

The above definition reflects certain fundamental concepts of ERM which are: “a process, on-going and flowing through an entity; effected by people at every level of an organisation; applied in a strategy setting across the enterprise; designed to identify potential events that will affect the entity and to manage risks within its risk appetite; and able to provide reasonable assurance to an entity’s management geared to achievement of objectives.”

COSO Cube

COSO ERM Framework is conveniently depicted in a three-dimensional matrix in the form of the famous COSO cube (first designed by Richard Steinberg, core COSO member).



The vertical columns represent the four objectives. The eight framework components are represented by horizontal rows. The four organisational structures are represented by the third dimension. The four objectives are divided into strategic, operations, reporting and compliance. The four organisational structures are categorised into entity level, division, business unit and subsidiary. The eight components of the ERM Framework are internal environment, objective setting, event identification, risk assessment, risk response, control activities, information & communication and monitoring.

COSO 企業風險管理架構現正在審閱中，並可能於今年稍後由《企業風險管理—風險追隨策略及表現》（Enterprise Risk Management—Aligning Risk with Strategy and Performance）取代。新的架構為先前架構的修訂版，旨在反映近期風險情況的變化，並推出23項原則以支持架構的各組成要素。主要的架構及應用技術大致上維持不變。

企業風險管理圍繞以下各項：

- 策略得以追隨風險胃納，並與其一致；
- 強化回應風險之決策；
- 降低營運的非預期風險及損失；
- 確認與管理遍及企業各層面之風險；
- 掌握機會；及
- 改善資源運用。

企業風險管理的定義

企業風險管理乃關於影響價值的創造或保留的風險及機會，其於COSO企業風險管理架構的定義如下：

「企業風險管理是遍及企業各層面之過程，該過程受企業的董事會、管理階層及其他人士而影響，用以制定策略、辨認可能影響企業之潛在事項、管理企業之風險，使其不超出該企業之風險胃納，以合理擔保其目標之達成。」

以上定義反映企業風險管理的若干基本概念，包括：「一項於企業內持續進行及運作的程序；由組織內每個階層的人員實施；應用於整個企業的政策制定；為辨認可能對企業造成影響的潛在事項並於風險胃納範圍內管理風險而設；以及能夠合理確保可達到企業管理層所訂下的目標。」

COSO立方體

簡單而言，COSO企業風險管理架構可被描繪成一個三面的方塊，正是著名的COSO立方體（最初由COSO的核心成員Richard Steinberg設計）。



Components of ERM

The eight components are inter-related and are integrated with the overall management and internal control process.

Internal Environment – this encompasses the tone of an organisation and sets the basis of how risk is viewed and addressed, including risk management philosophy and risk appetite, integrity and ethical values.

Objective Setting – objectives must exist before management can identify potential events affecting their achievement. There must be a process to set objectives that support and align with the entity's mission and are consistent with its risk appetite.

Event Identification – internal and external events must be identified distinguishing between risks and opportunities.

Risk Assessment – risks are analysed and assessed on an inherent (before control activities) and a residual (after control activities) basis.

Risk Response – management selects risk responses and develops actions to align risks with the entity's risk tolerance and risk appetite.

Control Activities – policies and procedures are established and implemented to ensure that the risk responses are effectively carried out.

直行表示四類目標，橫行則為八個架構組成要素。四個企業單位列於第三面。四類目標分別為策略性、營運、報導及遵循。四個企業單位分別歸類為實體層級、部門、事業單位及子公司。而企業風險管理架構的八個組成要素則分別為內部環境、目標設定、事項辨認、風險評估、風險回應、控制活動、資訊與溝通及監督。

企業風險管理的組成要素

八個組成要素相輔相成，並整合至整體的管理及內部監控程序上。

內部環境 – 形塑組織基調 (tone of organisation)，並設定風險檢視及應對方式的基礎，包括風險管理哲學及風險胃納、操守與道德價值觀。

目標設定 – 管理層須於能夠辨認出影響其目標能否達成之潛在事項前已訂下目標，且必須要有程序去設定支持及追隨實體使命並與其風險胃納一致的目標。

事項辨認 – 於辨認內部及外部事項時，必須區分風險及機會。

風險評估 – 風險的分析及評估乃按固有（於進行監控前）及剩餘（於進行監控後）的基準進行。

風險回應 – 管理層選擇風險回應，並建立行動，以讓風險追隨實體的風險承受能力及風險胃納。



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Jennifer Luk

e jennifer@ninehillsmedia.com

Frank Paul

e frank@ninehillsmedia.com

ninehills
media

t +852 3796 3060

Information and Communication – relevant information is identified, captured and communicated that enable people to carry out their responsibilities.

Monitoring – ERM is monitored through on-going management activities or separate evaluations or both with necessary modifications made.

Assessment of Risk

Risk may be assessed qualitatively (by professional judgement) and/or quantitatively (by statistical models, the most popular one is the Monte Carlo simulation and risk analysis first used by scientists working on the atomic bomb during World War II and named after Monaco city renowned for its casinos). It is commonly analysed by the Likelihood-Impact grid with the horizontal line representing the likelihood of the risk occurring and the vertical line representing the impact to the entity if the risk does occur. Below is a typical grid.

Impact	High	Medium	High	High
	Medium	Low	Medium	High
	Low	Low	Low	Medium
		Low	Medium	High
		Likelihood		

The likelihood is categorised into low (chance of risk occurring), medium and high. The impact (financial or otherwise) is categorised into low (impact when the risk does occur), medium and high. Based on the likelihood-impact analysis, such event may be of low, medium or high risk. In the COSO Application Techniques (Volume 2), the likelihood of occurrence is ranked from very low, low, moderate, high, to very high and the relative impact is ranked from insignificant, minor, moderate, major to catastrophic. Whether and to what extent an enterprise will undertake an event with low, medium or high risk will depend on the risk philosophy of the enterprise and its risk tolerance and risk appetite.

In our Next Issue

In our next issue of Momentum, we will discuss what happens once risks are identified and assessed, and how management should respond to risks and implement activities to control and mitigate the risks. In addition, we will discuss how the COSO Risk Management Framework applies to enterprises, from listed companies to law firms and its limitations. **M**

— Vincent P C Kwan

Solicitor/Certified Public Accountant
Chairman, FRA Committee
The Chamber of Hong Kong Listed Companies

控制活動 — 制定並實施政策及程序，以確保風險回應能有效執行。

資訊與溝通 — 辨認、獲取及傳達相關資訊，讓人們能夠履行其責任。

監督 — 透過持續的管理活動或個別評估監督企業風險管理，或兩者同時進行，並作出必要的修訂。

風險評估

風險的評估可為定性 (qualitative) (以專業判斷進行) 及 / 或定量 (quantitative) (以統計模型進行，其中最多人採用的是蒙地卡羅模擬及風險分析，其於第二次世界大戰期間由科學家於原子彈相關工作中首次採用，並以摩納哥一個以賭場聞名的城市命名)。其分析通常透過可能性及影響性方格進行，橫軸表示風險發生的可能性，縱軸則表示風險實際發生對實體的影響性。以下為該方格的範例。

影響性	高	中	高	高
	中	低	中	高
	低	低	低	中
		低	中	高
		可能性		

可能性按風險發生的機率分級為低、中及高。影響性 (財務或其他方面) 按風險實際發生時造成的影響分級為低、中及高。根據可能性及影響性分析，有關事項可為低、中或高風險。於COSO應用技術 (第二部分) 中，風險發生的可能性的分級由甚低、低、中等、高至甚高，而相關影響的分級則由輕微、偏低、中等、偏高至嚴重。企業是否進行低、中或高風險的事項以及其進行的程度，將取決於該企業的風險哲學、風險承受能力及風險胃納。

下期內容

下一期《Momentum》將會討論辨認並評估風險後發生的情況，以及管理層應如何回應風險及進行活動以控制及減低風險。此外，我們亦會討論COSO風險管理架構如何應用於不同企業 (從上市公司到律師事務所) 及該架構的限制。 **M**

— 關保銓

律師 / 會計師
香港上市公司商會
財經事務及監管政策委員會主席

21/3/2017

Breakfast Meeting with Mr Thomas Atkinson, Executive Director, Enforcement Division, Securities and Futures Commission

At this breakfast meeting, Mr Atkinson shared with the 20 plus attendees the enforcement focus on the SFC, which included addressing the untoward volatility and the lack of open market of certain GEM companies and IPO candidates, as well as cases where companies and directors provided inaccurate or misleading information. The discussion should help members become more alert and steer them away from behaviours seen problematic by the SFC.

與證監會法規執行部執行董事 魏建新先生早餐會

在早餐會上，魏先生向與會的20多名會員介紹證監會的執法重點，包括處理創業板公司或上市申請人股價異常波動及缺乏公開市場的情況，以及公司及其董事提供不準確或誤導資料的情形。有關討論有助會員提高警惕，避免作出有可能被證監會認為有問題的行為。



21/4/2017

ESG Reporting Seminar Series 2017 – Management Approach and Disclosure – What and How

Speaker: Mr Coleman Ng, Director, Business Reporting and Sustainability, KPMG

At this inaugural session of our 2017 ESG Seminar Series, the speaker discussed the experience and techniques on disclosing environmental data for compliance with HKEx requirements, focusing on Environmental KPI data selection, collection and measurement. Attendees obtained new insights for their planning process for Environmental KPI disclosure.

2017年度《環境、社會及管治報告指引》研討會系列 — 管理層方法和披露 — 內容與方式

講者：畢馬威會計師事務所商業報告和企業可持續發展總監 吳志輝先生

此研討會是商會2017年度《環境、社會及管治報告》研討會系列的第一講。主講者集中討論了在披露環境數據方面的實踐經驗和技術，特別是環境KPI數據的選擇、收集和計量，以達至符合香港聯交所的要求。參與研討會的會員從中獲得了新的認知，對於籌劃其環境KPI數據披露方面大有裨益。



9/5/2017

CHKLC Director Training Series 2016 (Session 1) – Board Management: Directors Responsibilities for Delegation to and Reliance on Third Parties

Speaker: Professor C K Low, Associate Professor in Corporate Law, CUHK Business School, The Chinese University of Hong Kong

The first session of the 2017 Director Training Series was dedicated to directors responsibilities and in particular addressed the pitfalls when directors delegate their powers to third parties. The speaker cautioned that when delegating powers, directors must still live up to the standard of care expected of them in the Companies Ordinances and they are still accountable to the law.

CHKLC董事培訓課程系列2016（單元一）——董事會管理：董事授權予第三方並依賴其行事時所面對之責任

講者：香港中文大學商學院助理教授 劉殖強教授

2017年董事培訓系列的第一講是關於董事責任，特別提到當董事下放權力予第三者時需要警惕之處。講者提醒在下放權力時，董事仍需符合公司法內就董事需履行謹慎責任的要求，董事仍然負有對法律的責任。



24/5/2017

Visit to CHKLC by Delegation of Dershare

The Chamber received a delegation of Dershare, a network of mainland small and micro entrepreneurs with members of over 300,000 nationwide, with an eye on a listing here. Our Chairman Mr Francis Leung gave an overview of Hong Kong's capital market and compared a listing in Hong Kong vis-à-vis the A-share market. The group discussed how the Hong Kong capital market can better serve the needs of the new economy enterprises in the Shenzhen and Guangdong region.

德商匯訪問團到訪本會

商會接待了德商匯的訪問團，該組織是內地一個中小微創企業家的網路，在全國有超過三十萬會員。他們都有興趣將來在本港上市。商會主席梁伯韜先生向代表團講解香港資本市場的概況，並比較了在香港與在內地上市的分別。代表團也討論到香港資本市場如何服務深圳廣東地區新經濟企業的資金需要。



Upcoming Event

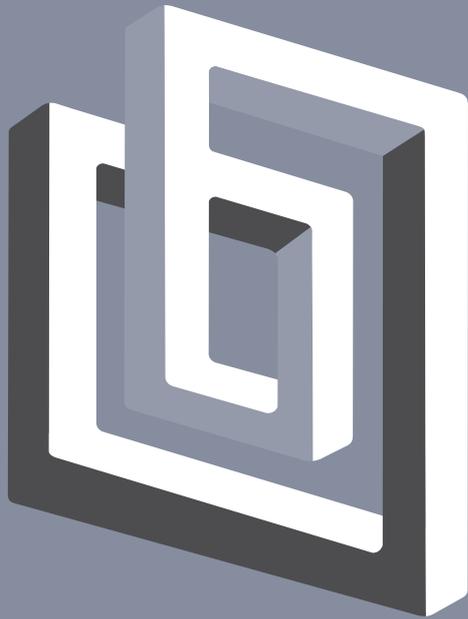
未來活動

- 12/6/2017** **ESG Reporting Series 2017 – Sustainability and Cyber Security: Evaluating and Managing Ongoing and Emerging Risks**
Speakers: Ms Patricia Dwyer, Founder and Director, The Purpose Business; and Mr Sunil Rathour, Cyber Security Consultant
2017年度《環境、社會及管治報告指引》研討會系列：可持續發展及網絡安全－評估及管理目前及正湧現的危機
講者：The Purpose Business 創辦人兼總監 Patricia Dwyer 女士；及網絡安全顧問 Sunil Rathour 先生
- 13/6/2017** **CHKLC Director Training Series 2017 (Session 2) – Crisis Management and Resumption of Trading**
Speaker: Ms Esther Chan, Managing Director, Strategic Financial Relations Ltd.
CHKLC 董事培訓課程系列2017（單元二）－危機管理及復牌
講者：縱橫財經公關顧問有限公司董事總經理 陳曼菁女士
- 15/6/2017** **Membership Social Function – CHKLC and HKVCA (Hong Kong Venture Capital and Private Equity Association) Happy Hour Drinks**
本會與香港創業及私募投資協會合辦會員歡樂時光聯誼聚會
- 28/6/2017** **CHKLC Annual General Meeting**
本會週年會員大會
- 11/7/2017** **CHKLC Director Training Series 2017 (Session 3) – Role of the Board and Directors in Tackling Cybersecurity and Fintech Issues**
Speakers: Mr Ricky Liu, Senior Manager, Risk Advisory, BDO; and Mr Dominic Wai, Partner, ONC Lawyers
CHKLC 董事培訓課程系列2017（單元三）－董事會和董事在應對網絡安全及金融科技的角色
講者：香港立信德豪會計師事務所風險諮詢服務高級經理 劉鵬鵬先生；及柯伍陳律師事務所合夥人 紹宗先生
- 27/7/2017** **Seminar on SFO's Disclosure Proceeding jointly organised by CHKLC, The Hong Kong Institute of Chartered Secretaries (HKICS) and The Hong Kong Independent Non-Executive Director Association (HKINEDA)**
由香港特許秘書公會、本會及香港獨立非執行董事協會聯合主辦有關證券及期貨條例之披露聆訊程序



Please watch out for further information on the above events from the Chamber. For enquiry, please contact the Chamber's Secretariat (Tel: (852) 2970 0886-7 / Email: info@chklc.org).

有關上述活動之詳情，請留意本會公佈的資料。如有查詢，請與本會秘書處聯絡（電話：(852) 2970 0886-7 / 電郵：info@chklc.org）。



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+86 10 8535 1866 或/or +86 159 0115 7089 | 劉自強 (MATTHEW LIU) ziqiang.liu@gulfstream.com

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