

Accounting Bulletin 1

Disclosure of Loans to Officers



Hong Kong Institute of
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香港會計師公會

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ACCOUNTING BULLETIN 1
DISCLOSURE OF LOANS TO OFFICERS

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Introduction

1. The Companies (Amendment) Ordinance 1984 amended the provisions in S161B of the Companies Ordinance relating to the disclosure of loans to officers. The section now requires disclosure in the financial statements of the following information in respect of every relevant loan made after 31 August 1984:
 - a. the name of the borrower and, where appropriate, the name of any connected director;
 - b. the terms of the loan, including the rate of interest and any security;
 - c. the amount outstanding on the loan (principal and interest) at the beginning and end of the financial year respectively and the maximum amount outstanding during the financial year; and
 - d. the amount of interest due but not yet paid and of any provision for unrecoverable interest or principal.

Similar disclosures must be made in relation to every guarantee entered into and every security provided by the company in respect of a relevant loan made after 31 August 1984.
2. The Society's Council considered that some guidelines should be issued to members on the interpretation of "relevant loan" and "officer of the company" for the purposes of this section and has therefore sought guidance from the Registrar-General. This Accounting Bulletin contains details of the interpretation given by the Registrar-General in letters to the Society dated 20 May 1985 and 3 June 1985 respectively.
3. It should be noted that this interpretation has been issued by the Registrar-General with the following provisos:
 - a. that it is for the purposes only of the provisions of S161B of the Companies Ordinance relating to the disclosure of particulars of "relevant loans";
 - b. that it is not to be taken as expressing any view on the interpretation of S157H of the Companies Ordinance and the prohibition of loans to directors under that section or on the interpretations of Ss157I and 157J of the Companies Ordinance dealing with the civil consequences of and the criminal penalties for transactions contravening the provisions of S157H;

- c. that it is for the purposes only of the Registrar-General's administration of the Companies Ordinance; and
- d. that it is for general guidance only and is not intended to deal with every situation that may arise in individual cases.

Interpretation of "Relevant loan"

- 4. S161B defines "relevant loans" in connection with all companies as those loans made either to an officer of the company or to a company in which a director holds a controlling interest. Such loans are considered to be relevant even if they were originally made at a time when the borrower did not fall into either of these categories. Where the company concerned is either a listed company or a company which is a member of a group containing a listed company the definition is extended to include a loan to a connected person. Such a person is defined in S161B(8) as:
 - a. the spouse of a director;
 - b. any children or step-children of a director provided that they are below the age of 21 years;
 - c. a person acting in his capacity as the trustee of any trust, other than an employee's share scheme or pension scheme, which includes as beneficiaries, or allows the trustee to exercise his powers for the benefit of, a director, his spouse, or any of his children or step-children below the age of 21 years; and
 - d. a person acting in his capacity as a partner of a director or of any person who is connected to that director by virtue of (a), (b) or (c) above.
- 5. Loans need not be disclosed in financial statements where all of the conditions listed below apply:
 - a. the loan is made by the company or by a subsidiary to an employee of the company or of the subsidiary;
 - b. it does not exceed HK\$100,000;
 - c. it is certified by the directors of the company or subsidiary as having been made in accordance with the company's usual practice for loans to its employees or to the employees of the subsidiary; and
 - d. it is neither a loan made by the company under a guarantee from or on security provided by a subsidiary nor, if the loan is from a subsidiary, is it guaranteed or secured by the company or any other subsidiary.
- 6. The Registrar-General has confirmed that, whilst the word "loan" is not itself defined in the Companies Ordinance, the words "relevant loan" are defined in S161B (see paragraphs 4 and 5 above) and the particulars that are required to be disclosed will be as described in that section.
- 7. In particular it may be taken that:
 - a. a mere agreement for a loan or a credit facility, in either case without any actual draw-down, is not a loan, relevant or otherwise;
 - b. there is no "loan" as such until an amount of money is actually advanced;

- c. a credit card account and the operation of such an account, i.e. the amounts debited from time to time to a credit card account, are not loans;
- d. in the case of banks and other lending institutions, overdrawn current accounts may be treated as running accounts. The particulars of these, therefore, that are required to be disclosed under S161B(1)(c), or S161B(4)(a)(iii), where appropriate, are:
 - i. the amount actually outstanding in the account, in respect of principal and interest, at the beginning of the bank's financial year;
 - ii. the amount actually outstanding in the account, in respect of principal and interest, at the end of the bank's financial year; and
 - iii. the maximum amount actually outstanding in the account during that financial year.

This means, inter alia, that there is no requirement to disclose particulars of individual amounts drawn down from time to time.

- 8. Advances for the payment of business expenses do not fall within the definition of relevant loans if they are used on the company's behalf within a reasonable period. Such advances are effectively the company's funds held on trust by the officer. The Registrar-General has confirmed, however, that the following types of advances should be categorised as relevant loans:
 - a. where the advance is used partly or wholly for the payment of private expenses and the officer clears the drawn amount from time to time; and
 - b. where the advance is a long-term one which has been made to the officer either for no particular purpose or for purposes other than the company's business.

Since such advances are deemed to be relevant loans they should be disclosed accordingly.

Interpretation of "Officer of the company"

- 9. The word "officer" is defined in S2 of the Companies Ordinance as including "a director, manager or secretary" and the word "director" as including "any person occupying the position of director by whatever name called". The Registrar-General has broken this down for the purposes of practical administration as follows:
 - a. Director - This means any person or company who was at any time during the company's financial year an executive, non-executive, alternate or "shadow" director. A "shadow" director is one in accordance with whose directions or instructions the directors of the company are accustomed to act.
 - b. Manager - This means the company's general manager, chief executive and any other type of manager or executive who has authority, without further approval, to grant a loan to himself.
 - c. Secretary - This means any person or company who was at any time during the company's financial year the secretary of the company including, if the office of secretary is vacant or there is for any other reason no secretary capable of acting, any assistant or deputy secretary or, if there is no assistant or deputy capable of acting, any officer of the company authorised generally or specifically to act as secretary by the directors.