

**Panel on Financial Affairs  
Follow-up to special meeting on 23 February 2009**

**IV. Legal power of the Securities and Futures Commission (“SFC”) to seek remedies and/or to revert the decision of privatization after the scheme of arrangement for privatization had been approved by the court**

Section 214 of the Securities and Futures Ordinance (“SFO”) gives the SFC power to apply to the High Court for various orders in the event that the business or affairs of a listed corporation have been conducted in a manner which is, for example, oppressive to some of its members or which involves misconduct towards the members. If a court has approved the very act which is claimed to be oppressive e.g. a privatization (a scheme of arrangement) it is difficult to envisage how we would be able to seek an order under Section 214 that the privatization was oppressive unless the court had been misled or other misconduct was involved.

2. Instead of attempting to act after the fact in relation to a court sanctioned privatization, the SFC has power under section 385 of the SFO to seek to intervene in ongoing proceedings for court approval for a scheme of arrangement e.g. to place relevant evidence before the court so that it is able to make a full and informed decision.

## V. Lost share certificates

- (a) whether and how the interest of the investors concerned could be better protected, in particular on the requirement to obtain bank guarantee for re-issue of the lost certificates

The replacement of lost certificates is handled by share registrars of listed companies.

2. Under section 13.60(5) of the Listing Rules, the issuer shall (or shall procure that its registrar shall) provide a certificate replacement service. The replacement procedures for lost certificates may vary depending on the jurisdiction where the listed company is incorporated.

3. For companies incorporated in Hong Kong, Section 71A of the Companies Ordinance (“CO”) applies whereby any person (the “Applicant”) who is a registered holder of shares in a company or who claims to be entitled to have his name entered in the register of members of a company (e.g. holders of share certificates in the name of the Hong Kong Securities Clearing Company (“HKSCC”) Nominees Ltd) may apply to the company for a new certificate in respect of such shares if the certificate relating to such shares is lost. Section 71A specifies the requirements to be fulfilled by the company and the Applicant before a new certificate could be issued. Under Section 71A, no bank guarantee is required for the re-issue of lost certificates. The Administration is reviewing the section under the CO rewrite exercise, and considering adjusting the amount threshold upwards to enable more shareholders with lost certificates to benefit from the simpler publication requirements. The proposed change will be included in the draft Bill for public consultation in the fourth quarter of 2009.

4. For companies not incorporated in Hong Kong (such as in Bermuda, Cayman Islands and British Virgin Islands), the process of dealing with lost certificates is usually specified in their own company articles, and requires some form of indemnification – e.g. the provision of a bank guarantee to cover potential losses that may arise as a result of the replacement of the lost certificates, or the obtaining of some form of insurance to cover such losses.

(b) the arrangements to deal with dividends and bonus shares arising from these lost cases which the investors concerned failed to prove their entitlements

5. At present, participants of the Central Clearing and Settlement System (“CCASS”) collect share certificates in the name of HKSCC Nominees Ltd for shares withdrawn from the CCASS Depository. CCASS Participants are reminded to transfer the shares into their own names or the names of their clients as soon as possible to ensure that benefit entitlements such as dividends and bonus shares will be distributed to them directly.

6. However, from time to time, CCASS Participants and/or their clients may fail/forget to complete the shares transfer prior to the relevant book-close dates for benefit entitlements. In such case, the entitlements which accrued to these shares in the name of HKSCC Nominees Ltd would be collected by CCASS and recorded as “unclaimed entitlements”.

7. HKSCC has detailed the standard procedures and documentation requirements in the CCASS Operational Procedures (section 8.22) for CCASS Participants to submit applications to re-claim such unclaimed entitlements. Where the unclaimed benefits are related to lost certificates, HKSCC would only require the submission of the replacement certificates that the CCASS Participant or its client has obtained from the share registrar for claim application purpose. So far, HKSCC is not aware of any lost cases which the investors concerned failed to prove their entitlements.

## **VI. The review on HKSCC's measures to enhance investor protection, including measures to increase shareholders' control of their securities and voting rights**

For investor protection purpose, HKSCC offers two types of investor accounts to increase shareholder's control of their securities in CCASS, namely (i) Investor Account service and (ii) Stock Segregated Account with Statement service.

### Investor Account Service

2. HKSCC introduced Investor Account service to the market in May 1998 (which was overhauled in 2004). The Investor Account enables investors to deposit their beneficially owned shares into CCASS for share custody purposes once they are admitted as "Investor Participant" ("IP"). With the Investor Account, IPs have full control over the movements of their shares deposited in CCASS. Apart from securities and money settlement services, CCASS provides comprehensive nominee services to IPs to help protect their shareholding rights such as receiving corporate communications directly from listed issuers and electronic voting services. IPs enjoy a variety of communication channels to access CCASS services including CCASS Internet System and CCASS Phone System on a 24-hour-a-day basis.

### Stock Segregated Account with Statement ("SSA") service

3. HKSCC introduced the SSA service to the market in March 1994. The SSA service is offered through brokers and custodians to investors who have entrusted their shares with them. Initially, investors who choose to open an SSA in CCASS would receive a monthly statement directly from CCASS reporting all movements of their shares in the SSA. The SSA service was revamped in 2007 and SSA users can now enjoy enhanced securities and money settlement services with access to CCASS similar to IPs. While brokers or custodians still have full control over the transfer of the investors' shares in SSA accounts, CCASS now provides various options for SSA users to track the movement of their shares such as through SMS/email alert messages, online enquiry, statements etc. Although nominee services are provided by the brokers or custodians to the SSA holders, like IPs, HKSCC provides corporate communication and electronic voting services directly to SSA users.

## Corporate Communications and Voting Rights

4. Under the Listing Rules, listed issuers are required to send out corporate communication materials to registered shareholders such as annual reports, circulars etc. For non-registered shareholders whose securities are held in CCASS, e.g. CCASS Participants (including IPs) and SSA holders, they can, at the request of the listed issuers and through notification to HKSCC, choose to receive corporate communication materials directly from the listed issuers via their share registrars. For investors who have entrusted their shares with CCASS Participants (other than IPs) and have not opened SSA accounts, they can request the participants concerned to submit their contact details to CCASS for such purpose. In addition, all corporate announcements are immediately posted on the website of the Hong Kong Exchanges and Clearing Ltd for the public.

5. Where a listed company has announced to hold a corporate meeting, CCASS Participants (including IPs) and SSA holders will be notified of the relevant details of the meeting and submit voting instructions to CCASS in accordance with the voting timetable. Investors who have entrusted their shares with brokers and custodians (who are CCASS Participants) but do not open SSA accounts have to request their brokers and custodians to vote on their behalf. Moreover, instead of submitting voting instructions, investors whose shares are held in CCASS can choose to give instructions to nominate a person to attend the meeting.