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6 May 2009

Ms Rosalind Ma
Clerk to Panel on Financial Affairs
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Ma,

Panel on Financial Affairs
Matters arising from the Privatization of PCCW

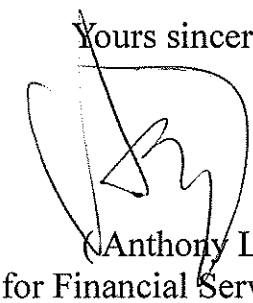
Thank you for your letter of 15 April 2009. Enclosed please find the documents setting out the requested information as follows –

Annex A Actions taken by the Securities and Futures Commission to follow up public concern about protection of minority shareholders in the privatization of PCCW; and

Annex B Plans to review and improve the relevant rules and regulations, such as provisions in the Companies Ordinance and the Codes on Takeovers and Mergers, to better protect the interest of small investors in the decision-making process of the listed issuers, notably in privatization.

Should you have any enquiry, please contact the undersigned.

Yours sincerely,



(Anthony LI)
for Secretary for Financial Services and the Treasury

c.c. SFC (Attn: Ms Christine Kung)
AA/SFST

Annex A

Actions taken by the Securities and Futures Commission to follow up public concern about protection of minority shareholders in the privatization of PCCW

In response to the development of the PCCW incident, the Securities and Futures Commission (SFC) has taken rigorous and immediate actions, as follows-

- On 30 January 2009, the SFC commenced its investigation into allegations of malpractice and manipulation in the PCCW's incident;

- On 4 February 2009, the SFC attended, and took possession of the voting records of, the PCCW's shareholders' meeting and applied significant resources to ensure that its investigation of the underlying facts was as complete as possible. Steps taken by the SFC included (i) analyzing over 6,000 voting records; (ii) interviewing 91 witnesses, transcribing, translating and summarizing their statements; (iii) analyzing and examining approximately 2,000 further documents including relevant share certificates, PCCW shareholders lists, transfer journals, and other records such as telephone, computer and personal records; (iv) obtaining and examining account opening documents and trading and settlement records for several hundred clients of five brokers; and (v) preparing evidence for submission to the court, including a core affidavit of 49 pages with 33 box files of key evidence;

- Given the SFC was concerned about allegations that the voting was unfair to minority shareholders, it made an application on 24 February 2009 to the court to intervene in the court hearing to ensure that the court had the benefit of any relevant evidence uncovered by the SFC's investigation. The court granted an application by the SFC to intervene in the court hearing to sanction the scheme following an investigation into allegations of malpractice and manipulation;

- During the Court of First Instance proceedings, the SFC presented evidence to the court and made comments on what the evidence suggested in relation to the conduct of the shareholders' meeting on 4 February 2009; and

- On 6 April 2009, the Hon Madam Justice Susan Kwan of the Court of First Instance approved PCCW's privatization. The SFC immediately lodged an appeal against the decision by Madam Justice Susan Kwan in order to seek clarification from the Court of Appeal in relation to the splitting of shares. On 22 April 2009, the Court of Appeal ruled in favour of the SFC's appeal against the decision by Madam Justice Susan Kwan after a 6-day trial.

Securities and Futures Commission
May 2009

Plans to review and improve the relevant rules and regulations, such as provisions in the Companies Ordinance and the Codes on Takeovers and Mergers, to better protect the interest of small investors in the decision-making process of the listed issuers, notably in privatization

At present, privatisation of a listed company has to be conducted under the relevant provisions of the Companies Ordinance (CO) and in compliance with the Codes on Takeovers and Mergers (Codes) issued by the SFC under the Securities and Futures Ordinance.

2. Generally speaking, a listed company can be privatised by way of a Scheme of Arrangement or a General Offer. For privatisation conducted through a scheme of arrangement, in accordance with section 166 of the CO, the company concerned has to apply to the court and convene a meeting in a manner as directed by the court to put the scheme of arrangement to shareholders' vote. At such meeting, not only approval for the scheme of arrangement has to be obtained from shareholders representing three-fourths of voting rights present and voting either in person or by proxy, approval also has to be obtained from over half of the shareholders present and voting either in person or by proxy (ie the "majority in number" requirement), and that the scheme of arrangement shall take effect only after the voting result has been sanctioned by the court. The "majority in number" requirement is to protect the interests of minority shareholders.

3. The Codes require that in addition to satisfying any voting requirements imposed by law, the scheme of arrangement must be approved by at least 75% of the voting rights attached to the disinterested shares that are cast either in person or by proxy at a duly convened meeting of the holders of the disinterested shares. In addition, the number of votes cast against the resolution to approve the scheme at such meeting must not be more than 10% of the voting rights attached to all disinterested shares. This requirement renders additional safeguards for minority shareholders.

4. We note that there are concerns from the market that the "majority in number" requirement for approving members' schemes under section 166 of the CO has given rise to the phenomenon of "share splitting". While the "majority in number" requirement is originally intended to protect the interests of minority shareholders and small creditors and exists in the company law of comparable jurisdictions such as the United Kingdom, Australia and Singapore, we agree that there is a case to review such a requirement.

5. As section 166 of the CO is applicable to both listed and unlisted companies and covers both members' and creditors' schemes of arrangement, we need to be cautious in balancing and protecting the different interests of shareholders and creditors. We will make reference to overseas practices and reviews and will consult the Standing Committee on Company Law Reform.

6. We aim at issuing any proposed changes on this subject, as part of the CO Rewrite exercise, for public consultation in the fourth quarter of 2009.

Financial Services and the Treasury Bureau
May 2009