

# WEBINAR SERIES:

2021 - INSOLVENCY, RESTRUCTURING & RECOVERY -  
A LEGAL, ACCOUNTING AND PRACTICAL OVERVIEW

---

## WEBINAR 3 - FINANCIAL DISTRESS AND RESTRUCTURING (ISSUES FOR CONSIDERATION FOR HONG KONG LISTED ISSUERS)

---

31 MARCH 2021

**PC** PERUN  
CONSULTANTS

CHARLTONS  
易周律師行





**REGULATORY REQUIREMENTS  
APPLICABLE TO DISTRESSED  
LISTED COMPANY**





## Duties of directors of Hong Kong private companies (recap)

- **fiduciary duties:** to act in the best interest of the company and its shareholders as a whole
  - When company approaches imminent insolvency or is faced with a real risk of insolvency, such duties towards shareholders would no longer be paramount and a director must take into account the interests of creditors "as a whole" (i.e. without preference to any particular class of creditors) prior to shareholders
- **duty of care, skill and diligence:** exercised by a reasonably diligent person acting as a director, with reference to his/her specific knowledge, skill and experience.



# Duties of directors of Hong Kong listed companies

- the Stock Exchange expects directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law
- directors are required to provide an undertaking (*Form B - Declaration and Undertaking with regard to Directors*) to the Stock Exchange at the time of appointment, in which they undertake to comply and procure the relevant listed company to comply to the best of their ability with the Listing Rules
- directors are expected to gain familiarity with the Listing Rules, relevant guidance letters of the Stock Exchange and laws and regulations applicable to the listed group, and often may undertake directors training or seek independent advice





# Breach of directors' duties of Hong Kong listed companies

- A breach of such duties would be a breach of the Listing Rules and relevant undertaking to the Stock Exchange. May lead to:
  - discipline by the Stock Exchange (i.e. private reprimand, public censures or statements involving criticism etc.)
  - reports being made to:
    - the Securities and Futures Commission ("SFC")
    - other regulatory authorities (such as the Insurance Authority or HKMA if the director is accredited to an insurer or investment bank)
    - offshore authorities pursuant to which the SFC has entered into cooperative arrangements for exchange of information under the IOSCO MMoU (International Organisation of Securities Commission Multilateral Memorandum of Understanding) For example, the SEC if the person is also a director of a U.S. listed company







## Breach of directors' duties of Hong Kong listed companies (cont')

- the SFC may impose orders against directors in market misconduct tribunal proceedings or through courts
- common orders:
  - “disqualification orders” disqualifying director from involvement in management of company
  - “cold shoulder” orders depriving the director access to securities markets
  - “cease and desist” orders requesting him to refrain from further breaches and/or orders for restitution and/or damages



## Disclosure obligations upon signs of financial distress

Under Part XIVA of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong):

- a listed issuer must disclose unpublished price-sensitive “inside information” by way of announcement *as soon as practicable* upon being aware of the information
- inside information is *deemed* to have come to the knowledge of a listed company if information has, or ought reasonably to have, come to the knowledge of its officers

*“Inside information” means specific information about the corporation, its shareholder or officer, or its listed securities or derivatives, which is not generally known to persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities”*





# Source of inside information

- price-sensitive inside information may be derived from:
  - **Actions or omissions** of the listed group
    - E.g. from implementation of restructuring plans specifically drawn up to deal with deterioration of financial conditions
  - **External factors** the implications of which on the business, operations or financial condition of the listed group may not be immediately apparent to the market
    - E.g. imposition of sanctions by governments; downgrading of rating of debt issued; impact of social distancing measures during COVID-19 pandemic or policy changes of governments etc.



# Disclosure obligations apply to information which is “specific”

In any event, the relevant information must be “specific” in the sense that they are capable of being identified, defined and unequivocally expressed:

- the mere knowledge of the content of relevant accounts may **not** be regarded specific enough for disclosure
- the knowledge of substantial losses or profits made by a company shown in the relevant accounts **would be** specific information and accordingly may be inside information





# *Guidelines on Disclosure of Inside Information*

*Guidelines on Disclosure of Inside Information* published by the SFC provides a non-exhaustive list of common examples of events or circumstances where a corporation should consider whether a disclosure obligation arises, including, *inter alia*:

- i. changes in performance, or expectation of the performance, of the business
- ii. changes in financial condition, e.g. cash-flow crisis, credit crunch
- iii. changes in expected earnings or losses
- iv. filing of winding up petitions, the issuing of winding up orders or appointment of provisional receivers or liquidators
- v. revocation or cancellation of credit lines by one or more banks
- vi. restructurings, reorganisation and spin-offs that have an effect on the corporation's assets, liabilities, financial position or profits and losses





## Inside information in financial accounts

A common situation where directors of listed companies should pay attention to in considering whether a disclosure obligation under Part XIVA arises (especially if the group is distressed) is upon *receipt of accounts and financial results* (in the form of advanced audited draft accounts, or monthly management accounts or otherwise).

Directors must make an assessment as to whether there is a *substantial difference* between market expectations (i.e. results which the market might predict) and the actual results or financial condition of the company



# What is a “material” or “significant” change that may constitute inside information

The directors should consider:

- I. market’s reaction if information was disclosed with reference to **what has already been disclosed to date** (e.g. past results, statements and forecasts)
- II. **profit projections** by analysts and other information about the company in financial journals and publications from which investors may logically deduce the corporation’s results
- III. whether the change in financial condition is in line with or are reasonably expected by shareholders/investors based on **information in the public domain** at the material time:
  - performance vis-à-vis competitors and corporations in comparable business
  - nature of business and significance of the change in financial condition to businesses of similar nature (e.g. some businesses may be more volatile / sensitive to market conditions whilst volatility traders may in fact profit from general market downturn)
  - market sentiment relating to the listed company in general





## No bright line test as to what constitutes inside information

- The SFC has not to date provided any bright line test as to the amount of percentage change in financial performance that may be taken as “material” or “significant” for the purpose of Part XIVA
- Insider dealing tribunal case (*Chevalier (OA) International Limited*)
  - in the accountancy profession, a movement up or down of 5% or more would be deemed to be material
  - it would be dangerous to lay down any hard and fast or arithmetic test as each corporation is different and certain information may have different impact on different listed corporations depending on the relevant corporation’s size, nature of business, recent developments and market sentiments about the corporation

# Safe harbours

A listed company may refrain from disclosing inside information as soon as practicable as prescribed under Part XIVA where

- i. the relevant information relates to transaction remains an “incomplete” proposal and/or is still being negotiated subject to finalization; *and*
- i. adequate measures are in place to preserve the confidentiality of such information (e.g. entering of a non-disclosure agreement); *and*
- i. confidentiality is in fact preserved

No formal guidance as to when a transaction becomes a “complete” proposal, but generally the obtaining of board approval for a transaction and/or the entering of any binding commitment may cause the transaction to be “complete”





# Suspension of trading

- if the directors are in receipt of inside information, but the company is not able to make an announcement (full announcement or holding announcement) on a timely basis, then the company should apply for a suspension of trading in its securities until disclosure can be made
- a suspension of trading of shares **no way lessens the obligations** of a corporation to disclose inside information to the public *as soon as reasonably practicable*



# Insider dealing and measures to mitigate risks of insider dealing

- directors and controlling shareholders of the listed company may receive materials concerning the listed group (e.g. advanced draft of audited accounts or management accounts for consolidation purposes) containing price-sensitive information (e.g. as a rapid worsening of financial condition) which has not been disclosed to the market
- prior to the publication of the relevant inside information, the recipient of the information **must not deal** in any securities of the Company to avoid any insider dealing offences under the SFO



# Definition of “insider dealing”

Under sections 270 and 291 of the SFO, insider dealing takes place when, *inter alia*:

- a person connected with a listed company (e.g. a director, employee or substantial shareholder) in possession of “inside information”:
  - deals, or counsels or procures another to deal, in the company’s listed securities, or
  - discloses or leaks the information knowing or having a reasonable cause to believe that the receipt of the information may deal or procure others to deal in the company’s securities





# Consequence of insider dealing

- market misconduct tribunal or court proceeding may be brought , and sanctions may be imposed on the relevant persons:
  - i. **disqualification order** – the person shall not be or continue to be a director of the listed corporation, or be concerned directly or indirectly, or take part in the management of a listed corporation or other specified corporation
  - ii. **cold shoulder order**
  - iii. **cease and desist order**
  - iv. **disciplinary referral order** – recommend other statutory body (such as the HKMA or Insurance Authority) to take disciplinary action against the person
  - v. **disgorgement and other cost orders**
- may be liable to prosecution as a **criminal offence**, subject offender to up to 10 years imprisonment and/or fines of up to HK\$10 million
- civil actions which may brought by persons who has suffered a pecuniary loss





# Available defence and mitigating risk of insider dealing

- under sections 271 and 292 of the SFO, a defence is established that:
  - there were effective arrangements in place (i.e. a “Chinese wall”) to ring-fence any inside information in the possession of any of its directors and employees and
  - each person who took the decision for the corporation to deal, counsel or procure a dealing in the listed securities did not have the inside information at that time and had not received advice from those in possession of such information
- to avoid leakage of inside information, measures should be put in place to avoid disclosures beyond those persons who have a need to know



# Mitigating risk of insider dealing

- establishing an information barrier to ring-fence the flow of inside information between persons who would likely receive inside information (such as the CFO) and those who are responsible any dealing in shares of the company (dealing personnel)
- such information barrier may involve:
  - a **general policy** against communication to, or discussion with, dealing personnel relating to any inside information
  - ensuring materials potentially concerning inside information to be **password protected** and access restricted from dealing personnel
  - ensuring **physical security** of, or policy for, destruction of inside information (subject to applicable retention policies)
- requiring all dealing decisions by dealing personnel and other staff to be cleared by compliance officer
- providing **adequate training** to dealing personnel and those who may come into contact with inside information





## Model Code for Securities Transactions by Directors of Listed Issuers

Under the Model Code (Appendix 10 of the Listing Rules) any director and investment vehicle controlled by him/her holding shares would be restricted from “dealing” (including pledging, or otherwise granting of any rights or options over) any shares of the listed company during any “**black-out periods**”, as follows:

- i. whilst in possession of inside information
- ii. on any day on which its financial results are published
- iii. during the period of 60 days immediately preceding the publication date of the annual results
- iv. during the period of 30 days immediately preceding the publication date of the quarterly results (if any) and half-year results



# RESTRUCTURING OPTIONS FOR A HONG KONG LISTED COMPANY





# Privatisation and delisting to facilitate restructurings

- when a company is in financial distress and such facts are known to the market, its share price may be severely and adversely impacted and in many case may under-perform
- during the COVID-19 pandemic, share price of some listed company may be trading at a significant discount to the net asset value per share
  - the share price of some listed companies had dropped so significantly that their cash position exceeded their market capitalisation to an extent its retained cash was sufficient for the company to carry out a share buy-back offer
- underperformance of share price might cause maintaining a listed status not justifiable or cause restructurings to be more difficult to carry out



# Implications of under-performing share price

- make company not investable by asset allocators and investors
  - such inability to raise equity capital to support the desired growth and strategy of the listed company may hamper overall goal of value maximization
- cause any investment terms that may be negotiated under any proposed restructuring plan to be based on unfavourable valuation
- increase the cost of borrowing
- make any restructuring proposals or steps involved to more difficult to execute
  - e.g. require obtaining independent shareholders' approval which may not be forthcoming, especially
  - investors have a different view of the future path for the listed company than management of the company
- weak liquidity or low analyst coverage

Going private may potentially unleash value and possibly assist with facilitating more drastic restructuring options







# Cited reasons for privatisation

## Lack of benefit from maintaining the listing status of the company *[Privatisation of Tonly Electronics Holdings Limited]*

*"The Company has not utilised its listing status for any equity fund raising activities in recent years, nor has it been able to attract any prospective strategic or financial investors to further commit any resources. The listing status is not expected to provide any benefit to the Company in the near term but would involve administrative, compliance and other listing-related costs and expenses being incurred. The Proposal entails the privatisation and delisting of the Company, and is expected to substantially reduce the administrative costs and management resources to be committed in maintaining its listing status and compliance with regulatory requirements."*

## Low trading liquidity of the shares *[Privatisation of Capxon International Electronic Company Limited]*

*"The trading liquidity of the Shares has been at a relatively low level over a prolonged period in recent years, with an average daily trading volume of approximately 727,523 Shares for the 24 months up to and including the Last Trading Day, representing less than approximately 0.09% of the total issued Shares as at the Last Trading Day. The low trading liquidity of the Shares has rendered it difficult for Shareholders to execute substantial on-market disposals timely without adversely affecting the price of the Shares. Additionally, the low trading liquidity of Shares hinders the Company's ability to raise further funds from the equity market for the Group's business developments."*





# Cited reasons for privatisation

Focus management on addressing near-term macro-economic uncertainties and facilitating long-term growth [*Privatisation of Tonly Electronics Holdings Limited*]

*“The lockdown due to the outbreak of COVID-19 in the PRC has negatively impacted the Group’s manufacturing activities in the first half of 2020, in particular at its factory in Huizhou since late January 2020. Further, the ongoing development of the pandemic in the Company’s key markets, including the United States and Europe, has caused significant disruption to the Company’s sales and marketing activities since March 2020, which is expected to continue throughout the rest of 2020. Although the Offeror has noticed gradual normalisation of activities in the PRC and overseas markets in the recent few weeks, the duration and long-term effect of the COVID-19 pandemic remains uncertain. In addition, uncertainties faced by the Group is exacerbated by (i) the intensifying China-US trade disputes, (ii) management’s intention to undertake restructuring initiatives that may result in near-term volatility in operational and financial performance which might have an adverse impact on share price, (iii) the inherent uncertainties of results from the Group’s continuous research and development activities and new product development, (iv) the planning and construction of the Group’s overseas self-owned manufacturing plant, and (v) ongoing supply chain vertical integration efforts.”*





# Cited reasons for privatisation

Low liquidity of Shares may continue to cause abnormal share price fluctuation and difficulty for the Company to raise funds [*Privatisation of Golden Meditech Holdings Limited*]

*"The average daily trading volume of the Shares for the 24 months up to and including the Last Trading Day was approximately 794,000 Shares per day, representing only approximately 0.03% of the issued Shares as at the date of this joint announcement. The low trading liquidity of the Shares could make it difficult for Shareholders to execute substantial on-market disposals without adversely affecting the price of the Shares and also make it difficult for Shareholders to dispose of a large number of Shares when any event that has an adverse impact on the Company's share price occurs. Due to the relatively low liquidity in the trading of the Shares, the Offeror considers that the Company's current listing platform may no longer be able to serve as an effective fund-raising platform for the Company's business and future growth."*

The Proposal will allow the Company more freedom for implementing its long-term growth strategies

*"The Offeror may implement a series of long-term transformation and growth strategies. However, such transformation strategies may affect the Company's short-term growth profile and result in the divergence between the Offeror's and the Company's view on the Company's long-term value on one hand, and investors' views on the Company's share price on the other hand. Following the implementation of the Proposal, the Offeror and the Company can make strategic decisions focused on long-term benefits, free from the regulatory constraints and pressure of market expectations on share price associated with being a publicly listed company."*





# Cited reasons for privatisation

## Increased capital management efficiency *[Privatisation of Huarong Investment Stock Corporation Limited]*

*“The combined company will benefit from increased capital management efficiency due to the pooling of capital resources and better allocation of capital amongst its various business lines. In particular, the Company’s management will be able to take advantage of the broader platform which will afford them greater flexibility to deploy capital in a manner which maximizes the return on capital for the Company.”*

## Declining Share price performance *[Privatisation of TEM Holdings Limited]*

*“During the 24-month period ended on and including the Last Trading Day, the highest closing price of the Shares as quoted on the Stock Exchange was HK\$0.19 from 21 September 2018 to 27 September 2018 and the lowest closing price of the Shares as quoted on the Stock Exchange was HK\$0.041 from 20 March 2020 to 25 March 2020. The continuous downward trend of the Share price and lack of market participants have made it difficult to reflect the Company’s fair value in the Hong Kong capital market, where the listing platform loses its appeal of raising equity financing to the Company.”*





# Cited reasons for privatisation

## Exit investments with limited liquidity *[Privatisation of CAR Inc.]*

*“The Offeror notes that the trading liquidity of the Shares has been at a low level over a period of time, which are partly caused by the lack of analyst coverage of the Company. The low trading liquidity of the Shares could make it difficult for the Scheme Shareholders to execute on-market sales of Shares without adversely affecting the market price of the Shares. In this regard, the Offeror is of the view that the Proposal provides an opportunity for the Scheme Shareholders to realise their holdings of Shares with limited liquidity in return for cash.”*

## Realise gains under the currently uncertain market conditions *[Privatisation of CAR Inc.]*

*“The Offeror considers that the Proposal provides the Scheme Shareholders with an opportunity to realise their investments in the Company under the currently uncertain market conditions. Since 2018, the Hang Seng Index has shown an overall downward trend. After a number of recent political and economic events (including but not limited to the COVID19 pandemic and Sino-US trade friction), the global market is now subject to further potential uncertainty.”*



# Cited reasons for privatisation

Good opportunity for the Scheme Shareholders to realise their investment with a premium [*Privatisation of CIMC-TianDa Holdings Company Limited*]

*"The Cancellation Price of HK\$0.266 per Scheme Share represents a premium of approximately 20.36% over the closing price per Share on 28 September 2020, being the Last Trading Day. The Cancellation Price also represents a premium of approximately 18.22% and 26.67% over the average closing prices of approximately HK\$0.225 and approximately HK\$0.210 per Share for 30 and 60 consecutive trading days up to and including the Last Trading Day, respectively. The average daily trading volume of the Shares for the 24 months up to and including the Last Trading Day was approximately 4,949,952 Shares per day, representing only approximately 0.03% of the issued Shares as at the Last Trading Day. The relatively low trading liquidity of the Shares makes it difficult for Shareholders to execute substantial on-market disposals without adversely affecting the price of the Shares. The Joint Offerors and the Directors (excluding the Independent Board Committee who will give their opinion following advice from Independent Financial Adviser) consider that the Proposal provides the Scheme Shareholders with an opportunity to realise their investment in the Company for cash at a premium without having to suffer any illiquidity discount."*





# Modes of privatisations

“Privatisation” is an offer whereby the listed company or its controlling shareholders would make an offer to acquire the shares of other shareholders

Most common methods:

- by way of a **general offer** - which involve the controlling shareholder making a voluntary general offer to acquire all the shares of other shareholders of the company for cash or securities or a combination of both
- by way a **scheme of arrangement** which involves a scheme being approved by shareholders and sanctioned by the court



# Modes of privatisations

Other possible methods:

- by way of a **share buy-back offer**, which involves a general offer being made by the company to buy-back all the shares held by shareholders. This may be an option for companies which have a strong cash reserve, but it is extremely rare
  - the only known case we are aware of is that of SCMP Group in 2014 which was not eventually launched
- depending on the companies law of the jurisdiction of incorporation of the listed company, theoretically other methods of privatisation such as by way of **amalgamation** may also be available





# Requirements for privatisation

- privatisation of a company listed on the Hong Kong Stock Exchange is subject to compliance with:
  - the **Code on Takeovers and Mergers** issued by the Securities Futures Commission;
  - the **securities law** of the jurisdiction in which the listed company is incorporated; and
  - the **Hong Kong listing rules** (Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited) concerning the delisting
- provisions of any agreements and undertakings binding the company and its controlling shareholders must also be considered.
  - For example, loan facilities entered by the company may contain conditions for the company to remain listed

# I. Privatisation by way of general offer

- Involve controlling shareholders (or its acquisition vehicle) and (if applicable) persons acting in concert (“offeror”) making a voluntary general offer to acquire all the shares of other shareholders of the Company for cash or securities or a combination of both
- Key procedures involved include:
  - i. issuance of **inside information announcement** by the company pursuant to Part XIVA of the SFO;
  - ii. issuance of a **joint announcement** by the Company and the offeror in respect of the **firm intention of the offeror to make the offer** (Rule 3.5 announcement)
    - such announcement should contain terms and conditions of the offer, identity of the offeror and its ultimate controlling shareholders
    - should be made only when the offeror has every reason to believe that it can and will continue to be able to implement the offer in full





- iii. establishment of a **committee of disinterested directors** (i.e. typically the independent non-executive directors) of the company to advise shareholders on the merits of the offer (in particular, whether the offer is, or is not, fair and reasonable and as to acceptance or voting)
  
- iii. independent board committee will need to appoint an **independent financial adviser** to assess the merits of the offer and provide independent financial advice to shareholders
  
- iv. issuance of a **composite document** containing:
  - (a) terms of the offer accompanied by forms of acceptances (*offer document*); and
  - (b) views of independent board committee and the independent financial advisers, within 21 days of the joint announcement (*letters of the board and response document*)





# Features of a privatisation by way of general offer

- i. consideration may be in **cash/other forms** (such as shares in the offeror), with certain qualifications:
  - (except with the consent of the SFC) if the offeror/any person acting in concert with it has purchased 10% or more of the listed issuer's shares for cash during the offer period and in the preceding 6 months, the offer must be in cash or have a cash alternative, and the offer price must not be less than the highest price paid for such shares during such period (Rule 23.1 of the Code)
  - the offer price may not be made at a price at more than a 50% discount to the prevailing market price, and where the lesser of (1) the closing price of the shares of the Company on the day before the Rule 3.5 announcement; and (2) the five-day average closing price of the Company before such day (Note to definition of "Offer" under the Code)
- ii. the offer can be made subject to **any number of condition(s) the offeror stipulates** provided that such conditions are not dependent on the judgment of the offeror or the fulfilment of which is in its hands (Rule 30.1 of the Code)





# Features of a privatisation by way of general offer

- iii. any voluntary offer must be conditional upon the offeror obtaining at least 50% control of the Company but may be made conditional on an acceptance level of shares carrying a higher percentage of voting rights (Rule 30.2 of the Code)

In a privatisation, the relevant acceptance threshold would typically be set at the higher of:

- **90%** in value of shares held by disinterested shareholders (i.e. the offeror and its concert parties are excluded) as this is a requirement for privatisation offers under the Takeovers Code) (Rule 2.11 of the Code)
- such **higher percentage** as may be required to effect a compulsory acquisition of shares of non-accepting shareholders by operation of **“squeeze-out” provisions** under the laws of the jurisdiction of incorporation of the listed company



# Features of a privatisation by way of general offer

- iv. all documents (other than those which are explicitly excluded from the post-vet list of the SFC) must be **filed with the SFC for pre-vetting and comments** prior to release of publication, and must not be released or published until the SFC has confirmed that it has no further comments thereon (Rule 12.1 of the Code); and must satisfy the highest standards of accuracy (i.e. prospectus standard is adopted)
  - All directors of the offeror should take responsibility for the contents of joint announcement and composite document (Rule 9.1 and Note 2 to Rule 9.4 of the Code)



# The offer period

- offer must remain open for a minimum of **21 days following the date of the posting** of the offer document, and must be kept open for acceptance for not less than **14 days from the time the offer becomes unconditional** (i.e. when, *inter alia*, the required acceptance level has been reached) (*Rules 15.1, 15.3 & 16.1 of the Code*)
- the offeror may revise its terms (such as increase the offer price) in which event, the revised offer must be kept open for at least **14 days following posting of the revised offer document** (*Rule 16.1 of the Code*)
- except with the consent of the SFC, the offer may not become unconditional as to acceptances after **7p.m. on the 60th day** after the date of posting of the offer document (*Rule 15.5 of the Code*)



# Irrevocable undertakings and commitments

- Controlling shareholders could obtain irrevocable undertakings from shareholders to accept the offer to increase the prospects of achieving a successful privatisation
  - such irrevocable undertakings from sophisticated and institutional investors may be indicative to the market that the offer, in particular the offer price is acceptable to them based on their assessment with reference to historical trading price, future prospects and net asset value per share etc.
  - the giving of such undertakings would not by itself and in the absence of any other factor lead to a presumption that the shareholder is acting in concert with the offeror
  - any approach for shareholders to seek irrevocable commitments should be done following consultation with the SFC







# Privatisation by way of scheme of arrangement

- The making of a proposal by a company to its shareholders in a scheme document with explanatory statement on the effect of the scheme
- may be a capital reduction scheme and/or a transfer scheme
  - i. a **capital reduction** scheme: cancellation of all the issued share capital of the listed issuer (other than those of the offeror) against the payment of consideration (which may be of any form) by the offeror to the former holders of cancelled listed shares
    - The reserve created by the cancellation is capitalised and applied in paying up new shares which are issued by the listed issuer to the offeror.
  - i. a **transfer scheme**: the transfer of shares of the listed issuer to the offeror



# Key requirements/ features of a privatisation scheme

- i. requires obtaining **shareholders' approval** in a general meeting as well as **sanction of the court** of the jurisdiction of incorporation of the listed company in a court meeting.
  - in some jurisdictions, shareholders may have appraisal rights or to appear at the hearing of the court to make submissions, and the court will only sanction the scheme if it considers it fair to shareholders
- ii. independent board committee and independent financial advisers are required to be appointed for advising on the merits of the scheme
- iii. board of the company would be in control of the scheme:
  - drafting and dispatch of the composite scheme document (including the expected timetable, letters from independent board committee and independent financial advisers, explanation statements and scheme of arrangement document etc.); making of necessary applications to the court, mailing the composite scheme documents to shareholder, holding the relevant meetings for approving the scheme and making necessary filings
- i. statutory majority of shareholders must act bona fide with no coercion of minority shareholders





# Indicative timetable for scheme of arrangement

- Day 1: File originating summons and affirmation in support
- Day 7: Summons for directions hearing
- Day 14: Despatch of scheme document
- Day 44: Court meeting / special general meeting
- Day 49: Publish notice of reduction of capital (cancellation scheme)
- Day 52: File chairman's report, petition, and affirmation in support
- Day 65: Petition hearing to sanction the scheme
- Day 65: Effective Date: file scheme order with Registrar of Companies

*\*The SFC should be consulted if the publication date of the composite scheme document would need to be extended beyond the 21 days' time limit to accommodate court timetable (Note 1 to Rule 8.2 of the Code)*



## Regulatory considerations

- privatisation scheme must be **approved by at least 75% of 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
- 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**
  - the possibility of the scheme being vetoed by disapproval of 10% votes at the meeting is an important factor to consider, especially where disapproval of one or more major disinterested shareholders may potentially thwart the entire scheme.
  - in the privatisation of a well-known property developer in 2018 , the disapproval of an asset manager which held approximately 7% shareholding at the time (i.e. over 10% of disinterested shares) was sufficient to cause the entire scheme to fail



# Implications for schemes involving substantial shareholders

- any scheme involving any transactions to be entered with substantial shareholders would also be subject to relevant requirements under the Hong Kong listing rules a scheme of arrangement involving
- e.g. issuance or buy-back of shares from substantial shareholders would be a connected transaction under the Listing Rules requiring an independent shareholder vote and other applicable requirements relating to connected transactions



	By way of general offer	By way of scheme of arrangement
<b>Nature of transaction</b>	Minority shareholdings transferred to the controlling shareholder	Minority shares are cancelled and new shares issued to the controlling shareholder in capital reduction scheme; transfer of shares are involved in a transfer scheme
<b>Control</b>	Offeror controls the process and does not require support of issuer's board	Issuer and its board control the process and must support and drive its implementation
<b>Approvals</b>	<p>No approvals are required. Shareholders accept on an individual basis.</p> <p>An general offer with a view of delisting is subject to the same approval requirements of a scheme of arrangement.</p>	Scheme 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
<b>Acquisition of 100%</b>	Not guaranteed unless the offer is conditional upon 90% acceptance (or such compulsory acquisition threshold in the relevant jurisdiction of incorporation of the issuer) and the compulsory acquisition right is exercised	Guaranteed if approved by shareholders and sanctioned by court (all-or-nothing guarantee)



	By way of general offer	By way of scheme of arrangement
<b>Offeror's ability to influence outcome</b>	Offeror can vote its shareholding, plus shares acquired as a result of market purchases, but voting is not involved in a general offer in general	Offeror can vote at court meetings for approving the scheme
<b>Effect of shareholder inertia</b>	Acquisition of 100% could be adversely affected by shareholder inertia (i.e. shareholders who do not take any action), thus causing the issuer to fail to achieve the 90% threshold	Only those disinterested shares who actually vote are taken into account in respect of shareholders' approval for the scheme and therefore, shareholder inertia will have less adverse effect
<b>Timetable</b>	The earliest time at which the offeror can take control over the listed company is 21 days from offer document, and then will likely take another two months to complete the compulsory acquisition procedure (to give dissident minority shareholders the right to object to being compulsorily acquired)	It generally takes longer time to acquire control but when the scheme is effective, the offeror would have acquired 100% of the listed issuer
<b>Financing</b>	<p>Financing (if required) can be complex. Multiple drawings may be required to finance acceptances as they come in.</p> <p>Where the acceptance condition is below 90%, there may be difficulties with granting of security to a lender.</p>	Financing (if required) is relatively straightforward. A term loan can be drawn in one lump sum within a specified period after the scheme becomes effective. Security granted following delisting using 'whitewash' procedures to avoid financial assistance.



	By way of general offer	By way of scheme of arrangement
<b>Stamp duty</b>	0.2% stamp duty is payable on the transfer of shares	No stamp duty is payable if not a transfer scheme
<b>Consequence of no board recommendation is obtained</b>	Lack of recommendation or divergence of views amongst board members or between the board and the independent advisers must be drawn to the shareholders' attention and an explanation given including the arguments for acceptance and rejection, emphasising the important factors	All expenses incurred by the offeree company in connection with the proposal shall be borne by the person seeking to privatise the offeree company by way of scheme of arrangement if such scheme is not approved
<b>Fees</b>	Lower, depending on how the financing is structured (complex syndication and unfavourable economic climate may lead to more costly financing)	Higher (involves various court hearings and shareholder meetings), especially if objections are raised in court proceedings
<b>Flexibility</b>	Offeror can revise term of offer and for revised offer document to be despatched to shareholders	Revision of terms of the scheme would require re-starting the timetable from posting, obtaining the court's permission to post new documents and holding a fresh shareholders meeting





## Some key difference between privatisation by way of general offer and scheme of arrangement

- scheme of arrangement is an **“all or nothing”** type of deal where acquisition of 100% of shareholding from other shareholders is guaranteed after court sanction for a scheme, but there would be no acquisition of any shares shall the scheme not be sanctioned
  - this may potentially attract predatory moves from potential bidders (as it signals to the market the amount of resources the offeror is willing to commit)
- a general offer may simply result in the offeror consolidating of control over the company if it chooses to close the offer without triggering the **“squeeze-out”** provisions
  - this may not be desirable if it causes a breach of public float requirement under the listing rules in which event the controlling shareholder may be required to place or issue shares to the public at a premium to the offer price)

Some key difference between privatisation by way of general offer and scheme of arrangement – opportunities to interact with shareholders

- a scheme of arrangement may provide the controlling shareholders more opportunity to make submissions or respond to any concerns of dissenting shareholders or the court in shareholder or court meetings
- in a general offer, there will limited opportunity for the controlling shareholders to discuss, understand or address concerns of dissenting shareholders
  - such opportunities are not available as shareholders are requested to either accept or reject the offer based on materials provided to them (i.e. offeror needs to resort to public relations or increasing offer price to attract further acceptances)





## Other key difference between privatisation by way of general offer and scheme of arrangement

- the timetable to a scheme of arrangement may be materially affected (or re-started) if certain shareholders request the scheme to be amended
- the offeror in a general offer could revise the terms of offer from time to time during the offer period (prior to day 46 from the date of offer document – given that the last day of acceptance is day 60 and any revised offer must be kept open for at least 14 days) based its gauge of acceptance levels over the offer period





## Other key difference between privatisation by way of general offer and scheme of arrangement

- **time and cost:** a scheme of arrangement is typically more time-consuming and more costly (involving various court proceeding) vis-à-vis a general offer
- **complexity:** financing arrangements are typically more straight-forward and no stamp duty is payable (except in a transfer scheme)



# Crucial considerations for privatisation plans

## I. Fairness of the offer price

- the view of financial advisers should be sought
- **typical considerations** when evaluating valuation:
  - value and prospects of underlying assets, businesses and investments of the listed company
  - existing and upcoming projects, some of which the market may perceive controlling shareholders are attempting to dispose after privatisation
  - P/E and PEG of comparable companies
  - entry cost of institutional and other investors and their opportunity costs for having locked-in capital and liquidity with their equity investments (as trade-off for prospects)
  - historical dividend policy – in particular, certain funds and investors may view investment in the issuer as source of recurring income if there is historically stable dividend pay-outs (although this may be hampered by change in dividend policy, for example, HSBC's shock announcement to halt dividend payments for 1Q 2019 and interim payments for 2020 on the request of the Bank of England)
- perception, sentiment and shareholder expectations may be more important than business fundamentals – PR and investor relationship crucial!



# Crucial considerations for restructuring plans

## II. Understanding shareholding base

- understanding the shareholding base and garnering of acceptances and/or **irrevocable commitments from meaningful or institutional investors** is crucial
  - views may be indicative to the market as to what they see as fair and reasonable (particularly in light of the fact that any opposition by 10% or more shareholding would derail a privatisation)
- **no special deals** could be reached with these investors during an offer period, when an offer is reasonably in contemplation or for six months after an offer is closed if such deals contain favourable conditions which are not extended to all shareholders (*Rule 25 of the Code*)



# HK Successful Take-Private Precedents

Statistics shows that the premium of recent successful Hong Kong take-private transactions ranges from c.41% - c.54% (mean) for Insider/Management takeover, higher than the premium of non-insider/management takeover.

## Recent Successful Take-Private Precedents Statistics

Date Announced	Target Name	Acquiror Name	Insider/Management Take Private	% Owned Prior	% Owned after Tran.	Value of Transaction (HK\$m)	1 Day	30 Days	90 Days	180 days	Method <sup>(1)</sup>
3/5/2021	Tonly Electronics Holdings Limited	T.C.L. Industries Holdings (H.K.) Limited	✘	61%	100%	1,277	19.00%	28.00%	35.80%	59%	SoA
3/4/2021	CAR Inc.	Indigo Glamour Company Limited	✘	21%	52%	8,562	17.99%	52.17%	/	/	VGO
2/19/2021	Huifu Payment Limited	Purity Investment Limited	✔	0%	100%	1,252	26.81%	47%	45%	46%	SoA
2/1/2021	Hengxing Gold Holding Company Limited	Shandong Gold Mining Co., Ltd. Expedition Holding Corporation Limited;	✘	0%	100%	159,482,759 SDGM H Shares	9.60%	0.16%	12.10%	/	SoA
1/21/2021	CIMC-TianDa Holdings Company Limited	Sharp Vision Holdings Limited	✔	42%	48%	1,083	20.36%	18.22%	37.11%	40%	SoA
1/11/2021	Shanghai Prime Machinery Co. Ltd.	Shanghai Electric Group Co. Ltd. Shanghai Prime Mingyu Machinery Technology Co., L	✔	26%	100%	1,118	68.40%	110.50%	/	/	MbA
1/8/2021	TEM Holdings Limited	Jumbo Planet Group Limited	✔	75%	100%	13	50.00%	59.50%	75.20%	54%	SoA
12/30/2020	Powerleader Science & Technology Group Limited	Shenzhen Speed Top Network Technology Co., Ltd.	✘	42%	100%	345	14.60%	10.10%	19.10%	/	MbA
12/22/2020	Leyou Technologies Holdings Limited	Image Frame Investment (HK) Limited	✘	0%	100%	11,607	4.46%	8.32%	25.03%	29%	SoA
12/22/2020	Haier Electronics Group Co., Ltd.	Haier Smart Home Co., Ltd.	✔	46%	100%	2,984	44.20%	42.65%	51.38%	/	SoA
12/4/2020	Changshouhua Food Company Limited	SanXing Trade Co., Ltd.	✘	52%	100%	1,150	16.40%	43.20%	65.80%	/	SoA
11/25/2020	Allied Properties (H.K.) Limited	Sunhill Investments Limited	✔	31%	56%	3,270	34.30%	39.10%	/	23%	SoA
11/19/2020	Xinhua Port Holdings Limited	Zhuhai Port (Hong Kong) Co., Limited	✘	0%	100%	2,115	23.67%	58.35%	128.00%	/	VGO
11/11/2020	Huarong Investment Stock Corporation Limited	Huarong International Financial Holdings Limited	✔	0%	100%	5,121,120,000 HRIF Shares	36.45%	51.07%	55.59%	104%	SoA
10/22/2020	Capxon International Electronic Company Limited	Value Management Holding Limited	✘	44%	74%	150	79.10%	88.10%	76.00%	55%	SoA
10/19/2020	Vantage International (Holdings) Limited	Fame Yield International Limited	✘	14%	50%	548	80.00%	119.50%	104.10%	79%	SoA
10/19/2020	Golden Meditech Holdings Limited	Meditech Global Group Limited	✔	0%	17%	425	41.94%	60.00%	/	22%	SoA
10/16/2020	Easy One Financial Group Limited	Caister Limited	✔	0%	100%	175	44.40%	90.10%	/	/	SoA

10/16/2020	O-Net Technologies (Group) Limited	Optical Beta Limited	✘	0%	100%	2,829	23.57%	24.56%	34.26%	43%	SoA
10/9/2020	Capxon International Electronic Company Limited	Value Management Holding Limited	✔	44%	74%	150	79.10%	88.10%	76.00%	55%	SoA
9/29/2020	Huadian Fuxin Energy Corporation Limited	Fujian Huadian Furui Energy Development Co., Ltd.	—	0%	100%	9,753	65.56%	87.92%	85.34%	/	MbA
9/25/2020	Jinmao Hotel and Jinmao (China) Hotel Investments and Management Limited	China Jinmao Holdings Group Limited	✔	67%	100%	3,191	30.40%	82.50%	64.40%	/	SoA
9/7/2020	China Baofeng (International) Limited	East Step International Holdings Limited	✔	0%	31%	540	27.50%	52.00%	39.00%	31%	SoA
8/6/2020	ELEC & ELTEK International Holdings Limited	ELEC & ELTEK International Company Limited	✔	49%	75%	28	10.60%	42.74%	40.63%	47%	VCO
7/23/2020	Kingsley Edugroup Limited	China Maple Leaf Educational Systems Limited Maple Leaf Education Asia Pacific Limited	✘	0%	100%	432	12.50%	4.25%	/	/	VCO
7/23/2020	Wheelock and Company Limited	Admiral Power Holdings Limited	✘	0%	33%	8,150	52.20%	45.20%	/	45%	SoA
5/22/2020	Li & Fung Limited	Golden Lincoln Holdings I Limited	✘	0%	100%	7,223	150.00%	95.20%	62.10%	44%	SoA
3/23/2020	Joyce Boutique Group Limited	JoyBo International Limited	✔	73%	100%	123	91.78%	82.10%	/	32%	SoA
3/19/2020	China Agri-Industries Holdings Limited	COFCO (Hong Kong) Ltd	✔	60%	100%	9,168	34.07%	53.00%	72.49%	/	SoA
3/18/2020	HN Renewables Corporation Limited	China Huaneng Group Co., Ltd.	✔	61%	100%	15,499	18.73%	55.72%	51.28%	/	VGO
3/10/2020	AVIC International Holdings limited	AVIC International Holding Corporation	✔	71%	100%	2,999	29.12%	81.31%	/	92%	VGO
2/28/2020	Springland International Holdings Limited	Octopus (China) Holding Limited	✘	73%	100%	1,213	63.10%	56.80%	53.20%	49%	SoA
1/8/2020	Dah Chong Hong Holdings Ltd	CITIC Pacific Ltd	✘	57%	100%	3,022	37.55%	55.00%	54.00%	41%	SoA
10/30/2019	TPV Technology Ltd	CEIEC (H.K.) Ltd	✔	49%	100%	4,645	41.39%	55.00%	/	139%	SoA
10/25/2019	China Automation Group Ltd	Brightex Enterprises Ltd & Ascendent Automation (Cayman) Ltd	✘	75%	100%	392	23.97%	48.00%	47.00%	42%	SoA
10/24/2019	C.P. Lotus Corporation	C.P. Holding (BVI) Investment Co Ltd	✔	75%	100%	426	10.00%	29.00%	27.00%	22%	SoA
9/4/2019	Asia Satellite Telecommunications Holdings Ltd	Bowenvale Ltd	✘	74%	100%	1,053	23.43%	44.00%	57.00%	71%	SoA
8/19/2019	China Power Clean Energy Development Co Ltd	China Power New Energy Limited	✔	28%	100%	2,939	41.90%	78.00%	102.00%	/	SoA
7/4/2019	China Hengshi Foundation Company Ltd	Zhenshi Group (HK) Heshi Composite Materials Co., Ltd	✔	79%	100%	514	8.23%	17.00%	/	28%	SoA
6/6/2019	Hanergy Thin Film Power Group Limited	Hanergy Mobile Energy Holding Group Co, Ltd	✔	68%	68%	470	/	/	/	/	SoA
5/2/2019	Hopewell Holdings Limited	Petrus HK Co Ltd	✔	37%	100%	21,256	46.70%	55.50%	49.60%	45%	SoA
1/25/2019	Advanced Semiconductor Manufacturing Corp Ltd	GTA Semiconductor Co, Ltd	✘	28%	100%	454	66.67%	99.29%	90.00%	/	SoA
1/15/2019	Sinotrans Shipping Limited	Sinotrans Shipping (Holdings) Limited	✔	69%	100%	3,374	50.00%	42.90%	32.40%	28%	MbA
11/29/2018	Hong Kong Aircraft Engineering Company Ltd	Swire Pacific Limited	✘	75%	100%	2,995	63.60%	63.00%	57.40%	50%	SoA
6/7/2018	Portico Internation Holdings Limited	Bluestone Global Holdings Limited	✔	75%	100%	2,723	50.20%	50.00%	45.00%	50%	SoA
11/10/2017	Welling Holding Limited	Midea International Corp Co Ltd	✔	69%	100%	1,842	30.40%	34.00%	29.00%	23%	SoA
7/3/2017	China Asts Hldg Ltd	New Synergies Investments co Ltd	✔	54%	100%	333	61.50%	77.00%	77.00%	74%	SoA
6/19/2017	Bloomage Bio Technology Corporation Ltd	Grand Full Development Ltd	✔	50%	100%	3,451	14.00%	24.00%	33.00%	33%	SoA
5/29/2017	China Metal International Holdings Inc.	United Elite Agents Ltd	✔	60%	83%	678	27.50%	26.00%	24.00%	19%	SoA
4/28/2017	Belle International Holdings Ltd	Muse Holdings-B Inc	✘	15%	100%	45,187	19.50%	22.00%	28.00%	26%	SoA



4/20/2017	Tcc Intl Hldg Ltd	Taiwan Cement Corp	✓	65%	99%	7,138	38.50%	50.00%	75.00%	87%	SoA
3/29/2017	Goldin Properties Holdings Ltd	Silver Starlight Ltd	✓	64%	100%	11,602	14.20%	34.00%	33.00%	43%	VGO
3/13/2017	Shadong Luoxin Pharmaceutical Group	GL Capital Group Inc; Ally Bridge Group	✗	73%	100%	2,221	31.80%	40.00%	55.00%	51%	VGO
3/1/2017	Yingde Gases Group Co Ltd	PAG Asia Capital Ltd	✗	1%	100%	11,268	-3.50%	20.00%	57.00%	74%	VGO
1/10/2017	Intime Retail (Group) Company Limited	Alibaba Group Holding; Intime International Holdings	✓	37%	90%	14,503	42.20%	52.00%	53.00%	53%	SoA
12/2/2016	Jilin Qifeng Chemical Fiber Co Ltd	Jilin Chemical Fiber Group Co Ltd	✓	50%	97%	450	6.50%	12.00%	34.00%	45%	VGO
9/23/2016	Chinalco Mining Corp Intl	Aluminum Corp of China	✓	85%	100%	2,526	32.40%	34.00%	47.00%	63%	SoA
7/8/2016	Nirvana Asia Ltd	CVC Capital Partners	✗	43%	100%	5,401	22.40%	36.00%	37.00%	36%	SoA
6/17/2016	Bracell Ltd	BHL Ltd	✓	84% <sup>(2)</sup>	100%	993	12.70%	81.00%	100.00%	103%	SoA
6/12/2016	TCL Communication Technology	TCL Corp	✓	65%	100%	3,490	34.60%	47.00%	43.00%	36%	SoA
5/29/2016	AUPU Group Holdings Co Ltd	Upwind Holding Company Limited	✓	56%	100%	1,264	24.90%	29.00%	31.00%	29%	SoA
2/3/2016	Dongpeng Holdings Co Ltd	Profit Strong and Max Glory	✓	74%	100%	1,486	31.80%	47.00%	55.00%	36%	SoA
1/6/2016	New World China Land Ltd	Easywin Enterprises Corp Ltd	✓	68%	100%	21,317	25.60%	41.00%	54.00%	57%	VGO
10/20/2015	Wumart Stores Inc	Wumart Holdings Inc	✓	55%	100%	3,601	90.20%	72.00%	34.00%	16%	VGO
5/27/2015	Dorsett Hospitality	Willow Bliss Ltd	✗	74%	100%	404	32.40%	41.00%	43.00%	35%	SoA
2/26/2015	econtext Asia Limited	Digital Garage	✓	59%	100%	881	41%	59.00%	51.00%	45%	SoA
12/11/2014	Hunan Nonferrous Metals Corp Ltd	Hunan Nonferrous Metals Junsheng Development	✓	57%	100%	6,362	68.70%	57.00%	58.00%	70%	VGO
5/8/2014	Regent Manner International	Taiwan Surface Mounting Tech	✗	74%	100%	1,017	32.40%	37.00%	39.00%	35%	SoA
8/15/2013	Magic Holdings International Limited	L'Oreal S.A.	✗	13%	100%	6,539	24.80%	27.00%	39.00%	64%	SoA
2/21/2012	Alibaba.com Ltd	Alibaba Group Holding Ltd	✓	73%	100%	18,252	22.70%	33.00%	33.00%	21%	SoA
1/30/2012	Samling Global Ltd	Samling Strategic Corporation	✓	61%	100%	1,278	102.70%	103.00%	82.00%	22%	SoA
8/8/2011	HannStar Board International	HannStar Board Corporation	✓	75%	100%	411	47.10%	52.00%	49.00%	25%	SoA
7/18/2011	China Resources Mcroelectronics	China Resources Co Ltd	✓	61%	100%	1,662	43.30%	30.00%	22.00%	27%	SoA
7/7/2011	Cosway Corporation Ltd	Berjaya Corporation Berhad	✗	55%	100%	3,493	50.70%	43.00%	31.00%	23%	VGO
4/26/2011	Little Sheep Group Ltd	Yum Brands Inc	✓	63%	100%	4,467	30%	29.00%	32.00%	31%	SoA
1/10/2011	Fubon Bank (Hong Kong) Ltd	Fubon Financial Holding Co Ltd	✓	75%	100%	1,524	37.60%	43.00%	39.00%	46%	SoA
8/10/2010	ICBC	ICBC - China	✓	73%	100%	10,819	27.80%	35.00%	45.00%	57%	SoA
4/19/2010	Wheelock Properties Ltd	Wheelock & Co Ltd	✓	74%	100%	6,905	143.90%	159.00%	163.00%	155%	SoA
1/8/2010	Hutchison Telecommun Intl Ltd	Hutchison Telecom Invest Hldgs	✓	67%	100%	3,488	36.60%	39.00%	37.00%	30%	SoA

Total Mean	38%	48%	51%	48%
Total Median	32%	43%	45%	42%

Insider / Management Takeover Mean	41%	54%	53%	49%
Insider / Management Takeover Median	36%	50%	47%	43%

# HK Unsuccessful Take-Private Precedents

Statistics shows that the premium of historical unsuccessful Hong Kong take-private transactions ranges from c.21% - c.32%

## Historical Unsuccessful Take-Private Precedents Statistics

Date Announced	Target Name	Acquiror Name	% Owned Prior	% of Shares Attempted to Acquire	Value of Transaction (HK\$m)	1 Day	30 Days	90 Days	180 days	1 Year	2 Year	Method <sup>(1)</sup>
	Huifu Payment Limited	Purity Investment Limited	0	100	1,252	26.81%	47%	45%	46%	79%	81%	SoA
3/1/2021	Beijing Jingneng Clean Energy Co., Limited	Beijing Energy Holding Co., Ltd.	61.64	84%	4,063	70.89%	68%	97%	100%	12%	12%	VCO
11/9/2020	EVOC Intelligent Technology Company Limited	EVOC Hi-Tech Holding Group Co., Ltd	75	100%	463	64.80%	100%	100%	90%	/	/	VCO
9/14/2020	Vietnam Manufacturing and Export Processing (Holdings) Ltd	SY International Ltd.	68%	100%	134.5	163.20%	161%	134%	117%	/	/	SoA
7/13/2020	Clear Media Limited	Ever Harmonic Global Limited	0	62.76	8,486.00	65.56%	88	85	/	/	/	MbA
4/24/2020	ICO Group Limited	Titan Wise Group Limited	16%	100	50	25.00%	7%	/	/	/	/	VCO
7/19/2019	Harbin Electric Company Ltd	Harbin Electric Corporation Co., Ltd.	60%	100%	3,081	82.40%	78%	/	85%	/	/	VGO
11/1/2018	Guoco Group Limited	GuoLine Overseas Limited	75%	100%	12,491	14.40%	18%	24%	18%	/	/	SoA
1/21/2018	Pou Sheng Intl Hldg Ltd	Pou Chen Corporation	63%	37%	10,908	31.80%	72%	55%	45%	34%	12%	SoA
7/18/2017	Future Land Dvlp Hldgs Ltd	Wealth Zone Hong Kong Investments Ltd	73%	27%	5,123	17.40%	20%	37%	64%	83%	125%	SoA
6/6/2017	New World Dept Store China Ltd	New World Development Co Ltd	72%	28%	934	50.40%	61%	65%	73%	79%	62%	VGO
8/18/2016	L&A International Holdings Ltd	WLS Holdings Limited	0%	100%	1,396	-88.80%	-99%	-99%	-99%	-99%	-99%	VGO
9/8/2015	Power Assets Holdings Ltd	Cheung Kong Infrastructure	39%	61%	95,955	11.00%	5%	2%	-2%	-1%	5%	SoA
3/13/2014	New World China Land Ltd	New World Development Co Ltd	69%	31%	18,355	32.30%	54%	64%	77%	86%	102%	SoA
11/26/2013	TCC International Holdings Ltd	TCC International Ltd	62%	38%	5,592	27.50%	36%	/	/	/	/	TO
11/21/2013	Glorious Property Holdings Ltd	Best Era International Ltd	32%	68%	9,566	45.20%	56%	55%	46%	41%	44%	SoA
5/10/2013	China Resources Gas Group Ltd	China Resources Power Hldg Co	0%	100%	53,156	12.80%	15%	32%	42%	50%	75%	SoA
12/13/2011	China Gas Holdings Ltd	ENN energy Holdings Ltd	5%	95%	14,609	25.00%	40%	/	/	/	/	TO
2/5/2010	Joyce Boutique Holdings Ltd	Wisdom Gateway Ltd	73%	27%	88	-11%	8%	16%	20%	32%	17%	SoA
11/25/2008	Natural Beauty Bio-Tech Ltd	Global Radiance Co Ltd	0%	100%	2,401	-15.50%	-14%	-22%	-30%	-35%	-29%	SoA
11/4/2008	PCCW Ltd	China Network Communications Group Corp	48%	52%	14,871	52.70%	10%	-7%	-9%	-10%	-11%	SoA
4/4/2007	ABC Commun (Hldgs) Ltd	HCBC Enterprises Ltd	59%	41%	112	30.30%	42%	43%	31%	20%	6%	TO
8/2/2006	Wongs Kong King Intl (Hldg) Ltd	Profit Ascent Ltd	70%	30%	289	21.10%	37%	52%	76%	91%	111%	SoA
8/26/2005	Guangdong Tannery Ltd	GDH Ltd	72%	28%	42	32.10%	52%	43%	35%	35%	31%	SoA
							21%	27%	24%	29%	29%	32%
							26%	37%	37%	39%	35%	24%





# Take-private precedents - key takeaways

- i. scheme of arrangement appears to be the preferred approach, followed by general offer, whilst all tender offers have failed
- ii. premiums to prevailing share price in successful privatisations varied materially from none to 150% with an average premium since 2020 at approximately 40%
- iii. as expected, premiums paid in successful privatisations was higher than for unsuccessful ones
- iv. other than certain exceptions, the share price had been dropping at the time the offer was made in most successful cases, and higher premiums is required where the share price is on an uptrend
- v. there do not appear to be discernible correlation between the size of the take-private transaction and the amount of premium that would need to be paid for the transaction to be successful



## Voluntary delisting of a Hong Kong listed issuer

- under Rule 6.15 of the HK listing rules, a company may voluntarily withdraw its listing if it exercises the “squeeze-out” provisions under applicable laws following a general offer; or it completes a privatisation scheme in compliance with Takeovers Code requirements, and notice of the withdrawal of listing is contained in the relevant shareholder circular
- following a privatisation and delisting, any restructuring plans of the company would no longer be subject to provisions of the Listing Rules (although it will continue to be subject to the laws of its jurisdiction of incorporation and constitutional documents)



# Restructuring and fund raising options

A listed company may raise capital from existing shareholders or third parties (with a view to service outstanding contractual debt or liabilities or to finance their restructuring plans).

Some common methods are:

- (i) rights issues
- (ii) open offers
- (iii) subscriptions and placings of securities





## Rights issue

- an offer of rights to existing shareholders which enables them to subscribe for shares/securities **in proportion to their existing shareholding** (with those who do not participate having their shareholding diluted)
- shareholders are issued **renounceable provisional letters of allotment** (which evidence the right of the person named to have shares issued to them upon payment of consideration) and such rights, sometimes referred to as **“nil paid rights”** may be traded as temporary securities
- as the share price of a company will likely drop due to issuance of more shares into the market, shareholders may potentially be compensated from trading of the nil paid rights in a discounted rights issue (being the theoretical ex-rights share price - new share offer price)





# Open offer

- offer to existing shareholders to subscribe for shares or securities (such as notes) **whether or not in proportion to their existing shareholding**
- not allotted to them on renounceable documents
- rights offered cannot be traded
- in some cases, an open offer of notes may include detachable warrants to incentivise the subscription of the notes

Similarities and differences	Rights issue	Open offer
Listing document	Publication of a <b>prospectus</b> : <ul style="list-style-type: none"> <li>• basis of subscription, the reason for the issue, the use of proceeds</li> <li>• contents as set out in <b>Part B of Appendix 1 of the Listing Rules</b> (but excluding paragraphs 8, 24, 26(1), (3)-(5) and 43(4))</li> <li>• a statement from each substantial shareholder as to whether that <b>substantial shareholder has undertaken to take up</b> its entitlement in full or in part and on what conditions, if any, and relevant particulars</li> <li>• will be <b>registered with the Companies Registry</b> in accordance with the Companies Ordinance</li> </ul>	Same (Main Board Rules 11.09(2))
Underwriting	<ul style="list-style-type: none"> <li>• <b>Normally fully underwritten</b> unless the prior consent of the HKEx otherwise has been obtained</li> <li>• If a rights issue is not fully underwritten, a substantial shareholder who applies to take up its full entitlement may unwittingly incur an obligation to make a <b>general offer</b> under the Takeovers Code unless a waiver is obtained. If this is likely to occur, the issuer may permit the substantial shareholder to scale-down its commitment in the case that the issue is not fully taken up to avoid a general offer obligation</li> </ul>	Same



Similarities and differences	Rights issue	Open offer
<p>Where the issued share capital or <b>market capitalisation</b> will increase by <b>more than 50%</b> (<i>taking into account any rights issues and open offer or other securities attached to rights granted in the preceding 12 month period</i>)</p>	<p>Additional Listing Rules requirements:</p> <ul style="list-style-type: none"> <li>• obtaining <b>independent shareholders'</b> approval</li> <li>• establishing <b>independent board committee</b> to advise shareholders whether the terms of rights issue are fair and reasonable and how they should vote</li> <li>• appointment of <b>independent financial adviser</b> to make recommendations to the independent board committee</li> <li>• additional <b>disclosure</b>: descriptions of the purpose of rights issue, total funds expected to be raised, detailed breakdown of proposed use of proceeds of the current issue and in respect of any equity issues in the preceding 12 months</li> </ul>	<p>Same (see Main Board Rules 7.24(5), 7.24(8))</p>

Similarities and differences	Rights issue	Open offer
Announce closure of books	At least <b>6 business days</b> before the closure of books (Main Board Rule 13.66(1))	At least <b>10 business days</b> before the closure of books (Main Board Rule 13.66(1))
Shareholders' meeting	<p>Main Board Rule 13.36: a pro rata rights issue does not require shareholders' approval, except:</p> <ol style="list-style-type: none"> <li>i. it will increase the issued share capital or market capitalisation by <b>more than 50%</b> (either alone or when aggregated with rights issues or open offers announced in the previous 12 months or earlier where dealing in the new shares started in the previous 12 months)</li> <li>ii. no arrangements other than those in <b>MB Rule 7.21(1)</b> are made for the disposal of rights shares not taken up and the rights issue is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer; or</li> <li>iii. where <b>overseas shareholders</b> are to be excluded (unless the conditions specified in MB Rule 13.36(2)(a) are met)</li> </ol>	<ul style="list-style-type: none"> <li>• Same. However, where an open offer is made to existing shareholders <b>not in proportion</b> to their existing shareholdings, <b>shareholders' approval</b> in general meeting will be required <b>unless the issuer will issue the offer shares under a general mandate</b> in accordance with MB Rule 13.36(2)</li> <li>• The general mandate <b>cannot exceed 20%</b> of the issued share capital of the issuer at the date of the general mandate</li> <li>• The shareholders can also separately authorise the issuer to issue shares equivalent to the number of shares repurchased since the date of the general mandate (up to a maximum number equivalent to 10% of the existing issued share capital)</li> </ul>



Similarities and differences	Rights issue	Open offer
Provisional letters of allotment	<ul style="list-style-type: none"> <li>• <b>Provisional allotment letters</b> inform shareholders of the number of shares provisionally allotted</li> <li>• <b>Letter of rights</b> informs shareholders their rights to buy a specific number of new shares at a specific price</li> <li>• Any such letters must state the time, being not less than <b>10 business days</b>, during which the offer may be accepted</li> </ul>	Not applicable by reason of the nature of open offers
Shares in excess	Issuer can <b>make arrangements</b> to dispose of rights shares not taken up by present shareholders	Same (Main Board Rule 7.26A)
Offer period	At least <b>10 business days</b> . Exchange must be consulted if proposed offer period is more than 15 business days (Main Board Rule 7.20)	Same (Main Board Rule 7.25)



Events	Remarks	Timeline
<i>Assuming general meeting NOT required</i>		
Publication of the rights issue announcement (including timetable) on HKEx news website	At least six business days (i.e. five clear business days) before the book closure	Day 1
Last day of dealings in securities on cum-rights basis	The business day immediately before the ex-date	Day 4
Ex-date (the first day of dealings in securities on ex-rights basis)	The business day immediately before the record date (when there is no book closure) or two business days before the register of members closes (when there is a book closure)	Day 5
Latest time for lodging transfers of shares to qualify for the rights issue		4:30pm on Day 6
Register of members closes (both days inclusive)		Day 7-11
Record date for rights issue	Any day during the closure of the register of members period	Day 11
Despatch of PAL and NPR		Day 12
First day of dealing in NPR	Two business days after the despatch of PAL	Day 14



Events	Remarks	Timeline
<i>Assuming general meeting NOT required</i>		
Latest time for splitting of PAL	<ul style="list-style-type: none"> <li>- At least three business days preceding the last dealing day</li> <li>- Not more than five clear business days between the last day for splitting and the last day for renunciation</li> </ul>	At a time on Day 16
Last day of dealings in NPR	Trading period of NPR should be at least five business days	Day 19
Latest time for acceptance and payment for rights shares and application for excess rights shares	<ul style="list-style-type: none"> <li>- Three business day after last day of dealing</li> <li>- The offer period should not be less than 10 business days.</li> </ul>	At a time on Day 22
Latest time for the termination of the underwriting agreement (if applicable)		At a time on Day 23
Announcement of the allotment results		Day 27
Despatch of certificates for fully-paid rights shares and refund cheques		Day 28
Expected first day of dealings in fully-paid rights shares	The business day immediately after the despatch of certificates	Day 29



# Restructuring and fund raising options

A listed company may raise capital from existing shareholders or third parties (with a view to service outstanding contractual debt or liabilities or to finance their restructuring plans).

Some common methods are:

- (i) rights issues
- (ii) open offers
- (iii) **subscriptions and placings of securities**





## Issuance of perpetual bonds

- may be considered by sizable or reputable issuers with material assets but encountering temporal cashflow issues, for example, due to effect of the COVID-pandemic
- perpetual in nature (i.e. they have an indefinite term) and as such they are typically treated as equity for accounting purposes (i.e. it would not increase the relevant company's debt ratio) which may make it an attractive alternative to other debt instruments
- usually redeemable at the option of the holder after a pre-agreed term; its coupon-rate may be "stepped up" after certain the years for compensating interest rate risk (with restrictions on dividend payments if coupon is not paid)



## Restructuring option: Listing of debt securities

Debt securities may be offered to **public and professional investors** (such as banks, insurers, authorised funds, trust corporations and high net worth individuals) under the Listing Rules, although offers to retail investors are relatively rare

### Key requirements:

- i. the issuance of a listing document containing such contents professional investors would expect it to contain
  - terms of the offering
  - risk factors, disclaimers and responsibility statement
  - proposed use of proceeds
  - business and financial information (including management discussion and analysis)
  - details of financial and other covenants package as well as guarantees and corporate support by operating subsidiaries etc.
  - details of the company's capitalisation and indebtedness





# Restructuring option: Listing of debt securities

## Key requirements (cont)

- ii. the submission of a listing application (Form C2), together with one-off listing fee (HK\$10,000-55,000, subject to issue size and tenor)
- iii. if the debt securities are convertible, then the issue and listing of shares must have been validly authorised, and there must be mechanisms for adjustments to conversion terms due to changes to capital of the listed company

## Processing time

The Stock Exchange will advise an issuer whether the relevant debt securities are eligible for listing **within 5 business days** from receipt of listing application. In practice, unless there are novel or unusual features, the listing approval would typically be granted **within 1-2 business days**

## Disposal assets to raised funds as part of asset restructuring

- in addition to raising funds through issuance of securities companies in financial distress may determine to reduce diversification and refocus its business portfolio on core competencies if it is believed that distress may have been caused by unprofitable or underperforming business lines
- the disposal of assets or businesses by a listed company may constitute a **notifiable transaction** requiring the listed company to comply with requirements under Chapter 14 of the Listing Rules





## Notifiable transactions – financial tests

**Assets ratio:** comparison of the total assets of the target transaction with the total assets of the listed company concerned as shown in the latest published interim/ annual report

(NB: total assets includes total fixed assets and total current and non-current assets and is adjusted by the amount of dividend declared, latest published valuation of assets etc.)

*[Value of assets being acquired or realised / assets of the listed company] x 100 %*

**Profits ratio:** comparison of the net profits (after deducting all charges except taxation and before minority interests and extraordinary items) attributable to the target assets with the profits of the listed company concerned.

*[Profit attributable to the assets being acquired or realised / Profit of the listed company] x 100 %*



# Notifiable transactions – financial tests

**Revenue ratio:** comparison of the revenue attributable to the assets which are subject of transaction with the revenue of the listed company concerned

(NB: revenue means those arising from principal activities of a company and excludes incidental revenues and gains).

*[Revenue attributable to the assets being acquired or realised / Revenue of the listed company] x 100 %*

**Consideration ratio:** comparison of consideration given or received for the transaction with the total market capitalisation of the listed company concerned

(NB: total market capitalisation is the average closing price of the listed company's securities for the past 5 business days as stated in the Hong Kong Stock Exchange's daily quotation sheets).

*[Aggregate value of consideration given or received / Total market capitalisation of the listed company] x 100 %*



Transaction Type	Assets ratio	Consideration ratio	Profits ratio	Revenue ratio
Share transaction	less than 5%	less than 5%	less than 5%	less than 5%
<b>Discloseable transaction</b>	5% or more but less than 25%	5% or more but less than 25%	5% or more but less than 25%	5% or more but less than 25%
<b>Major transaction - disposal</b>	25% or more, but less than 75%	25% or more, but less than 75%	25% or more, but less than 75%	25% or more, but less than 75%
Major transaction - acquisition	25% or more, but less than 100%	25% or more, but less than 100%	25% or more, but less than 100%	25% or more, but less than 100%
<b>Very Substantial Disposal</b>	75% or more	75% or more	75% or more	75% or more
Very Substantial Acquisition	100% or more	100% or more	100% or more	100% or more

	Notification to Exchange	Short suspension of dealings	Publication of an Announcement	Circular to shareholders	Shareholder approval	Accountants' report
Share transaction	Yes	Yes	Yes	No	No	No
Discloseable transaction	Yes	No, unless there is PSI	Yes	No	No	No
Major transaction	Yes	Yes	Yes	Yes	Yes	Yes
Very substantial acquisition	Yes	Yes	Yes	Yes	Yes	Yes
Very substantial Disposal	Yes	Yes	Yes	Yes	Yes	No

*\*Notes: Any shareholder and his associates must abstain from voting if such shareholder has a material interest in the transaction. A listed company may choose to include an accountants report.*





## Restructuring transactions involving substantial shareholders – connected transactions

- restructuring plan may involve transactions to be entered with connected persons of the listed company
  - e.g. the making of shareholders' loan to the listed company, any pledge of security of the substantial shareholder to secure financing for the listed group, or any acquisition or disposal of assets to substantial shareholders etc.
- these transactions, called **connected transactions** would be subject to requirements of Chapter 14A of the Listing Rules which are designed to mitigate the risk of persons affiliated with the listed company from taking advantage of their position without regard to the interests of public shareholders



## Definition of connected persons

The definition of “connected persons” covers, inter alia:

- i. a **director, chief executive or substantial shareholder** (holding 10% or more of the voting rights) of the listed issuer or any of its subsidiaries, or an **associate** of any such persons;
- ii. a person who was a director of the listed issuer or any of its subsidiaries in the past 12 months, or an **associate** of such a person;
- iii. a connected subsidiary (namely, (a) a non-wholly owned subsidiary of the listed issuer where any connected person(s) at the issuer level are entitled to exercise, or control the exercise of, 10% or more of the voting power at general meetings of the non-wholly owned subsidiary; or (b) a subsidiary of such a non-wholly owned subsidiary; or
- iv. any deemed connected person determined by the Stock Exchange,





## Definition of “associates” of connected person

“Associates” of a connected person includes, *inter alia*:

- i. his spouse, his (or his spouse’s) child or step-child (natural or adopted) under the age of 18 years (each an “immediate family member”);
- ii. the trustees, acting in their capacity as trustee of any trust of which the individual or his immediate family member is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object (the “trustees”);
- iii. subject to certain exemptions, a company in which the individual, his immediate family members and/or the trustees (individually or together) control the exercise of 30% or more of the voting power or control the composition of a majority of the board of directors, and any subsidiary of such company;



## Definition of “associates” of connected person

- iv. a person cohabiting with him as a spouse, or his child, step-child, parent, step-parent, sibling or step-sibling (each a “family member”)
- v. a company in which the family members (individually or together), or the family members together with the individual, his immediate family members and/or the trustees control the exercise of 50% or more of the voting power or control the composition of a majority of the board of directors, and any of its subsidiaries
- vi. a parent-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, nephew, niece or cousin of the connected person (each a “relative”) and/or their controlled corporations, whose association with the connected person is such that, in the opinion of the Stock Exchange, the proposed transaction should be subject to the connected transaction requirements





# Definition of “associates” of company

“Associates” of a company includes, inter alia:

- i. its subsidiary or holding company, or fellow subsidiary of such a holding company (together, the “group companies”);
- ii. the trustees of any trust of which the company is a beneficiary or, to the company’s knowledge, discretionary object (the “trustees”); and
- iii. a company in which the company, the group companies and/or the trustees (individually or together), can exercise or control the exercise of 30% or more of the voting power at general meetings or control the composition of the majority of its board of directors, and any subsidiary of such company.

# Key requirements of a connected transaction

- i. **written agreement:** must be entered by relevant parties
- ii. **reporting:** details of connected transactions must be disclosed in annual reports and accounts of the listed issuer
- iii. **notification and announcement:** the terms of the connected transaction must be notified to the Stock Exchange and disclosed by way of announcement as soon as they have been agreed
- iv. **independent shareholders' approval:** obtaining approval (shareholders with a material interest must abstain from voting) in a general meeting by way of poll. Notice of general meeting as well as a circular complying with contents requirements set out in Chapter 14A must be dispatched to shareholders





# Key requirements of a connected transaction (cont)

- v. **independent board committee:** comprising only independent non-executive directors of the board of the listed issuer must be established to advise shareholders as to, *inter alia*, (a) whether the terms of the transaction are fair and reasonable and on normal commercial terms, the entering into of which is in the interest of the listed issuer and its shareholders as a whole; and (b) how to vote, taking into consideration the views of the independent financial adviser
- vi. **independent financial adviser:** must be appointed to advise the independent board committee and independent shareholders in respect of the matters described in the preceding paragraph (v)





# Connected transactions exempted from complying with Chapter 14A

Certain transactions are fully or partially exempted from the connected transaction requirements of Chapter 14A of the Listing Rules:

- i. **de minimis transactions:** where the size of the transaction (by reference to calculation of “percentage ratios” relating to the transaction taking into account the significance of the transaction to the listed issuer) is relatively immaterial to the listed group
- ii. **financial assistance:** financial assistance provided by a connected person to the listed group on normal commercial terms or better and without security over assets of the listed group, or the provision of directors indemnity
- iii. **certain issuance of securities to connected persons:** if the connected person receives the securities in respect of a pro-rata issue as a shareholder, or pursuant to a share option scheme that are compliant with Listing Rule requirements;





## Connected transactions exempted from complying with Chapter 14A

- iv. **directors' service contracts and insurance:** entering into of directors' service contracts and purchase and maintenance of insurance for the director
- v. **purchase and sell of consumer goods and services:** from a connected person no normal commercial terms or better in its ordinary course of business where the relevant goods or services are of a type ordinarily supplied for private use and consumption (and will not be reprocessed or resold)
- vi. **sharing of administrative services:** such as shared secretarial, legal and staff training services on cost basis provided that the costs are identifiable and allocated on a fair and equitable basis.

# General disclosure requirements

Chapter 13 of the Listing Rules specify certain specific circumstances that may be relevant to restructuring whereby an announcement would need to be published:

## **Pledge of shares by the controlling shareholder:**

where the controlling shareholder has pledged its interest in the issuer's shares to secure the issuer's debts or to secure guarantees or other support of its obligations, the issuer must announce (a) the number and class of shares being pledged; (b) the amounts of debts, guarantees or other support for which the pledge is made; and (c) any other details that are considered necessary for understanding of the arrangements as soon as reasonably practicable

## **Loan agreements with covenants relating to specific performance of the controlling shareholder**

where an issuer (or its subsidiaries) enters into a loan agreement that includes a condition imposing specific performance obligations on any controlling shareholder and breach of such obligation will cause a default of loans that are significant to the issuer's operations, then the issuer must announce (a) the aggregate level of the facilities that may be affected by such breach; (b) the life of the facility; and (c) the specific performance obligation imposed on any controlling shareholder as soon as reasonably practicable





## Court-Assisted Restructuring

Within a legal framework and statutory process, the advantages are:

- Moratorium
- Majority to bind minority creditors
- Shareholders' consent not required
- Provides transparent forum for multi-party negotiations
- Fewer chances of lender liability actions
- Less risk for directors re insolvent trading
- Recognition by foreign courts



# Corporate Rescue in Hong Kong

- No tailor-made statutory corporate rescue mechanism

Current Solution for HK Companies:

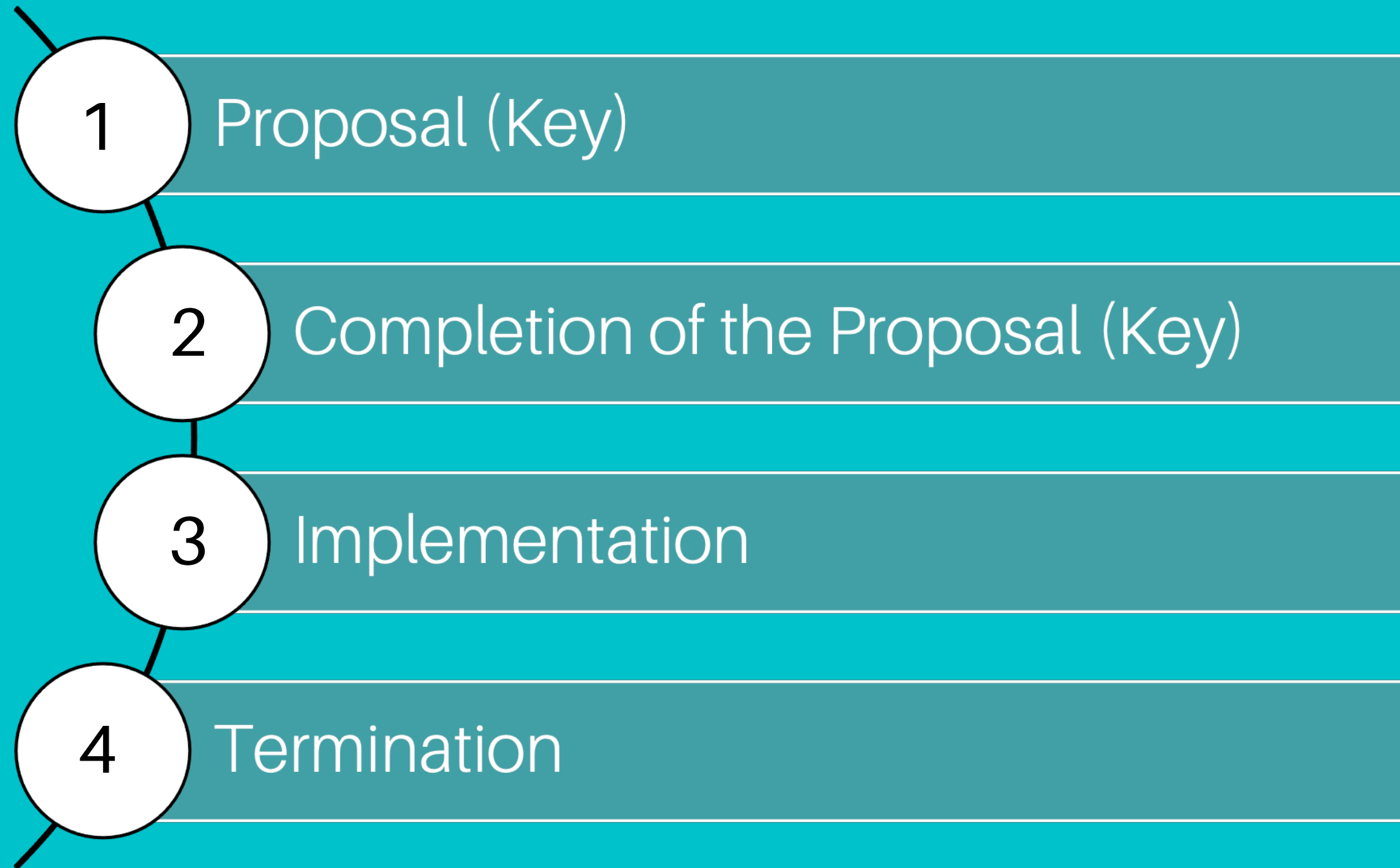
- By way of a **scheme of arrangement**, Part 13 of the CO.
- With provisional liquidators having already been appointed on the backdrop of a winding up petition against the company having been filed and there is a **risk of asset dissipation** before the winding up hearing.

Once appointed, provisional liquidators may be granted powers to explore corporate rescue options, that are then implemented via a scheme of arrangement



# Schemes of Arrangement

4-stage process



# HK PL Can be Appointed on Ground That Listing Status Being the Most Valuable Asset in Jeopardy

However, in [Re Plus Holdings Ltd \[2007\] 2 HKLRD 725](#):

- Bermuda incorporated and listed on the Hong Kong Stock Exchange
- Creditor petitioner applied for the appointment of a PL, with one of the purposes of the proposed appointment to facilitate a corporate rescue
- Company in 3rd stage of delisting; if no viable restructuring proposal was submitted, the company would be delisted
- It was held that the company was clearly insolvent and that its most valuable asset was its [listing status, which was in serious jeopardy](#)
- Thus, [appointment of PL for the purpose of submitting a viable restructuring proposal was not viewed as a departure from the traditional basis \(risk of asset dissipation\) and was permitted](#)





# Offshore Companies: “Light-touch” Provisional Liquidator

Provisional liquidation as a tool for corporate rescue is explicitly allowed in offshore jurisdictions (Cayman Islands, Bermuda, etc.)

Reciprocal recognition in HK  
(Letter of Request)

Moratorium on creditor actions in place in both place of incorporation and HK

## Powers and duties:

- The directors remain in day-to-day control of the affairs of the company
- Light-touch PLs are granted with limited powers necessary to contemplate a restructuring plan on appointment





## A distressed company may become unsuitable for listing

- when a listed company is facing severe financial difficulties, or where it has been forced to liquidate or dispose of its material assets, then the suitability of the company to remain listed may be questioned, in particular when its sustainability is doubtful
- further, it is likely that the share price of the relevant companies may be materially suppressed and this may cause it to become a “shell” company which is susceptible to speculative trading and unnecessary volatility
- in some more serious circumstances, the Stock Exchange may commence procedures for delisting of the company if it believes that an fair and orderly market for its shares cannot be maintained





# A distressed company may become unsuitable for listing

- *Listing Rule 13.24*: issuer must have sufficient level of operations and assets of sufficient value to warrant its continued listing, the stock exchange will require the company to have a viable and sustainable business. Examples of breaching of this rule:
  - financial difficulties have seriously impair their ability to continue its business or which has led to suspension of some or all of its operations;
  - net liabilities as at the balance sheet date
- *Listing Rule 14.82*: where after completion of various disposal of assets, the assets of the listed company consists wholly or substantially of cash and/or short-term investments (including any securities which may be readily converted into cash), then the stock exchange will not regard the company as suitable for listing and trading of its securities will be suspended



## A distressed company may become unsuitable for listing

Paragraph 6.04 of the Exchange Listing Rules provides that “... the continuation of a suspension for a prolonged period without the issuer taking adequate action to obtain restoration of listing may lead to the Exchange cancelling the listing.”





## Role of a FA in restructuring

The Exchange will follow a four-stage delisting procedure after suspension:

- Stage 1:
  - The issuer must make quarterly announcements of developments
  - At the end of the six-month period, the Exchange will determine whether it is appropriate to extend this initial period or proceed to the second stage
- Stage 2:
  - The Exchange draws attention to the issuer's continued failure to meet rule 13.24 and requires it to submit resumption proposals within the next six months
  - The Exchange continues to monitor developments of the issuer and will require from its directors' monthly progress reports
  - At the end of this period, the Exchange will consider the issuer's proposals and determine whether it is appropriate to proceed to the third stage



## Role of a FA in restructuring

- Stage 3:
  - The Exchange will announce that the issuer does not have sufficient assets or operations for listing, and impose a deadline (generally six months) for submitting resumption proposals
  - The issuer would continue to be required to provide monthly progress reports to the Exchange
- Stage 4:
  - If no resumption proposals have been received at the end of the 3rd stage, the listing will be cancelled
  - An announcement will be made by both the Exchange and the issuer





## Role of a FA in restructuring

The role of the financial adviser to the issuer where there is a **viable existing business** (in whole or part), is to do all things necessary to help **resume the trading of shares of the issuer by resolving existing business issues within the 4-stage delisting procedure.**

This includes:

- Reviewing the company's financial position and projections to formulate a turnaround plan [discussed in Webinar 2]
- Identifying an appropriate white knight investor to implement the turnaround plan
- Publishing all outstanding financial results with any concerns raised by the auditor addressed
- Reporting to the HKEx on the issuer's efforts and progress to restructure its business, and negotiating with the HKEx on extensions to be granted at the end of the various stages of the delisting process until a resumption proposal is accepted
- Submitting resumption proposal to the HKEx

# White Knight Rescue

- where other restructuring options have failed and the listed company is facing serious cash flow issues or even risk of insolvency, then it may need to consider more drastic options
- this may include raising substantial amount of capital from friendly investors sometimes coupled with injection of assets to support the sustainability of the business. Different from offerors in a hostile takeover, such investors, sometimes referred to as “white knights” will acquire a substantial amount of shares of the corporation with the support and cooperation of the management of the listed company
- in some cases, they may seek to acquire control or statutory control of the company although they may not necessarily replace the entire board of the company





# White Knight Rescue

- if it can be shown to the SFC that the company is in such a serious financial position that **the only way** it can be saved is by an urgent rescue operation which involves the issuance of securities to the “white knight”, then the SFC may **potentially waive the general offer obligation** of the “white knight” which would normally be triggered if it and/or its concert parties acquire over 30% voting rights in the listed company. The granting of such waiver from the SFC is subject to full compliance with various requirements under the whitewash guidance under the takeovers code (including the obtaining of approval from at least 75% disinterested shareholders)
- however, if the SFC can be satisfied that the urgency of the rescue would make it impracticable for the rescue proposal to be submitted for approval by disinterested shareholders and it is satisfied that the proposal is equitable to existing shareholders, then the SFC may also **dispense with the requirement of obtaining shareholders approval under the whitewash**



# Reverse Takeovers

Sometimes the “white knight” may wish to inject businesses and assets into the listed company and this may potentially give rise to reverse takeover implications under the listing rules

Typical RTO process (submit resumption proposal based on the following steps):

1. Capital reorganisation
2. Acquire investor’s business under RTO regime
3. Receive proceeds from Open Offer and Subscription
4. Apply proceeds to settle creditor’s claims and professional fees
5. Scheme of Arrangement to release issuer from remaining creditor’s claims
6. Resumption of trading after restoration of public float





# Reverse Takeovers – Sale of Listing Status by the PLs of the Issuer

## BRIGHT LINE TEST

Reverse takeovers is defined in Note 2 to Rule 14.06B of the listing rules, and the following transactions are normally recognized as reverse takeovers:

- a) an acquisition or a series of acquisitions of assets constituting a very substantial acquisition which will result in a change in control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries)
- b) acquisition(s) of assets from a person or a group of persons entered into by the listed issuer within 36 months of such person or group of persons gaining control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries)



# Reverse takeovers

- if the Stock Exchange considers acquisitions as a reverse takeover, it will require the application of all listing rule requirements on the business and assets being acquired, including appointment of sponsor to carry out **extensive due diligence**, registration of a **prospectus** as well as **vetting of a listing application** which may be considered by any white knight as onerous and undesirable (as the process often takes up to 6 months with substantial devotion of resources on professional parties)

Transaction Type	Assets ratio	Consideration ratio	Profits ratio	Revenue ratio
Very Substantial Acquisition	100% or more	100% or more	100% or more	100% or more





# Reverse Takeovers – Sale of Listing Status by the PLs of the Issuer

## PRINCIPLE BASED TEST

Note 1 to Rule 14.06B sets out the principle based test whereby it is stated that the Stock Exchange will take into account the following factors in determining whether an acquisition or series of acquisition constitute an attempt to list the acquisition target and circumvent the new listing requirements:

- the size of the acquisition or series of acquisitions relative to the size of the issuer
- A fundamental change in the issuer's principal business;
- the nature and scale of the issuer's business before the acquisition or series of acquisitions
- the quality of the acquisition target
- a change in control (as defined in the Takeover Code) or de facto control of the listed issuer (other than at the level of subsidiaries) and
- a series of transactions taking place in reasonable proximity (within 36 months) or are otherwise related



# Extreme Transactions

*Rule 14.53A of listing rules:* the listed issuer must:

- a) comply with the additional requirements for very substantial acquisitions (set out in rules 14.48 to 14.53), which includes that the circular must contain information required under rules 14.63 and 14.68; and
- a) appoint a financial adviser to perform due diligence on the acquisition targets to put itself in a position to be able to make a declaration in the prescribed form (Appendix 29). A declaration must be submitted by the financial adviser to the Exchange before the bulk-printing of the circular.





# Extreme Transactions

The declaration required by the financial adviser (as prescribed under Appendix 29 to the listing rules) includes:

- a) that having made reasonable due diligence inquiries, it has reasonable grounds to believe and does believe that the acquisition targets are able to meet the requirements under rule 8.04 and rule 8.05;
- b) that the enlarged group is able to meet all new listing requirements under Chapter 8 of the listing rules (except for rule 8.05 and those rules agreed with the Exchange);
- c) that the circular to be issued by the listed issuer contains sufficient particulars and information to enable a reasonable person to form as a result thereof, a valid and justifiable opinion of the proposed acquisition and the financial condition and profitability of the acquisition targets at the time of issuance of the circular;



# Extreme Transactions

The declaration required by the financial adviser (as prescribed under Appendix 29 to the listing rules) includes:

- d) The adequacy, accuracy and completeness, in all material aspects, of the non-expert sections of the circular;
- e) There are no other material issues relating to the acquisition which should be disclosed to the Exchange; and
- f) In respect of each expert section of the circular, that it has reasonable grounds to believe and do believe that, having made reasonable due diligence inquiries, it, inter alia, contains factual information which are true and complete in material aspects; are based on fair, reasonable and complete bases and assumptions; is provided by appropriately qualified, experienced and sufficiently sourced expert.



# Reverse Takeovers - 2019 Amendments

Key amendments to the RTO Rules came into effect on 1 October 2019 includes:

- Disallowing backdoor listing through large scale issue of securities for cash which will result in a change in control or de facto control of the issuer;
- There will be sufficient public interest in the target business per rule 8.07;
- Rule 14.06C “extreme transactions”, setting out the requirements to be met in order to demonstrate to the Exchange that there is no attempt to circumvent the requirements for new listing applicants that would otherwise constitute an RTO;
- Rule 14.06E imposing restriction on disposal or distribution in specie to shareholders that involves all or a material part of the issuer’s existing business within 36 months from a change in control, unless the remaining business or acquired assets can meet rule 8.05 requirements.



# Reverse Takeovers - 2019 Amendments

## Practical hurdles:

- SFC's strict requirements on new business and assets need to meet IPO standards
- Difficulties in obtaining extensions to each delisting stage, as the SFC is less lenient and requires main board listed issuers to adhere to the 18 months delisting timeframe (GEM: 12 months)
- More uncertainty to purchase listed shell
- Listing status have poor value and lower success rate since the end of 2019





# Reverse Takeovers – Sale of Listing Status by the PLs of the Issuer

Re: [China Huiyuan Juice Group Limited \[2020\] HKCFI 2940](#):

- Cayman incorporated, HK listed
- Insolvent and shares suspended from trading
- No assets in HK (in mainland, held via BVI intermediate companies)

Held: [highly unlikely that the listed status would have any residual value](#) (because at the time the winding up petition was presented, the issuer had already been suspended for 16 months and the petitioner could not demonstrate that an incoming PL/L would be able to rescue the listing status). The Court therefore did not grant an order to wind up the company

