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6 April 2009

Court of Appeal stays decision on PCCW privatisation

The Court of Appeal has granted the Securities and Futures Commission (SFC) leave to appeal against today's decision by the Hon Madam Justice Kwan of the Court of First Instance to approve PCCW Ltd's (PCCW) scheme of arrangement to privatise the company (the scheme).

The date of the hearing has been set for 16 April 2009.

The SFC will seek clarifications from the Court of Appeal in relation to the splitting of shares.

"We are concerned that important points of law regarding the splitting of shares, which are of significant public concern, have not been fully clarified," the SFC's Chief Executive Officer, Mr Martin Wheatley said. "These are important points of principle for the Hong Kong market and the protection of minority shareholders," he added.

On 24 February 2009, the court granted an application by the SFC to intervene in the court hearing to sanction the scheme following an investigation into allegations of malpractice and manipulation. This investigation was commenced on 30 January 2009 ahead of the shareholders' meeting to consider the scheme on 4 February 2009.

The SFC was concerned about allegations that the voting was unfair to minority shareholders and therefore decided to intervene in the court hearing to ensure that the court had the benefit of any relevant evidence uncovered by the SFC's investigation. This concern has also been strongly reflected in the public outcry and media reports in recent weeks.

After attending the shareholders' meeting on 4 February 2009 and taking possession of the voting records of the meeting, the SFC applied significant resources to ensure that its investigation of the underlying facts was as complete as possible within the three weeks before the court's deadline of 17 March 2009. Steps taken by the SFC included:

- (a) analysing over 6,000 voting records;
- (b) interviewing 91 witnesses, transcribing, translating and summarising their statements;
- (c) analysing and examining approximately 2,000 further documents including relevant share certificates, PCCW shareholders lists, transfer journals, and other records such as telephone, computer and personal records;
- (d) obtaining and examining account opening documents and trading and settlement records for several hundred clients of five brokers; and
- (e) preparing evidence for submission to the court, including a core affidavit of 49 pages with 33 box files of key evidence.

Before the court hearing on 1 April 2009, the SFC made all evidence available to the various parties in this case, including PCCW, Pacific Century Regional Developments Ltd and Starvest Ltd.

The SFC presented this evidence to the court last week and made comments on what the evidence

suggested in relation to the conduct of the shareholders' meeting on 4 February 2009. It was clear that the court was assisted in considering this case by the information that the SFC was able to put before it.

While this was the first occasion on which the SFC has exercised its statutory power to intervene in proceedings (Note 1), it has been a core part of the SFC's functions and objectives to protect the interests of the investing public especially when there are allegations that those interests may have been abused or prejudiced.

End

Notes :

1. Under section 385 of the Securities and Futures Ordinance (SFO), the SFC may apply to the court to intervene and be heard in proceedings which concern a matter provided for in the SFO or in which the SFC has an interest where it is satisfied it is in the public interest to do so. The SFC is required by the SFO to consult the Financial Secretary before making an application. The SFC did so in this case.

2. The [judgment](#) of the Court of First Instance is available on the Judiciary website (www.judiciary.gov.hk).

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