

## Corporate & Commercial

### The Cheung Kong / Hutchison Reorganisation Part 1: Redomiciliation of Cheung Kong

#### Background

In early January 2015, Cheung Kong (Holdings) Limited (“**Cheung Kong**”) and Hutchison Whampoa Limited (“**Hutchison**”) jointly announced a scheme relating to the reorganisation and combination of the businesses of the Cheung Kong Group and the Hutchison Group to create two new Hong Kong listed companies, CK Hutchison Holdings Limited (“**CKH Holdings**”) and Cheung Kong Property Holdings Limited (“**CK Property**”). After completion of the scheme, CKH Holdings will take over all the non-property businesses of both groups whereas CK Property will combine the property businesses of both groups.

The scheme consists of three stages. In essence, firstly, the holding company of the Cheung Kong Group will be changed from Cheung Kong to CKH Holdings by way of a scheme of arrangement (the “**Cheung Kong Reorganisation Proposal**”). After completion, Cheung Kong will cease to be listed on the Main Board whereas CKH Holdings will become listed on the Main Board and control and operate the same assets and businesses as Cheung Kong. The second stage will involve an intra-group change in shareholding of Husky Energy Inc. and a scheme of arrangement of Hutchison. Hutchison will become an indirect wholly-owned subsidiary of CKH Holdings and no longer be listed. At last, the real estate assets that are currently spread across Hutchison and Cheung Kong’s portfolios will be consolidated into CK Property, which will be then spun off and listed on the Main Board.

This article will give an overview of the Cheung Kong Reorganisation Proposal, based on presently and publicly available information.

#### Reasons for the Cheung Kong Reorganisation Proposal

Cheung Kong announced that the Cheung Kong Reorganisation Proposal will provide greater flexibility for making distributions to the shareholders of CKH Holdings. Further, the Cayman Islands is one of the Stock Exchange’s acceptable jurisdictions for issuers seeking a listing on the Main Board. In fact, compared with Hong Kong incorporated issuers, Cayman Islands incorporated issuers enjoy greater flexibility in terms of corporate regulatory requirements, such as lower threshold (two-thirds when compared to 75%) to pass a special resolution and no requirement for directors to obtain shareholders’ approval to issue shares on a non-pro-rata basis.

## How was the scheme of arrangement carried out?

### Scheme of arrangement

Under the Cheung Kong Reorganisation Proposal, the share capital of Cheung Kong was reduced by cancelling and extinguishing all the Cheung Kong shares in issue at a certain record time (the “**Scheme Shares**”). Subject to and immediately upon such reduction of capital taking effect, the issued share capital of Cheung Kong was increased to its former amount by the creation of such number of new Cheung Kong shares as was equal to the number of Scheme Shares cancelled. Simultaneously, Cheung Kong applied all credit arising in its books of account as a result of the capital reduction in paying up the newly created Cheung Kong shares, which were allotted and issued, credited as fully paid, to CKH Holdings.

In consideration for the cancellation and extinguishment of the Scheme Shares, holders of the Scheme Shares generally received CKH Holdings shares (ranking *pari passu* with each other), credited as fully paid, on the basis of 1 CKH Holdings share for every 1 Scheme Share.

Being a Court-driven process, the scheme of arrangement under the Cheung Kong Reorganisation Proposal involved application to the Court for an order to convene the Court Meeting, which took place on 14 January 2015. The order was granted on 3 February 2015. Cheung Kong then despatched the Listing Document, together with other ancillary notices and documents in relation to the Court Meeting and the EGM to its shareholders on 6 February 2015. The Court Meeting and the EGM were successively convened on 25 February 2015, where shareholders of Cheung Kong granted their approval of the scheme and ancillary procedures to implement the same in the said meetings.

Cheung Kong returned to the Court which heard a summons for directions in respect of the scheme of arrangement on 5 March 2015. Sanction of the scheme of arrangement was granted upon hearing of Cheung Kong’s petition on 17 March 2015.

On 18 March 2015, the effective date of the scheme of arrangement, listing of the Cheung Kong shares on the Main Board was withdrawn, whereas the CKH Holdings shares in issue and to be issued pursuant to the scheme of arrangement were listed on the Main Board and were traded on the Main Board under Cheung Kong’s former stock code (0001). CKH Holdings became the new and ultimate holding company of the Cheung Kong Group: Cheung Kong and its subsidiaries became subsidiaries of CKH Holdings.

### **Benefits by way of a scheme of arrangement**

By way of a scheme of arrangement, Cheung Kong could save stamp duty and take advantage of the lower threshold to pass resolutions to approve the reorganisation. If a general offer is adopted, the stamp duty involved would have been more than HK\$709 million;

no stamp duty is payable for shares transferred under a scheme of arrangement. A scheme of arrangement requires approval by at least 75% of the voting rights present and voting at the Court Meeting, and the votes cast against the scheme not to exceed 10% of the total voting rights attached to all disinterested shares. Special resolutions at the EGM have to be passed on poll by at least 75% of the total voting rights of all shareholders voting. On the contrary, 90% or more of the shares have to be acquired for compulsory acquisition of the entire shareholding of Cheung Kong, had the reorganisation taken the form of a general offer.

## Aftermath

The Cheung Kong Reorganisation Proposal was the first stage in the reorganisation of the Cheung Kong and Hutchison Groups. We will discuss the remaining stages and their implementation in our articles to come, to see how the change in shareholding in Husky Energy Inc. would play a role in the reorganisation, how Hutchison would merge into CKH Holdings and how CK Property would be spun off from CKH Holdings.

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**Important:** The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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