

Corporate Finance

Recent trend in privatisation in Hong Kong

Introduction

According to The Stock Exchange of Hong Kong Limited (the “**Stock Exchange**”), 10 listed companies were privatised in 2019 whereas 8 listed companies were privatised or voluntarily delisted in Hong Kong in the first half of 2020. Common reasons for privatisation include the current share price representing a significant discount to the net asset value per share, the increasing difficulty in raising funds from the market, and the high compliance costs to maintain a listing status. Privatisation of a listed company in Hong Kong is usually done by way of scheme of arrangement and general offer, which will be explained in this newsletter below.

Scheme of arrangement

In the context of privatisation, “scheme of arrangement” refers to the proposal to cancel the shares held by public shareholders in return for cash or non-cash consideration, leaving the majority shareholder(s) who thereby obtains full control of the company and following by a withdrawal of listing.

The proposing shareholder should request the board of directors of the listed company to convene an extraordinary general meeting and propose to all shareholders a scheme of arrangement for reduction of its share capital by cancelling the shares which are held by the public shareholders. The scheme of arrangement must then be approved by shareholders with the thresholds required under the laws of the jurisdiction at which the listed issuer was incorporated. According to the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (“**Companies Ordinance**”), which is applicable to listed companies incorporated in Hong Kong, the scheme of arrangement should be approved by 75% of votes of disinterested shareholders present and voting in a general meeting, with no more than 10% of the total disinterested shares voting against the proposed scheme. The Codes on Takeovers and Mergers and Share Buy-backs (the “**Takeovers Code**”), which is applicable to a company with a primary listing in Hong Kong regardless of its place of incorporation, also contains similar requirements on the approval threshold as that in the Companies Ordinance. Upon obtaining the shareholders’ approval, the scheme of arrangement should also be approved by the court in the jurisdiction of incorporation of the company.

Timeline of a scheme of arrangement

Privatising a listed company by way of scheme of arrangement, in the absence of complicated issues, generally takes three to four months from the date of first announcing the privatisation proposal to the date of withdrawal of listing of shares. The general timeline is as follows:

1. make an announcement pursuant to Rule 3.7 of the Takeovers Code that an offeror is considering to privatise the company by way of scheme of arrangement;
2. make an announcement pursuant to Rule 3.5 of the Takeovers Code ("**Rule 3.5 Announcement**") that an offeror has a firm intention to privatise the company by way of scheme of arrangement;
3. apply to the court in the jurisdiction of incorporation for directions to convene an extraordinary general meeting for approving the scheme of arrangement and the court hearing for such directions should be held before publishing a composite document;
4. within 21 days (in case of cash offer) or 35 days (in case of securities offer) from the date of the Rule 3.5 Announcement, publish a composite document setting out the details of the scheme of arrangement, a notice the shareholders meeting convened at the directions of the court to approve the scheme of arrangement (the "**Court Meeting**") and a notice of extraordinary general meeting to approve the reduction of capital and the allotment of new shares immediately after the cancellation of the listed shares and the withdrawal of listing (the "**EGM**");
5. hold the Court Meeting and the EGM and announcing the poll result;
6. apply to the court by way of petition for an order to sanction the scheme and file the court order to the relevant registrar of companies;
7. voluntarily withdraw the listing of shares within seven days after the final closing date; and
8. settle the consideration within seven business days following the date on which the scheme of arrangement shall become effective upon all the conditions to the scheme of arrangement have been fulfilled.

General offer

In the context of privatisation, "general offer" refers to an offer made by a shareholder of a listed company and persons acting in concert with him to "purchase" shares from all other shareholders and following by a withdrawal of listing.

A shareholder should make a voluntary general offer under and in accordance with the Takeovers Code to all other shareholders to purchase their shares in consideration of cash and/or securities. In the case of a listed company incorporated in Hong Kong, the British Virgin Islands and the Cayman Islands, if the shareholder making the offer has acquired at

least 90% of the shareholding in the listed company, it would have a right to buy out the remaining shares after giving notice to the minority shareholders (the “**Compulsory Acquisition Right**”). Since in some jurisdictions, such as the People’s Republic of China (the “**PRC**”), there is no Compulsory Acquisition Right, shareholders who did not accept the general offer will hold securities that are not listed on the Stock Exchange after the withdrawal of listing. Therefore, a privatisation in relation to H share listed in Hong Kong would normally comprise a general offer followed by a merger by absorption (in other words, the offeror and the listed company would be merged into one company).

Timeline of a general offer

Privatising a listed company by way of general offer is less common than by way of scheme of arrangement. In the absence of complicated issues, the general timeline is as follows:

1. make an announcement pursuant to Rule 3.7 of the Takeovers Code that an offeror is considering making a general offer to privatise the company;
2. make a Rule 3.5 Announcement that an offeror has a firm intention to make a general offer to privatise the company;
3. within 21 days (in case of cash offer) or 35 days (in case of securities offer) from the date of the Rule 3.5 Announcement, publish a composite document setting out the details of the general offer;
4. the offer should be valid for at least 21 days until the first closing date (the “**First Closing Date**”) after the composite document is posted;
5. make an announcement of the results of the general offer as at the First Closing Date and if the privatisation proposal receives support from persons representing at least 90% shareholdings of the listed company on the First Closing Date, the general offer should remain open for acceptance for not less than 14 days thereafter (the “**Final Closing Date**”);
6. make an announcement of the results of the general offer as at the Final Closing Date;
7. obtain all necessary governmental and regulatory approvals for the general offer;
8. voluntarily withdraw the listing of shares within seven days after the Final Closing Date; and
9. settle the consideration within seven business days following the later of the date on which the offer becomes unconditional in all respects and the date of receipt of a completed acceptance of the general offer from the relevant shareholder.

Scheme of arrangement or general offer?

In Hong Kong, privatisation by way of scheme of arrangement is more common, since in order to invoke the Compulsory Acquisition Right in a case of privatisation by way of general offer, the offeror shareholder must obtain at least 90% of the shareholding of the listed issuer and the level of acceptance of the voluntary offer by the public shareholders may not be in

full control of the offeror shareholder. In addition, no stamp duty is payable for cancellation of shares in the case of privatisation by way of scheme of arrangement. However, the offeror shareholder will have more control over the process of privatisation by way of general offer since the scheme of arrangement will be subject to the court's scrutiny, approval and timetable.

Recent successful privatisations in Hong Kong

In 2019 and 2020, Li & Fung Limited (incorporated in Bermuda), Joyce Boutique Group Limited (incorporated in Hong Kong), Springland International Holdings Limited (incorporated in Cayman Islands) were privatised by way of scheme of arrangement. Huaneng Renewables Corporation Limited (incorporated in the PRC) was privatised by way of general offer. In times when the stock market slumps, it is expected to see more listed companies to go private, especially through scheme of arrangement.

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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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