

# HANG SENG SCHEME JUDGMENT: PRACTICAL TAKEAWAYS FOR FUTURE DEALS

The recent reasons for judgment in the case of Hang Seng Bank Limited (**HASE**), handed down by the Hong Kong Court of First Instance (**Court**) on 2 February 2026, serve as a helpful refresher of the legal principles underlying Hong Kong privatisation schemes, as well as provide greater clarity on the Court's approach towards specific issues which may be relevant to future privatisation schemes. The key takeaways are summarised below.

## 1. MAC conditions: Still permissible, but expect scrutiny

While the Court accepted the inclusion of a material adverse change (**MAC**) condition in HASE's privatisation scheme, its acceptance was on the basis of certain facts, including:

- HSBC Holdings plc (holding company of the offeror) is a listed entity which owes duties to act in the best interests of its shareholders and the Offeror is an authorized institution in Hong Kong with a very large number of customers and depositors. The MAC condition was necessary to protect the interests of these stakeholders; and
- on the other hand, the interests of the scheme shareholders were safeguarded by the requirement under Note 2 to Rule 30.1 of the Takeovers Code, which means that the MAC condition cannot be invoked lightly.

**Takeaway:** MAC conditions should not be treated as boilerplate in Hong Kong privatisation schemes. Parties should be prepared to explain, based on their specific circumstances, why a MAC condition is necessary and how post-sanction deal certainty will be preserved in order to safeguard the interests of the scheme shareholders.

## 2. Shares held by offeror and concert parties on behalf of non-discretionary and disinterested clients may be voted on as “disinterested shares” under the CO

The judgment confirms that shares held by offeror and concert parties but beneficially owned by persons who: (a) control or direct the exercise of the voting rights attached to such shares; (b) give instructions as to how the shares (if voted) are to be voted; and (c) are not the offeror or its concert parties (within the meaning of the Takeovers Code) would qualify as “disinterested shares” for the purpose of the Hong Kong Companies Ordinance (CO).

The Court noted the safeguards put in place to ensure that only “disinterested shares” which satisfied the dual requirements under the CO and the Takeovers Code would be voted, including: (a) the carefully crafted definitions of “Code Disinterested Shares”, “Non-Discretionary Client Shares” and “Disinterested Beneficial Owner” under the terms of the scheme; (b) irrevocable undertakings from the offeror and concert parties not to vote (or give instructions to vote) other than in respect of shares held on behalf of non-discretionary and disinterested clients who have given express voting instructions; and (c) the SFC's verbal confirmation that it did not have any concern on the proposed arrangements and due diligence steps for the voting of such shares.

**Takeaway:** The judgment provides clarity as to the Court's approach towards shares held by offeror and concert parties on behalf of disinterested non-discretionary clients, which would be particularly relevant to future Hong Kong privatisation schemes involving financial institutions.

Slaughter and May advised Hang Seng Bank Limited on its privatisation. Please contact one of our team on the next page or your usual Slaughter and May contact if you have any queries.

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