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HOW MANY MINORITY SHAREHOLDERS ARE BEING *'RAPED'*, DAILY ?

The way in which quite a number of publicly listed companies are managed (or mismanaged) in the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) permits, in many cases, little to no protection for minority shareholders.

More often than not, minority shareholders are completely at the mercy of the Substantial Shareholders, many of whom ride roughshod over them in utter disregard of the rules of the game.

In most developed countries of the world, the way in which many minority shareholders of publicly listed companies are treated in the HKSAR would be considered tantamount to rape.

The call has gone out, but it is unlikely that the powers-that-be will heed it: The *'call'* is for a comprehensive clean-up of the securities industry.

TARGET (), in a telephone survey of a number of Chairmen and members of The Hongkong Institute of Certified Public Accountants (), confirmed its suspicions that there is a growing pocket of unease and embarrassment among quite a number of senior officials of international financial institutions, operating in the territory.

Strictly on the assurance of anonymity, this medium has been informed of a number of the major complaints from these senior executives of major, international financial enterprises, with offices in the HKSAR.

TARGET lists just 3 of the major complaints because to list them all would require the penning of a tome.

Complaint Number One

It is required in the HKSAR that, for a company to be floated on the Main Board of The Stock Exchange of Hongkong Ltd or The **G**rowth **E**nterprise **M**arket (The GEM) of The Stock Exchange of Hongkong Ltd, a minimum of 25 percent of the Issued and Fully Paid-Up Share Capital must be Offered for sale to the investing public.

There is no requirement in the HKSAR that there be demonstrated by the issuing company, prior to the publication of its Initial Public Offering prospectus, of any definitive indication of widespread interest in the company and/or the purchase of its scrip by the investing public.

Disregarding this consideration, the figure of 25 percent of the Issued and Fully Paid-Up Share Capital to be Offered to the investing public is far too low: It should be raised to a minimum of 40 percent.

The reason for the increase in the minimum float, from 25 percent to 40 percent, is to ensure that Substantial Shareholders can be *'tamed'* and no longer be able to dominate the minorities, thereby permitting constructive frauds to be perpetrated, either by design or accident.

Complaint Number Two

Senior Management of a publicly listed company has a duty of fidelity to the company, first and foremost, and it is required that all determinations of Senior Management must be made impartially and objectively.

The onus is upon Senior Management to act in good faith for the sole benefit of the corporate entity, whose affairs they have agreed to manage by virtue of their office.

There ought to be no consideration, given of any benefit/detriment for any major/ Substantial Shareholder(s) of their company, regardless of that shareholder's official position in the company; such consideration must not play a role in any and all determinations of Senior Management.

If Senior Management is the controlling shareholder, and/or a member of a family or syndicate, which is the controlling shareholder, then, there exists, de facto, a serious conflict of interest and, as such, it is difficult, if not impossible, for Senior Management to divorce itself from self interests in any/all corporate determinations.

Also, it is well known that certain Chairman/Chief Executive Officers of publicly listed companies are in the habit of keeping the most-lucrative businesses that come their way in their private portfolios and passing onto their publicly listed companies only those businesses which are not faring well or whose prospects are limited.

Only too often, Chairmen of publicly listed companies receive *'soft'* commissions from offerors of new business transactions, those commissions, by right, belonging to the publicly listed companies, not to the Chairmen.

The point is made, strongly, that there is a notional commercial value to the position of Chairman of a publicly listed company so that, when a new business proposal is placed at the doorstep of a publicly listed company, the Chairman of that company has a duty of fidelity to the company and he may not accept the proposal for himself unless, at General Meeting of the publicly listed company that he chairs, it is decided by shareholders – with the Chairman, abstaining from voting on the resolution, put to the meeting – that the company should not engage in the new enterprise.

Complaint Number Three

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