

HONG KONG / JUDGMENT

RE INTELLIGENT GROUP ENTERPRISE LTD

COURT

Court of First Instance

DECIDED

29 June 2007

CASE / FILE NUMBER

HCMP700/2007

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bjbj R gP 59 of the Companies Ordinance (Cap. 32)

Before: Hon Kwan J in Court Date of Hearing: 26 June 2007 Date of Judgment: 26 June 2007 Date of Handing Down of Reasons for Judgment: 29 June 2007

REASONS FOR JUDGMENT

This is a petition presented by Intelligent Group Enterprise Limited (the Company) for confirmation of reduction of its share capital and the cancellation of its share premium account. I have made an order as sought and these are the reasons. The Company The Company was incorporated on 8 October 1999 as a private company under its former name. Its name was changed to its present name on 20 April 2001. Shortly after its incorporation, the Company commenced and has since carried on business in information technology, providing stock exchange information and financial analytical tools to customers for service charges through the Internet. The present authorised capital of the Company is HK\$15 million, divided into 15 million shares of HK\$1.00 each, of which 11,084,000 shares have been issued and are fully paid. Since 26 October 2001, the Company has an amount of HK\$7,139,040.00 standing to the credit of its share premium account. The Company has received total capital funding of HK\$18,223,040.00. When the Company commenced business in 1999, business in information technology flourished. The directors projected and intended at the time that the balance of capital funding of HK\$16 million would be used for taking over other businesses to achieve quick expansion. In 2001, business in this field declined and prospects were gloomy. The directors shelved the plan to take over other businesses. Capital funding in excess of the wants of the Company were invested in corporate bonds, these financial assets were valued at HK\$8,036,376.71 as at 31 December 2006. There is provision in the articles of association of the Company that it may by special resolution reduce its

share capital or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law. The share sale agreement In January 2007, iAsia Online Systems Limited (the Investor) negotiated with the Company to purchase its entire shareholding. The Investor was interested in purchasing the information technology business of the Company but not its financial assets. It was concerned about the accumulated losses, which stood at HK\$8,654,659.87 as at 31 December 2006. On the advice of its accountants, the Investor requested the Company to eliminate the accumulated losses and the financial assets. On 15 February 2007, the corporate bonds were all sold for HK\$7,951,164.00. On 10 April 2007, a provisional agreement was made between all the shareholders of the Company and the Investor by which the latter agreed to purchase the entire shareholding of the Company, subject to the condition precedent that the Company is to obtain sanction from the court for capital reduction and cancellation of its share premium account as per the special resolutions passed on the same day. The special resolutions At an extraordinary general meeting of the Company on 10 April 2007, special resolutions were passed as follows:

- (1) the authorised share capital be reduced from HK\$15 million divided into 15 million shares of HK\$1.00 each to HK\$3 million divided into 15 million shares of HK\$0.20 each, and that such reduction be effected by cancelling paid-up capital to the extent of HK\$0.80 upon each of the shares in issue and by reducing the nominal value of all the issued and unissued shares from HK\$1.00 to HK\$0.20 per share;
- (2) the share premium account be reduced to nil and cancelled; and
- (3) subject to the capital reduction and cancellation of the share premium account taking effect, the credit arising from the cancellation of the paid-up capital in the sum of HK\$8,867,200.00 and from the reduction and cancellation of the share premium account in the sum of HK\$7,139,040.00 be set off against the accumulated losses of the Company in the sum of HK\$8,654,659.87 and the balance remaining thereof in the sum of HK\$7,351,580.13 be transferred to the distributable reserves of the Company and be distributed to the members on a pro rata basis in the proportion of the shares held by each or be applied subject to such conditions as may be imposed by the court. The purposes of the proposed reduction In the notice to convene the extraordinary general meeting and the circular to shareholders accompanying the notice, the purposes of the proposed reduction and cancellation of the share premium account were adequately explained to the shareholders. The directors considered it would be in the interest of the Company to bring in another investor. The existing capital structure of the Company was not attractive to investors, due to accumulated losses of over HK\$8 million, which would delay future profit distribution. Further, the Investor had no interest of purchasing the financial assets, which are non-business assets. To achieve a reasonable capital structure so as to bring in an investor to salvage the Company, the directors proposed to reduce the share capital to eliminate the accumulated losses and to return redundant capital locked up in non-business assets. This would bring the accounts more nearly into line with the business assets and bring forward the time when the Company would be in a position to pay dividends. The total credit arising from the

proposed reduction of capital and cancellation of the share premium account would be HK\$16,006,240.00. Applying this to set off the entire accumulated losses as at 31 December 2006 would leave a balance of HK\$7,351,580.13. The directors were of the opinion that this reserve could not be gainfully employed in the business of the Company and ought to be distributed. They proposed to repay such excess balance to the shareholders on a pro rata basis in proportion to the shares held by each. The financial position of the Company The audited accounts for the years of 2000 to 2005, the management accounts of 2006 and updated accounts ending at 31 May 2007 were produced. Since incorporation, the Company had made losses every year due to the fact that the annual operational costs were greater than the annual turnover. As at 31 December 2006, the accumulated losses of the Company amounted to HK\$8,654,659.87 and were due to past operational expenses. They had been lost or were unrepresented by available assets. The deficit in the profit and loss account was primarily attributable to high staff remuneration and subscription fees paid to the Stock Exchange. Such losses were regarded as permanent in nature. As at 31 December 2006, the total capital reserves in the balance sheet of the management account amounted to HK\$9,568,380.13, of which HK\$8,036,376.71 were invested in corporate bonds. As mentioned earlier, the bonds were all sold in February 2007. The proceeds of HK\$7,951,164.00 realised in the disposal have been deposited in the bank accounts. According to the updated accounts, the accumulated losses as at 31 May 2007 amounted to HK\$9,021,992.77. The increase of loss of HK\$367,332.90 for the five-month period from January 2007 was mainly due to the loss on disposal of the bonds and the legal costs incurred for these proceedings. Both were non-recurrent items. The total capital reserves as at 31 May 2007 amounted to HK\$9,201,047.23. The Company has adduced evidence to satisfy the court that it does have sufficient liquid assets to make the proposed capital reduction, eliminate the accumulated losses and to return redundant capital, and leave a sufficient margin of working capital required for its operational needs. As at 31 May 2007, fixed assets net of depreciation amounted to HK\$356,490.33, current assets were HK\$9,093,309.55, and current liabilities stood at HK\$248,752.65 which consisted mainly of amounts payable to trade creditors of HK\$223,976.65. It was anticipated that current liabilities would be paid in the ordinary course of business on a regular basis. There is no long term or other liability. A full list of creditors on a monthly basis was prepared from December 2006 to June 2007. Up to 15 June 2007, there are only two creditors with debts of about HK\$518.00. No tax is payable by the Company as at the date of the management accounts made up to 31 May 2007. It was expected that the Company would still be making a small loss by the end of the financial year ended 31 December 2007 and there is no contingent tax liability. Having considered the service nature of the business, the turnover and previous operating costs, the directors were of the view that reasonable working capital required for the business would be about HK\$1.3 million. The total capital required to safely cover both the working capital and the fixed assets requirements for the Company's business was estimated at about HK\$1.7 million. According to the cash flow projection for the year ended 31 December 2007 prepared by the auditor, the Company should have enough cash to support its operations. The paid-up share capital after the proposed reduction would amount to HK\$2,216,800.00. This amount would

appear to be sufficient to cover the working capital and the fixed assets requirements for the Company s business. The Company s financial position would appear to be sound.

Orders

At the hearing of the summons for directions on 29 May 2007, direction was given that section 59(2) of the Companies Ordinance, Cap. 32 shall not apply as regards any class of creditors of the Company. The Company has complied with the direction for advertisement of a notice of the petition. There was no opposition to the petition. The conditions for a reduction of capital are satisfied in this instance. The shareholders are treated equitably in the proposed reduction and the proposals have been properly explained to them in the circular. The reduction is for a discernible purpose and I am satisfied that the interests of creditors are adequately safeguarded. I have therefore made an order in terms of the draft submitted as amended. (S Kwan) Judge of the Court of First Instance High Court Mr Victor K C Lee, instructed by Messrs Anthony So & Co., for the Petitioner PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk vo 5t+ 3(UB= vo 5 HCMP.dot setup Microsoft Word 9.0 ^ ^ ^ ^ Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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