

中国南方航空公司：走向国际化的国家官僚资本主义

2008年11月29日，我接到 proxyvote.com 的 Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting 电子邮件，要我作为股东就12月29日召开的中国南方航空公司特别股东会议投票。

我立即在网上阅读相关文件，选择“出席会议”而不是仅从网上投票。不久，我收到了打印出来的投票证书。我马上与广州的维权人士唐荆陵联系，请他代理我出席会议，并送传真到中国南方航空公司表达我的意愿（附件1）。我们的基本目的是：1）了解走向国际化的原中国国营大公司¹的股东会议程序；2）利用机会表达对人权问题的关注；3）帮助中国的海外上市公司在国际上做生意时遵守“世界人权宣言”等原则。

12月3日纽约Mellon银行(BNYM)（附件2）发传真给我，说BNYM是中国南方航空公司在美国的 depositary（存款者），我的股份ADR只能通过Broadridge投票，再由BNYM代理投票。其中，这句 In practice, ADR shareholders can not present themselves in person and vote their ADRs at the meeting（现实中，股东不能本人出席股东会议投票）隐含“有中国特色的”国家官僚资本主义性质，把绝大多数的小股东民众排除在经济决策过程之外，与“人民代表大会”通过“人民代表”把人民排除在政治决策过程之外同出一辙。²这正是我们要改变的。中国南方航空公司既然跑到美国来上市，还能如法炮制，欺凌小股东吗？

我立即与BNYM联系，指出中国南方航空公司拒绝我出席股东会议，侵犯了股东的基本权利。因为美国证券法规正是基于大萧条的教训而设立保护绝大多数小股东的，特别在今天，所有美国人的退休基金等都以各种途径流向股票市场，更需要保护小股东的权利，我保留向 Securities & Exchange Committee (SEC, 美国证券管理委员会)申诉的权利。BNYM马上理解了我的意向，说他们只管报告股东投票的结果，而没有权利过问股东是否能出席会议，并把我的出席会议的意向同时转送给我和中国南方航空公司。我为了不把事情弄复杂，用信件送出了投票（而没有等到开会时才在会场投票）。

直到会议前夕，我没有受到中国南方航空公司的任何答复，就判断中国南方航空公司不会违背常识阻碍股东出席股东会议。以下是唐荆陵的“南方航空股份2008年12月29日临时股东大会会议情况汇报”：

【我于早上9:20到达位于新白云国际机场南工作区的南航明珠大酒店。上到四楼的会议厅，门口正进行入场登记。

接待人员问我是否办理过股东出席登记，我答复说我是作为代理人出席会议，股东本人已经向公司进行了必要的登记。我看到桌上的股东签到表只有寥寥几个大机构股东。我报出我代表的股东名字并出示我的委托书、身份证等文书，对方显然是有备而来，称不能确认我所代表的股东身份。我让接待人员再给予核实。后出来一位徐小姐，称赵京为ADR（存托凭证）持有人，不属于A股、H股股东，不具有会议出席资格。并称ADR持有人应向其经纪人表明投票意见。

我指出我来是要代表股东发表对公司经营相关的意见，如果公司在我方的出席资格上出现错误可能导致严重法律问题，且赵京先生已经就此事与南航公司取得了一致意见时，徐小姐声称已经就此问题咨询过中国和美国方面的律师，公司方面还曾向美国投行查询以便确认赵先生是否为ADR持有人，但对方声称因为隐私保护的理由不能提供有关资料，故他们不能确认赵先生或者其代理人的出席资格。

¹ 据公司2008年第三季度报告，公司总资产为878.37亿元。见http://www.cs-air.com/cn/investor/other/c_01055ann-20081029.pdf。

² 正如背着中国民众向华盛顿当局出卖中国利益的北京当局的贸易谈判代表图永龙谩骂广州市民是“刁民”一样。

经过交涉后，徐小姐声称愿意接纳我在会议旁听区参与，但不能作为股东代表发言。我进入会场。会场前方是排成正方形的会议区，围着就坐的为董事会成员、监事会成员、见证律师、董事会秘书等成员。后方为旁听区，新闻党委办等在旁听区。会场左后方是董秘办的区域。出席会议的董事长（代）为李文新。会议通过书面投票方式通过了拟订的议题。投票前，出席会议的两个大股东博时基金和国泰基金分别就具体经营上的一些问题提问并得到解答。在投票等待计算票数和休息的间隙，董事长到靠近旁听区的股东席上和上述两家基金的代表谈话。我趁机会直接和李文新先生打招呼，并表明我是代表美国的 ADR 持有人赵京先生来表达对公司经营战略问题的关切：一是公司方面是否注意到了在跨国经营中人权问题对公司发展战略的产生重大影响的一些案例？比如雅虎以及一些石油公司；二是公司方面是否对自己所从事的商业活动可能产生的人权问题作过评估或将采取什么对策？李先生没有立即回答我的问题，请我和董事会秘书谢兵（该人列席会议）联系。我正和李先生谈的时候，董秘办的一个女孩子赶紧过来，很紧张地看着我们，似乎想阻止我们交谈，但因为整个谈话不长，她最终没成功。

投票结束后，会议于 10:15 分左右宣布结束，我找到谢兵先生，他给了我他的卡片，声称他知道我们的情况，因为他始终都得到过有关这个事情（我方准备出席会议和交涉的经过）的报告。他介绍董秘办的徐小姐（前面出来交涉的女士）给我，请我们将有关意见发给他们。

徐阳 证券事务代表 xuyang@csair.com

谢兵 董事会秘书 [xie@csair.com](mailto:xieb@csair.com)

原来，中国南方航空公司这些天默不做声，正是为了这样对付我们这样的小股东！我马上致信中国南方航空公司（附件 4），请其回答 1）：为什么不在会议之前答复我的出席会议的意向的通知？2）拒绝我的代理出席会议的依据是什么？

2009 年 1 月 11 日，我接到了中国南方航空公司徐阳以 Company Secretary Office（公司秘书处）名义于 1 月 7 日发出的第一次对我的答复（附件 4）。这个答复表现了中国南方航空公司的傲慢与偏见。它没有回答我的提问，也没有出示任何法规拒绝股东出席会议发言，还声称唐荆陵没有出示 effective shareholder's identification（有效证明）。如果股东投票证书不是“有效证明”，什么算“有效证明”？我（以及所有的美国股东）凭这个证书出席股东大会，从来没有被拒绝过，为什么中国南方航空公司有权自行要求“有效证明”？

我 2009 年 1 月 13 日再次致函中国南方航空公司（附件 5），希望中国南方航空公司诚实地对应。

1 月 21 日，我接到徐阳的电子邮件，问能否在北京时间 1 月 22 日上午 9 时与我通话。我立即答复可以。遗憾的是，中国南方航空公司没有来电，让我空等许久。我只好于 1 月 26 日向 SEC（美国证券管理委员会）申诉（附件 6）。

2 月 2 日，我意外收到来自北京的电话。原来是一家英国律师事务所 DLA Piper UK LLP 北京办事处的 Partner（合伙人）Liu 先生和徐阳女士打来的。我请他们把谈话的内容用书面表示，不久即受到 Liu 的电子邮件（附件 7）。我回函要求中国南方航空公司确认 DLA Piper UK LLP 有权代理中国南方航空公司与我交涉，并在此声明向下一次股东大会书面提案的意向。

2 月 11 日，我收到中国南方航空公司秘书谢兵的电子邮件，附带题为“谢总”的文件（附件 8）。这实际上是经历了这么多回合，作为秘书的公司给我的第一份正式回复，其中包含足以说明目前中国的一党专制的“有中国特色的社会主义”（即国家资本主义）制度下官僚资本（所谓“国营企业”）的国际化特征的信息。

首先，按照中国南方航空公司章程第 76 章第 16 节，只有持有 3%以上股份的股东才有权向股东大会提案。除了持有大多数股份的国家官僚，持有 3%以上的股东几乎不存在，这就是为什么唐荆陵“看到桌上的

股东签到表只有寥寥几个大机构股东”。这“寥寥几个大机构股东”即使持有超过 3%的股份，也绝不敢挑战持有大多数股份的国家官僚，其结果使得整个公司被置于国家官僚的幕后黑箱操作。

更重要的是，像美国这样，随着越来越多的中国人被置于股票市场支配之下，必然要求对普通小股东面对动荡复杂的股票市场有更多的权利保障，而参与股东大会就是其中最重要的权利。所以，不能由各个公司自行制定股东的权利，而必须由证券管理委员会来统一决定。例如，参照美国 SEC Rule 14a-8，持两千万美元以上价值的股东就有权提案到股东大会表决，在中国，可以定为一万元价值以上的股东有权提案到股东大会表决，这样才初步体现基本的经济民主原则。要达到这一点，除了中国越来越多的股东的参与外，³更需要中国的民主化。⁴另一方面，中国的“主权基金”也日益需要中国民众的监督管理。⁵

其次，中国南方航空公司有意划分出 **shareholder**（股东）和 **holder of ADRs**（ADRs 持股人），以我通过 **BNYM** 购入公司股票的路径为由把我定为 **ADRs** 持股人，进一步否认我出席（或指定代理出席）股东大会的股东基本权利，是对“股份公司”制度的粗暴侵犯。无论通过任何第三途经（公司为了扩大吸资渠道，总要通过各种渠道发行股票，就如中国南方航空公司通过 **BNYM** 在美国出售股份才吸引到我这样的小股东），只要能够证明持有公司的股份（正如中国南方航空公司也不得不承认我持有其股份一样），就有权参加股东大会。按照美国设立 SEC 的基本精神和 SEC 保护小股东的基本原则，中国南方航空公司这样的粗暴侵犯股份制度的股份公司应该被赶出股份市场。我于 2 月 20 日再次向 SEC 申诉，要求 SEC 履行职责，维护美国股份市场的安定。

截至今天（3 月 16 日）为止，我还没有收到 SEC 的回复。个中原因，除了 SEC 自从金融危机以来忙于应付更大的案件无法及时调查我与中国南方航空公司的这件“小官司事件”外，通过我与 SEC 打交道的经历，我更担忧 SEC 一贯的偏袒大公司的做法。在目前美国政府需要中国政府“帮助”之际，很难指望 SEC 会秉公劝告、指导中国南方航空公司遵守美国法规而吓跑来美国上市的中国的国家官僚资本。

³ 这一次唐荆陵的参与就是一个先例。

⁴ 我非常清楚地记得一个金融资本的代理得意地炫耀他如何利用机会，促使江泽民下定决心实施股份制。这也由江氏的所谓“三个代表理论”（首先是代表帝国主义和官僚资本主义）体现出来。

⁵ 广州的巩胜利在《北京之春》2009 年 3 月号“谁能监管中国主权基金”一文中问道：“外汇多本该是好事，但中国成全球第一大外汇储备国，却给中国带来无限的困扰。首先是外汇 2008 年底突破 20000 亿美元，越堆越多成为全世界越长越大的“堰塞湖”；把外汇花出去购买其他国家的国债，但第一商业帝国美国除了经济不景气之外，21 世纪以来美元一直不停贬值；再就是到国外去投资，但中国的外汇投资几乎没有几单成功的案例。”“中国外汇交易买卖，中国“主权基金”进出海外，从来没有给中国纳税人、“国家主人”——公民们任何交待”“中国“主权基金”没有透明度及中共党的政治意图，国家外管局很少发表公开声明，从未透露过投资标准及已经投资的产业，像“黑道”一样格外掩饰在世界各地的投资。”“中国国家外管局目前有旗下三家分支机构在运行操作中国“主权基金”在国际资本运行，概不公布外汇交易，也不发表任何公报，更不告知 13 亿国民。”“中国购买美国国债、企业债券，在中国国内从未公告过，就是号称最高权力——全国“人大”也从来没有数字公布。”“根据美国财政部网站的数据，截至 2007 年 6 月 30 日，中国总计持有美国公司长期债券 3760 亿美元，成为全球第一大债权人。其中资产支持债券为 2060 亿美元，而资产支持债券主要就是住房抵押贷款支持债券，由美国两大住房抵押贷款融资机构房利美和房地美发行或者担保。如此一来，“两房”的债券就与中国外汇储备紧紧地联系的捆绑在一起了。”“中国拥有美国大量的国债和债券，这个决策是怎样出笼的？执行操作又是怎样做出的？由谁决定拍板，由谁批准执行的？操作过后为什么不向全国纳税人及全国人大报告？最关键的是没有“阳光化”规则，有地下“黑幕”交易。按国际金融交易惯例，购买债券、股票的中介都有为数可观的佣金收入，佣金是 2.5%，而中国每年 3 万亿美元进出美国资本市场交易的 2.5%佣金，就是 750 亿美元的巨大收入，这相当于近两个 29 届北京奥运会投入的中国国家债券交易所得佣金，又流向何方？有没有人以权谋私，中饱私囊？难道不该公告、给中国公民一个交代吗？”“目前之中国，不管是中共中央纪律检查委员会还是国家监察部，或是新成立的国家反贪局，以及中国银监会、国家证监会等所有中国监管机构，都无法对中国国家外汇管局及子公司操作外汇、运行进行有效的监控，没有形成任何监管机制能审查中投公司在中国之外及美国注册地的外汇账户中国监管当局无权进入美国进行监管该公司、而美国监管当局又无法监管设在中国的该公司运作，特别是在美国、欧洲等资本市场运行交易，中国对监督外汇交易没有任何游戏规则。”

这件个案再次证明，不能指望任何国家权力会自动保护普通民众的经济政治权益。在今天的全球化时代，只有我们每一个地球公民在自己的所在国度挑战、监督、改变政府的政治权力压迫和经济制度剥削，才是最有效的防止人类文明倒退的方式。

[2009年3月17日，美国圣拉蒙]

CHINA SOUTHERN AIRLINES COMPANY LIMITED SPECIAL MEETING TO BE HELD ON 12/29/08
 FOR HOLDERS AS OF 11/29/08
 14714 9-0309 YOU MAY ENTER YOUR VOTING INSTRUCTIONS AT *404544883
 OR WWW.PROXYVOTE.COM UP UNTIL 11:59 PM EASTERN TIME THE
 DAY BEFORE THE CUT-OFF OR MEETING DATE.
 169409109
DIRECTORS **1875 8377 3272**

Fax: 86 20-8661-9040

- PROPOSAL(S)**
- S1 - TO CONSIDER AND APPROVE THE AMENDMENTS TO THE ARTICLES OF ASSOCIATION OF THE COMPANY **DIRECTORS RECOMMEND FOR**
 - S2 - TO CONSIDER AND APPROVE THE AMENDMENTS TO THE PROCEDURAL RULES OF THE SHAREHOLDERS' GENERAL MEETINGS **FOR**
 - S3 - TO CONSIDER AND APPROVE THE AMENDMENTS TO THE PROCEDURAL RULES OF BOARD OF DIRECTORS **FOR**
 - S4 - TO CONSIDER AND APPROVE THE APPOINTMENT OF MR. LIU BAO HENG AS AN EXECUTIVE DIRECTOR OF THE FIFTH SESSION OF THE BOARD OF DIRECTORS OF THE COMPANY **FOR**

*NOTE: IN ORDER TO HAVE YOUR SHARES VOTED, YOUR INSTRUCTIONS MUST BE RECEIVED NO LATER THAN DECEMBER 17, 2008 AT 5:00 P.M. EST

Proxy: Mr. 唐荆陵 will represent me to attend this meeting.
Jing Zhao
Dec. 2, 2008

MATERIALS ELECTION

As of July 1, 2007, SEC rules permit companies to send you a Notice indicating that their proxy materials are available on the Internet and how you can request a mailed copy. Check the box to the right if you want to receive future proxy materials by mail at no cost to you. Even if you do not check the box, you will still have the right to request a free set of proxy materials upon receipt of a Notice.

CHINA SOUTHERN AIRLINES COMPANY LIMITED
 12/29/08
DIRECTORS
 (MARK "X" OR ONLY ONE BOX)
 THIS SPACE INTENTIONALLY LEFT BLANK
 PLEASE INDICATE YOUR VOTING INSTRUCTIONS FOR EACH PROPOSAL

- USE NUMBER ONLY**
- FOR AGAINST ABSTAIN
 - S1
 - S2
 - S3
 - S4

PLEASE INDICATE YOUR PROPOSAL SELECTION BY FINALLY PLACING AN "X" IN THE APPROPRIATE NUMBERED BOX WITH BLUE OR BLACK INK
 SEE VOTING INSTRUCTION NO. 3 ON REVERSE
 A/C. 169409109
1875 8377 3272
 188 345
 PLACE "X" HERE IF YOU WANT TO ATTEND AND VOTE YOUR SHARES AT THE MEETING
AMERITRADE
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*****AUTOM**5-DIGIT 945
 JING ZHAO
 IRA SEP
 TD AMERITRADE CLEARING CUSTODIAN
 SAN RAMON CA 94582-5180

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12/02/08

← SIGNATURE HERE
Jing Zhao
 SIGNATURES
 DATE



THE BANK OF NEW YORK MELLON

FACSIMILE TRANSMITTAL SHEET

TO:	Jing Zhao	FROM:	Anita Sung
COMPANY:		DATE:	12/3/08
FAX NUMBER:	775-551-8065	TOTAL NO. OF PAGES INCLUDING COVER:	1
CC:			
RE:	China Southern Airlines - Voting		

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Dear Jing Zhao,

China Southern Airlines has forwarded to me your fax regarding having a proxy to attend the Company's upcoming shareholder meeting. The Bank of New York Mellon is the Depositary for the Company's ADR program. As such, if you need to vote your ADRs, you can only vote through Broadridge. Broadridge will in turn send the votes to the Bank and we will vote the underlying position on behalf of all the ADR shareholders. In practice, ADR shareholders can not present themselves in person and vote their ADRs at the meeting.

I trust you'll find the above helpful. If you need to discuss this further, please do not hesitate to contact me directly. My contact details are below.

Best regards,
Anita Sung
Vice President
Relationship Manager - NY
Tel: 212-815-8161
Fax: 212-571-3050
Email: anita.sung@bnymellon.com

101 BARCLAY STREET
NEW YORK, NEW YORK 10286

[附件 3： 2009 年 1 月 5 日致中国南方航空公司信]

January 5, 2009

To: Mr. LI Wenxin, Chairman of Board

China Southern Airlines Company Limited

278 Jichang Road, Guangzhou 510405

Guangdong Province, the Peoples Republic of China

ATTN: Mr. XU Yang xuyang@csair.com, Mr. XIE Bing xieb@csair.com

RE: Stockholders Meeting

Dear board of directors:

Happy New Year!

I am surprised and disappointed to know that you rejected my proxy Mr. Tang Jingling to attend the 2008 CHINA SOUTHERN AIRLINES COMPANY LIMITED Special Meeting of Stockholders on December 29, 2008.

On December 5, 2008, Ms. Anita Sung, Vice President of The Bank of New York Mellon Depository Receipts, sent email to Mr. Xu Yang and me the following message: “Mr. Zhao resides in California, what he wants to do is send a proxy to simply attend the shareholder meeting to ask some questions. Perhaps, you could take it from here and revert to Mr. Zhao whether this is possible or not.”

I have not received any information from Mr. Xu Yang, so we judged the company has agreed me to send my proxy to attend the stockholders meeting. Please answer the following questions:

- 1] Why you did not inform me that you would reject my proxy to attend the stockholders meeting?
- 2] What is the base for you to reject a stockholder to attend (and speak at) the stockholders meeting?

While I am not a corporate lawyer, I have attended many American and Chinese companies' stockholders meetings in the U.S. and China, I (or my proxies) was never rejected to attend any stockholders meeting in the world. I purchased your stock mainly because my parents and brother are living in Guangdong while the regime in Beijing has lawlessly deprived of my citizenship to live in or enter China. I am very interested in your company's business, but from this experience, I became very concerned of your management of the company. It is common sense to welcome stockholders to the stockholders meeting. No company can be operated against common sense.

I plan to write a letter to the SEC (Securities & Exchange Commission) as well.

Sincerely,

Jing Zhao

Cc to: Ms. Sung, Mr. Tang

[附件 4: 中国南方航空公司徐阳 2009 年 1 月 7 日回复]

Subject: Re: the Dec. 28, 2008 Special Stockholders Meeting Incident

Dear Mr. Zhao,

We have received your letter dated on January 5, 2009. While we sincerely appreciate your support to China Southern Airlines Company Limited (the "Company"), we take some issue with your characterization of the events.

Despite the fact that Mr. Tang Jingling could not show us your effective shareholder's identification, which meant that we could not properly identify him as a proxy of a stockholder entitled to attend the extraordinary general meeting ("EGM"), we welcomed him to attend the EGM as a guest. After the meeting, Mr. Li Wenxin, director of the Company, who assumed the duties of our chairman of the board, spoke with him personally.

The Company's actions were in compliance with relevant laws and regulations and articles of associations of the Company. We appreciate your activism, and encourage you to correspond with us, but as for representation for ADR shareholders, the Bank of New York Mellon ("BNYM") would act as the proxy of ADR shareholders and would vote the ordinary shares underlying the ADSs that you hold, BNYM has already explained this to you by an email on January 7, 2008 and they would also like to speak with you personally if you like.

If you have any questions, please feel free to let us know.

Best regards,

Xu Yang

Company Secretary Office

China Southern Airlines Company Limited

[附件 5: 2009 年 1 月 13 日致中国南方航空公司]

January 13, 2009

To: Board of directors
China Southern Airlines Company Limited
278 Jichang Road, Guangzhou 510405
Guangdong Province, the Peoples Republic of China
ATTN: Mr. XU Yang, Mr. XIE Bing

RE: Stockholders Meeting (2)

Dear board of directors:

I received Mr. Xu Yang's reply to my first letter (on January 5, 2009) to the board of directors. I cannot accept his explanations.

1] Mr. Xu did not explain why the company did not inform me before the shareholders meeting how to "send a proxy to simply attend the shareholder meeting to ask some questions." (Ms. Sung's message dated on December 5, 2008).

2] Mr. Xu's claim "that Mr. Tang Jingling could not show us your effective shareholder's identification" is not fact. It is your arbitrary judgment. The fact is that Mr. Tang did show my shareholder's identification issued by TD Ameritrade. I (and all other shareholders in the U.S.) used the same kind of identification to attend shareholders meetings, and no company (including PetroChina and China Digital TV companies in Beijing) rejected me or my proxies to attend shareholders meetings.

3] Mr. Tang was deprived of speaking right at the meeting. There is no meaning for a shareholder (or his/her proxy) to attend a shareholders meeting without the right to speak. You violated shareholders' right. Mr. Xu claimed: "The Company's actions were in compliance with relevant laws and regulations and articles of associations of the Company." Please show me the relevant laws and regulations and articles of associations of the Company. These articles or bylaws of the Company are not superior to the SEC regulations as long as the Company is publicly traded in the U.S. market.

4] Mr. Xu further stated: "as for representation for ADR shareholders, the Bank of New York Mellon ("BNYM") would act as the proxy of ADR shareholders and would vote the ordinary shares underlying the ADSs that you hold." This is true only with regard to counting the voting shares of proposals; it has nothing to do with attending (thus speaking at) or submitting proposals to the shareholders meeting. On January 9, 2009, Ms. Sung replied me: "As with regards to sending a Proxy to attend the meeting and speak at the meeting, the Bank has no discretion nor authority over this and thus, it is then entirely the China Southern Airline's (CSA) decision." The Bank ("BNYM") could not represent me to speak at the shareholders meeting. Your act of depriving of my proxy's speech right at the shareholders meeting is a discrimination against small shareholders. Practically, it would be heavy burden to the Bank to represent me to speak at the shareholders meeting, simply because the Bank has not enough knowledge or experience to handle my questions regarding the Company's global business development. Furthermore, if I submit a human rights proposal to be voted at future shareholders meeting, there is nothing of the Bank's business between the Company and a shareholder.

As a shareholder of the Company, I sincerely hope the company could understand the challenges and opportunities doing business globally.

Respectfully,

Jing Zhao

Cc to: Ms. Anita Sung, The Bank of New York Mellon,

Mr. Jingling Tang,

Morton Sklar, Esq., World Organization for Human Rights USA



Home | Previous Page

To: U.S. Securities and Exchange Commission

Office of Investor Education and Advocacy

Investor Complaint Form: Review and Submit

You're not done yet! Please review your complaint before sending it. If you need to correct or add anything, either click on the "Make Changes" button below or use your browser's back button. When everything is in order, click on the "Submit to SEC" button. If you do not wish to submit your complaint electronically, simply print a copy of this page and either fax or mail it to us.

202-772-9295

You told us that we may, if appropriate, send your complaint to the firm or company involved.

Tell Us About Yourself

Name Dr. Jing Zhao

Address 160 Maidenhair Ct
San Ramon, CALIFORNIA 94582 UNITED STATES

Daytime Phone 925-804-6150

Alternate Phone 408-712-0115

Fax 775-551-8065

Email jzhao@mail.h-net.msu.edu

You are a Individual Investor

Tell Us About the Firm or Individual You Have a Complaint Against

Name China Southern Airlines Company Limited

Type Public Company

Broker, Adviser, TD Ameritrade
or Salesperson

Address 1005 N. Ameritrade Place
Bellevue, NEBRASKA 68005 UNITED STATES

Tell Us About Your Investment

<https://tts.sec.gov/acts-ics/do/complaint/submit>

1/26/2009

Type of Security ADRs

Name of Issuer or Security The Bank of New York Mellon

Security Symbol ZNH

Tell Us About Your Complaint

China Southern Airlines company violated stockholders' legal rights at the stockholders meeting on Dec. 29, 2008.

[Dec. 2, 2008] I sent fax to the company stating "Proxy: Mr. Tang Jingling will represent me to attend this meeting."

[Dec.3] Ms. Anita Sung of the Bank of New York Mellon, sent fax to me stating "ADR shareholders can not present themselves in person and vote their ADRs at the meeting."

[Dec. 4] I mailed out my vote and told Ms. Sung that "I want to notify the company that I have asked my proxy in Guangzhou to speak at the shareholders meeting."

[Dec. 5] I talked with Ms. Sung. She understood my intention and sent email to the company and me. The company did not reply or contact me before the meeting.

[Dec. 29] My proxy Mr. Tang went to the meeting. The company rejected his qualification as a stockholder's proxy but had to allow him a seat in the hearing-only zone.

[Jan. 5, 2009] I sent email to the company's board of directors, asking: Why you did not inform me that you would reject my proxy to attend the stockholders meeting? What is the base for you to reject a stockholder to attend the stockholders meeting?

[Jan. 11] Mr. Xu Yang of the company replied me with his Jan. 7, 2009 message, which claimed: "Despite the fact that Mr. Tang Jingling could not show us your effective shareholder's identification, which meant that we could not properly identify him as a proxy of a stockholder entitled to attend the extraordinary general meeting, we welcomed him to attend the EGM as a guest." This is not true. "The Company's actions were in compliance with relevant laws and regulations and articles of associations of the Company." He gave no nothing "laws" or "regulations" or "articles".

[Jan. 13] I sent email to Mr. Xu, Ms. Sung, Mr. Tang and others with the four points:

- 1] Mr. Xu did not explain why the company did not inform me before the shareholders meeting how to "send a proxy to simply attend the shareholder meeting to ask some questions."
- 2] Mr. Tang did show my shareholder's identification issued by TD Ameritrade.
- 3] Please show me the relevant laws and regulations and articles of associations of the company. These articles or bylaws of the company are

<https://tts.sec.gov/acts-ics/do/complaint/submit>

1/26/2009

not superior to the SEC regulations.

4] The Bank could not represent me to speak at the shareholders meeting.

[Jan. 21] Mr. Xu sent me email: "We'd like to discuss this over the phone at 9:00 am, Thursday, January 22, 2009, Beijing time (CA time: 17:00, Wednesday, January 21, 2009)." I replied with my phone numbers and came back to the fixed-line phone number, but Mr. Xu (or Ms. Sung or other people of the company and the bank) never contacted me any more.

Please take action to protect stockholders' right to attend (to vote, and speak at, and to submit proposals to) stockholders meetings.

Respectfully,
Jing Zhao

Jing Zhao, 01/26/2009

cc: Ms. Anita Sung (via fax 212-571-3050)

Can you provide
cancelled checks?

Can you provide correspondence Yes
to and from Firm?

Can you provide advertising or
marketing materials?

Can you provide notes
of conversation with Firm?

Can you provide Yes - Mr. Tang's statement
other materials?

Tell Us What Action You Have Taken

Have you complained to the firm? Yes

Regulators Contacted

Action Taken

Submit to SEC

Print Completed Form

Make Changes

Click "Submit to SEC" to submit this form electronically. Click "Make Changes" to go back and modify the form.

<https://tts.sec.gov/acts-ics/WEB-INF/html/complaint-confirm.jsp>

[Home](#) | [Previous Page](#)

<https://tts.sec.gov/acts-ics/do/complaint/submit>

1/26/2009

[附件 7: 2009 年 2 月 2 日 DLA Piper UK LLP 北京办事处来函]

Explanation Regarding China Southern Airlines' Shareholder / ADR holder rights

Mr. Zhao,

It was a pleasure speaking with you today. As you requested, I am writing to you to summarize the main points of our conversation and to provide you some additional explanation, which will hopefully address the misunderstanding between you and China Southern Airlines Company Limited (the "Company"). As I mentioned on the call, we are outside corporate counsel for the Company.

The Right to Attend Shareholders' Meetings, Vote and Appoint Proxies

As specified in the Company's Articles of Association (see Arts 99-100), the right to attend shareholders' meetings, to vote at such meetings or to appoint proxies is a right enjoyed by all shareholders of record (as recorded in the register of members on the record date).

However, one important distinction is that you are a holder of American Depositary Shares evidenced by American Depositary Receipts. When the Company listed in the US, as a foreign company, it deposited its H Shares with Bank of New York (later Bank of New York Mellon), and then issued the ADS, each representing 50 of its H Shares. As a technical and legal matter, the shareholder of record is the Bank of New York Mellon.

Therefore the right to attend meetings, vote and appoint proxies specified in the Company's Articles of Association apply to the Bank of New York Mellon, and not to holders of ADRs.

Rights of ADR Holders with respect to Shareholders' Meetings

As a holder of ADRs, you are entitled to certain rights, which are specified in a Deposit Agreement between the Company, Bank of New York Mellon and the holders of ADRs from time to time (which includes you since you are deemed to be a party upon acquiring the ADRs). You may find a copy of this agreement filed as an exhibit to the Form F-6 filed by the Company with the SEC on June 25, 1997.

Specifically, the Deposit Agreement requires Bank of New York Mellon, if requested by the Company, to notify holders of ADRs (as of a specified record date) of any shareholders' meetings and to permit the holders of ADRs to instruct Bank of New York Mellon as depositary and the shareholder of record as to how to vote "subject to any applicable provision of PRC law or regulation, if any, and of the Articles of Association of the Company."

It was in such a manner that you were given a notice and proxy materials for the Company's meetings on December 29, 2008 and on February 26, 2009. In each case, you are permitted to instruct the Bank of New York Mellon as to how to vote on certain matters, but if you do not choose to instruct the Bank of New York Mellon as to how to act, the Company is not legally obligated to recognize you to attend, vote or appoint another proxy for such meetings.

From time to time, the Company has permitted guests to attend shareholders' meetings in listening only capacity. That was why Mr. Tang Jingling was permitted to attend the December 29, 2008 meeting.

Role of the SEC

You have also pointed out to the Company that it must still comply with SEC regulations. In that respect, you should also be aware that unlike most of the companies listed in the US, the SEC regulates the Company as a "foreign private issuer". To be a "foreign private issuer", a company must be incorporated outside the United States and must meet the following 2 conditions:

- (i) US residents do not hold a majority of the shares; and
- (ii) Any of the following:
 - a majority of its directors and officers are not U.S. citizens or residents;
 - its business is administered from outside the United States; or
 - a majority of its assets are located outside the United States.

In certain respects, the SEC does not apply the same regulatory regime to foreign private issuers such as the Company as it does to domestic companies. The reason is due to the SEC's deference to laws of these companies' home jurisdictions. One particular area where the SEC does not regulate for foreign private issuers is the area shareholder voting, appointment of proxies and shareholder meetings (including the right to propose matters to be subject to a vote). You may also note that the Company has different reporting requirements (e.g. no Forms 8-K, 10-Q and 10-K, which you are familiar with as a shareholder of US public companies).

Other Sources of Confusion

We note also that you have sent to Ms. Anita Sung of Bank of New York Mellon a submission to a website called ProxyVote.com. While that website indicates that you have chosen to attend the Company's February meeting, please recognize that ProxyVote.com is a third party provider with no relationship or affiliation with the Company. The Company has no control over statements made by ProxyVote.com, your broker or other third parties. The Company's obligations to permit your attendance at that meeting are stated above.

Actions in the Future

We encourage you to contact Ms. Xu Yang of the Company directly or to contact us for any future concerns. I think you will find that the Company has a very open policy of communicating with ADR holders. The Company appreciates your support and welcomes a free dialogue on many, many matters.

We hope this has been helpful. If you have further questions regarding this email, please feel free to contact me.

Regards,

Steven Liu
Partner
DLA Piper UK LLP, Beijing

[附件 8：2009 年 2 月 11 日中国南方航空公司秘书谢兵的正式回复]

Dear Mr. Zhao,

Thanks for your email on February 7, 2009 to Mr. Steven Liu of DLA Piper UK LLP, Beijing Representative Office (“DLA”) on which you copied me among others.

DLA’s Authorization to Represent the Company

We confirm that DLA is our outside corporate counsel and has the authorization to represent China Southern Airlines Company Limited (the “Company”) to address all matters with you. Furthermore, we concur with and reaffirm the explanations stated by Mr. Liu in his email of February 2, 2009. His explanations are matters of fact, and not matters which you can choose not to accept as you seem to indicate in your email response to him.

Right to Raise Proposals in Shareholders’ Meeting of the Company

As specified in the Company’s Articles of Association (see Art. 76 (16) quoted in relevant portion below), the right to raise motions to be subject to a vote shall be enjoyed by shareholders holding 3% or more of the total shares of the Company *carrying the right to vote*.

As previously explained by Mr. Liu, the holders of ADRs technically do not carry the right to vote. Therefore, you, as a holder of ADRs, do not enjoy the right to submit proposals at the shareholders’ meeting of the Company.

“Article 76 The shareholders’ general meeting shall exercise the following functions and powers:

- (16) To consider motions raised by shareholders who represent 3% or more of the total shares of the Company carrying the right to vote....”

Recap Major Points Noted by Mr. Liu Previously

To reaffirm the Company’s position on issues you have raised to date, we would like to reiterate the major points stated by Mr. Liu in his email of February 2, 2009.

- The right to attend meetings, vote and appoint proxies specified in the Company’s Articles of Association apply to *shareholders*, and not to holders of ADRs.
- As a holder of ADRs, you are permitted to instruct the Bank of New York Mellon, the shareholder of record pursuant to a deposit agreement by which you are bound, as to how to vote on certain matters, but if you do not choose to instruct the Bank of New York Mellon as to how to vote, the Company is not legally obligated to allow you to attend, vote or appoint another proxy for such meetings.

In relation to this point, we note that you have had prior communications with the Bank of New York Mellon during the Chinese New Year holiday. We note also from our communications with Bank of New York Mellon that you do not hold your ADRs in your own name but rather in “street name” with your broker. Therefore, sending a letter in the fashion that you did to Ms. Anita Sung of Bank of New York Mellon will only lead to delays as they are not able to verify your status as a holder of ADRs. To ensure your effective issuance of instructions to the bank on voting the ADRs you beneficially own, you may need to confirm with your broker on the proper way to do so.

- In certain respects, the SEC does not apply the same regulatory regime to foreign private issuers such as the Company as it does to domestic companies. One particular area where the SEC does not regulate for foreign private issuers is the area shareholder voting, appointment of proxies and shareholder meetings (including the right to propose matters to be subject to a vote).
- ProxyVote.com is a third party provider with no relationship or affiliation with the Company. While the website indicates that you have chosen to attend the Company's February meeting, the Company is not obliged to permit your attendance at that meeting as a result. In addition, the Company has no control over statements made by ProxyVote.com, your broker or other third parties.

SEC Rule 14a-8

We appreciate your sharing with us of Yahoo! Inc.'s reply to your proposals and the relevant SEC regulation. However, the rule you cited (Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended) is among those rules that the SEC does not apply to "foreign private issuers" such as the Company. Yahoo! Inc., in contrast is a U.S. company. We encourage you not only to take our word for it, but also inquire with the SEC or qualified securities attorneys as to the applicability of this rule to foreign private issuers.

Dialogue with the Company

We appreciate your willingness to conduct a meaningful dialogue with the Company. We therefore welcome you to present your comments and suggestion through our formal investor-related channel (ir@csair.com).

Actions in the Future

We encourage you to contact Mr. Liu of DLA with any further questions or concerns in relation to rights of ADR holders. And please feel free to contact me with any suggestions in relation to the Company's business.

Regards,



Xie Bing
Company Secretary