

Whether the Exchange would approve the proposed changes to the terms of convertible bonds issued by a listed issuer under general mandate

Facts

Background

1. Two years ago, a Main Board issuer (**Company A**) issued certain convertible bonds to an independent third party (the **investor**) under a general mandate (the **original general mandate**). Assuming full conversion of the bonds at the initial conversion price, the conversion shares would represent 10% of the then issued shares of Company A.
2. The original general mandate allowed Company A to issue new shares of not more than 20 per cent. of its issued shares until the conclusion of the next annual general meeting. Except for the issue of the convertible bonds, Company A had not used the mandate to issue any other securities.

Proposals

3. In light of the change in market conditions after the issue of the convertible bonds, Company A and the investor proposed to revise the terms of the bonds:
 - (a) the parties proposed to reduce the initial conversion price of the bonds. Based on the revised conversion price, the maximum number of conversion shares would not exceed the number of new shares issuable under the original general mandate.
 - (b) alternatively, the parties would extend the conversion period and the maturity date of the bonds for one year. There would not be any change to the conversion price of the bonds and therefore the number of conversion shares issuable by Company A.
4. Company A submitted that the original general mandate would be sufficient to cover the conversion shares issuable under the revised terms of the bonds. It sought the Exchange's approval for the proposed changes to the terms of the bond.

Relevant Listing Rules

5. Rule 13.36 states that:

- (1) (a) Except in the circumstances mentioned in rule 13.36(2), the directors of the issuer ... shall obtain the consent of shareholders in general meeting prior to allotting, issuing or granting:
 - (i) shares;
 - (ii) securities convertible into shares; or
 - (iii) options, warrants or similar rights to subscribe for any shares or such convertible securities.

Note: Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them) pro rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rules 13.36(2) and (3).

(b) ...

(2) No such consent as is referred to in rule 13.36(1)(a) shall be required:

(a) ...

(b) If, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to allot or issue such securities or to grant any offers, agreements or options which would or might require securities to be issued, allotted or disposed of, whether during the continuance of such mandate or thereafter, subject to a restriction that the aggregate number of securities allotted or agreed to be allotted must not exceed the aggregate of (i) 20% of the number of issued shares of the issuer as at the date of the resolution granting the general mandate (or in the case of a scheme of arrangement involving an introduction in the circumstances set out in rule 7.14(3), 20% of the number of issued shares of an overseas issuer following the implementation of such scheme) and (ii) the number of such securities repurchased by the issuer itself since the granting of the general mandate (up

to a maximum number equivalent to 10% of the number of issued shares of the issuer as at the date of the resolution granting the repurchase mandate), provided that the existing shareholders of the issuer have by a separate ordinary resolution in general meeting given a general mandate to the directors of the issuer to add such repurchased securities to the 20% general mandate

...

...

[\(Rule 13.36 was amended on 11 June 2024. See Note below.\)](#)

6. Rule 28.05 states that:

Any alterations in the terms of convertible debt securities after issue must be approved by the Exchange, except where the alterations take effect automatically under the existing terms of such convertible debt securities.

Analysis

7. The Exchange considered that each of the proposals described in paragraph 3 would constitute a material change to the terms of the convertible bonds. They should be regarded as new arrangements for Company A to issue convertible securities to the investor. It could not use the original general mandate for the new arrangements.
8. Accordingly, Company A was required to comply with Rule 13.36 for the proposals. It should obtain a specific mandate for issuing the conversion shares under the revised terms of the bonds unless it had an existing general mandate that was valid and sufficient to cover these conversion shares. If Company A failed to do so, the Exchange would not approve the proposed changes to the terms of the bonds.

Conclusion

9. Company A was required to comply with Rule 13.36 for the proposals.

Subsequent Development

10. Under Rule 13.36(6) (which became effective on 3 July 2018), an issuer may not issue securities convertible into new shares of the issuer for cash consideration pursuant to a general mandate under Rule 13.36(2)(b), unless the initial conversion price is not lower than the benchmarked price (as defined in Rule 13.36(5)) of the shares at the time of the placing.
11. In this case, the convertible bonds were issued to the investor for cash consideration two years ago and Company A was required to comply with Rule 13.36 for the proposals described in paragraph 3. Under the amended Rules, Company A should obtain a specific mandate for issuing the conversion shares under the revised terms of the bonds unless (i) it had an existing

general mandate that was valid and sufficient to cover these conversion shares; and (ii) the conversion price of the bonds as revised was not lower than the benchmarked price of the shares at the time of the proposal.

Note: Rule 13.36 was amended on 11 June 2024 to, among others, (i) apply the existing requirements for an issue of new shares to a resale of treasury shares; and (ii) exclude treasury shares in the calculation of issued shares for the purpose of determining the general mandate limit. The Rule amendments would not change the analysis and conclusion in this case.