~~(i)~~ Whether (i) a listed issuer could proceed with a share repurchase offer which might result in a lack of open market in its shares; and (ii) ~~whether~~ the Exchange would give consent to the listed issuer for issuing new shares within 30 days after completion of such offer to meet the public float requirement

Facts

1. A Main Board issuer (**Company A**) was dually listed on the Exchange and an overseas stock exchange. It proposed to withdraw its listing in the overseas stock exchange by making a share repurchase offer to all existing public shareholders in Hong Kong and the overseas market (**Offer**).

2. It intended to maintain a listing on the Exchange. For any shareholders in the overseas market who did not accept the Offer, their shares would be transferred to the Hong Kong branch register.

3. It would also issue new shares to certain independent institutional investors (**Investors**) for cash to finance part of the funding requirement for the Offer.

4. To ensure a minimum of 25% public float immediately after the Offer, Company A had obtained undertaking from the Investors and certain public shareholders not to accept the Offer.

5. However, if there was a very high take up of the Offer, Company A's shares would be held by a small number of shareholders and there might not be an open market for trading in the shares in Hong Kong upon completion of the Offer. To address the concern, Company A submitted that:

    a. it had a wide spread of shareholders with over 2,000 shareholders in the overseas market and over 60 shareholders in Hong Kong including nominee companies. More than 60% of the overseas shareholders were institutional investors;

    b. the subscription of new shares in Company A by the Investors and the business cooperation with them would enhance the value of Company A. Company A did not expect a high uptake of the Offer; and

    c. in the event that there was a concern about the lack of an open market in Company A's shares after the offer, it would place new shares to independent placees (**Possible Placing**) to ensure compliance with the public float requirement.

6. Company A asked whether the Exchange would allow it to proceed with the proposed Offer. It also sought the Exchange's consent to conduct the Possible Placing within 30 days after the Offer under Rule 10.06(3).

Relevant Listing Rules

7. Rule 8.08 states that:

"There must be an open market in the securities for which listing is sought. This will normally mean that:-

(1) (a) at least 25% of the issuer's total number of issued shares must at all times be held by the public;

…

(2) for a class of securities new to listing, at the time of listing there must be an adequate spread of holders of the securities to be listed, …. The number will depend on the size and nature of the issue, but in all cases there must be at least 300 shareholders; and

(3) not more than 50% of the securities in public hands at the time of listing can be beneficially owned by the three largest public shareholders, …."

(Rule 8.08(1)(a) was amended on 11 June 2024. See Note below.)

8. Rule 13.32 states that:

"(1) Issuers shall maintain the minimum percentage of listed securities as prescribed by rule 8.08 at all times in public hands. …

(2) Once the issuer becomes aware that the number of listed securities in the hands of the public has fallen below the relevant prescribed minimum percentage the issuer shall take steps to ensure compliance at the earliest possible moment…

(3) If the percentage falls below the minimum, the Exchange reserves the right to require suspension of trading in an issuer's securities until appropriate steps have been taken to restore the minimum percentage of securities in public hands. In this connection, the Exchange will normally require suspension of trading in an issuer's securities where the percentage of its public float falls below 15% (or 10% in the case of an issuer that has been granted a lower percentage of public float under rule 8.08(1)(d) at the time of listing).

(4) Where the percentage has fallen below the minimum, the Exchange may refrain from suspension if the Exchange is satisfied that there remains an open market in the securities…

…"

9. Rule 10.06(3) states that:

   "An issuer whose primary listing is on the Exchange may not make a new issue of shares or announce a proposed new issue of shares for a period of 30 days after any purchase by it of shares, whether on the Exchange or otherwise (other than an issue of securities pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue securities, which were outstanding prior to that purchase of its own securities), without the prior approval of the Exchange."

   (Rule 10.06(3) was amended on 11 June 2024. See Note below.)

Analysis

Public float requirements

10. The public float requirement seeks to ensure an open market for trading in listed securities and require at least 25% of the securities be held by the public at all times. Where there are insufficient securities in the hands of the public, trading will be suspended if it is necessary to avoid a disorderly market.

11. Company A proposed a withdrawal of listing in the overseas stock exchange by making a share repurchase offer to all existing shareholders. In the extreme case where all public shareholders accepted the Offer (other than those undertaken to Company A not to do so), Company A's shares would be held by a small number of shareholders and there might not be an open market in the shares in Hong Kong upon completion of the Offer. It was not in the interest of Company A's shareholders if trading suspension continued for a prolonged period due to the lack of an open market in the shares.

12. The Exchange would allow Company A to proceed with the proposal taking into account the following:

    a. the purpose of the Offer was to facilitate the withdrawal of listing of Company A's shares from the overseas stock exchange. Company A intended to maintain a listing of its shares on the Exchange;

    b. Company A had a wide spread of shareholders, and a number of shareholders undertook not to accept the Offer. The concern about a lack of open market in its shares would arise only if there was a very high take up of the Offer; and

    c. Company A proposed to place new shares to independent placees to ensure an open market for trading its shares in Hong Kong upon completion of the Offer.

Possible Placing after the share repurchase offer

13. Rule 10.06(3) requires that an issuer seeks the Exchange's consent before issuing new shares or announcing a new issue of shares within 30 days after the purchase of its own shares. This is ~~both~~ to ensure that the issuer does not affect the price of the new shares to be issued by the repurchase of its own shares~~ and that the repurchased shares are not in~~

~~practice being treated almost as if they are being held as treasury shares~~.

14. In this case, the purpose of the Possible Placing was to ensure an adequate spread of shareholders in Hong Kong after the Offer. In Company A's announcement for the proposed Offer, there would be disclosure to inform the market of the Possible Placing after the Offer. The proposal did not raise concern on market manipulation.

Conclusion

15. The Exchange allowed Company A to proceed with the proposed Offer and gave consent for conducting the Possible Placing within 30 days after the Offer.

Note: Rule 8.08(1)(a) was amended on 11 June 2024 to exclude treasury shares in the calculation of issued shares for the purpose of determining the public float of the issuer. Rule 10.06(3) was amended on 11 June 2024 to (i) apply the existing moratorium period requirement for an issue of new shares to a resale of treasury shares and (ii) extend the carve-out provision to include the grant of share awards or options under a share scheme that complies with Chapter 17, or a new issue of shares or a sale or transfer of treasury shares under a capitalisation issue, upon vesting or exercise of share awards or options under the share scheme that complies with Chapter 17 or pursuant to the exercise of outstanding warrants, share options or similar instruments. The Rule amendments would not change the analysis and conclusion in this case.