

## HKE<sub>x</sub> LISTING DECISION

HKE<sub>x</sub>-LD101-2 (Published in August 2010) (Updated in April 2015)

<b>Parties</b>	Company A – a Main Board issuer  The Investor – Company A’s strategic partner
<b>Issue</b>	Whether the Exchange would waive the public float requirement for Company A
<b>Listing Rules</b>	Main Board Rule 8.08(1)(a)
<b>Decision</b>	The Exchange waived the requirement

### FACTS

1. Company A was owned as to 70% by its controlling shareholder and as to 30% by public shareholders. Since its listing a year ago, it had had the minimum public float of 25% under Rule 8.08(1)(a). There was a PRC regulatory requirement imposed at the time of listing that the controlling shareholder had to own at least a 51% interest in Company A.
2. The Investor was one of the world’s leading manufacturers of the same products as those produced by Company A. Company A and the Investor proposed to form a long term strategic partnership (the **Proposed Transaction**). The Investor would inject funds and introduce advanced technologies to Company A to develop new products and cooperate in sales and distribution of the products globally.
3. As a condition of the Proposed Transaction, the Investor required to acquire a 25% plus one share equity interest in Company A, through subscribing for new shares and/or acquiring existing shares from the controlling shareholder. This effectively gave the Investor veto rights over any special resolution which required support from shareholders holding at least a 75% interest under the applicable laws.
4. After the Proposed Transaction, the controlling shareholder and the Investor would hold a 51% and a 25% plus one share equity interest in Company A respectively, and the public float would be 24% minus one share.
5. Company A sought a waiver from the public float requirement under Rule 8.08(1)(a) because:
  - a. Despite the 1% plus one share public float shortfall, the absolute number of shares in public hands would remain unchanged and there remained an

open and highly liquid market in Company A's shares which were widely distributed among a large number of shareholders. Company A had approximately 480,000 shareholders immediately upon completion of its IPO. Its total market capitalisation was over \$10 billion and the average daily trading volume of its shares since listing was approximately 7 million shares.

- b. The Proposed Transaction would be beneficial to Company A and its shareholders as a whole since it would bring to Company A new funds, experience and advanced technologies, and enhance its global competitiveness and earning capacity.
- c. Given the PRC regulatory requirement and the Investor's requirement, a public float representing 24% minus one share would be the highest achievable level of public float. Compliance with Rule 8.08(1)(a) would be unduly burdensome and impractical to Company A.
- d. At the time of listing, Company A, with a market capitalisation of over HK\$29 billion, would have qualified for a waiver under Rule 8.08(1)(d) had it applied for it. No waiver was sought at that time because the Proposed Transaction had not been contemplated.

## APPLICABLE LISTING RULES

6. Rule 8.08(1) states that:

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

- (a) at least 25% of the issuer's total number of issued shares ~~capital~~ must at all times be held by the public.

...

- (d) The Exchange may, at its discretion, accept a lower percentage of between 15% and 25% in the case of issuers with an expected market capitalization at the time of listing of over HK\$10,000,000,000, where it is satisfied that the number of securities concerned and the extent of their distribution would enable the market to operate properly with a lower percentage .... Additionally, a sufficient portion (to be agreed in advance with the Exchange) of any securities intended to be marketed contemporaneously within and outside Hong Kong must normally be offered in Hong Kong.

7. 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. ...

Notes: (1) ...

- (2) The lower percentage of securities in public hands that the Exchange may at its discretion grant to eligible issuers under Rule 8.08(1)(d) may only be granted at the time of listing and will not be open for application post listing notwithstanding an issuer may after listing attain a market capitalisation of over HK\$10,000,000,000.

## **ANALYSIS**

8. The public float requirement seeks to ensure an open market in the securities for which listing is sought. To provide an open, fair and orderly market for the trading in the securities, it is essential to have available a minimum number of shares for trading.
9. At the time of listing, the Exchange may accept a public float of between 15% and 25% if issuers have an expected market capitalisation of over HK\$10 billion. Note 2 of Rule 13.32(2) clarifies that the Exchange may only allow the lower percentage under Rule 8.08(1)(d) to eligible issuers at the time of (and not after) listing. The Exchange will not accept an issuer's request to lower the minimum public float percentage threshold after listing simply because of its large market capitalisation.
10. In this case, Company A sought to reduce the minimum public float requirement because of the Proposed Transaction.
11. The Exchange noted the rationale for the Proposed Transaction submitted by Company A. When assessing Company A's waiver application, it considered the following factors:
  - a. With the Investor's requirement to hold 25% plus one share in Company A, Company A and its controlling shareholder had shown their best endeavours to comply with the Rules by reducing the latter's interest to 51%, the minimum PRC regulatory requirement. The highest achievable public float for Company A would be 24% minus one share.

- b. The public float shortfall would be about 1%. The number of Company A's shares in the public hands would remain unchanged. The shortfall would unlikely affect the provision of an open, fair and orderly market for Company A's shares, having regard to (i) the large shareholder base and high liquidity of the shares; and (ii) the public market capitalisation which had been over HK\$10 billion since listing.
- c. Had the Proposed Transaction been in place at the time of listing, Company A would have qualified for a public float waiver under Rule 8.08(1)(d).

## **CONCLUSION**

- 12. The Exchange waived the public float requirement for Company A.