

HKEx GUIDANCE LETTER

HKEx-GL42-12 (August 2012)

[Streamlined and incorporated into the Guide for New Listing Applicants in January 2024]

Subject	Guidance on Main Board Rule 9.09(b) in new listing cases
Listing Rules and Regulations	Main Board Rule 9.09(b)
Related Publications	Interim Guidance on Pre-IPO Investments (HKEx-GL29-12 dated January 2012)
Author	IPO Transactions Department

Important note: This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter.

I. Purpose

1. This Guidance describes the purpose of Rule 9.09(b) and the circumstances under which a waiver may be considered in the case of a new applicant.

II. Listing Rules

2. Rule 9.09(b) prohibits dealing in shares by any core connected person of the issuer from 4 clear business days before the Listing Committee hearing until listing is granted. This rule does not apply to circumstances under Rule 7.11 where the share dealing is to achieve the required public float.
3. The purpose of Rule 9.09(b) is to prevent core connected persons such as directors and substantial shareholders (and their close associates) of a listing applicant holding the applicant's shares from benefiting through dealing in those shares shortly before listing. These core connected persons are deemed to have inside information and are in a position to influence the IPO process.

III. Guidance

4. The share dealing prohibition under Rule 9.09(b) ceases to apply after an application has lapsed, that is 6 months after the filing of a listing application (Form A1)¹.

Circumstances for Rule 9.09(b) Waiver

5. We would normally grant a Rule 9.09(b) waiver under each of the following circumstances:

	Circumstances for waivers
1	<p>The applicant's shares are already listed overseas (excluding trading-only status or over-the-counter-trading status). Its existing shareholders include independent and public investors over whose investment decisions the applicant has no control. A public investor may become a substantial shareholder of the applicant before it lists on the Exchange.</p> <p>We would consider granting a Rule 9.09(b) waiver so as not to restrict share dealings by these public investors on the basis that:</p> <ul style="list-style-type: none">(i) the applicant has no control over the investment decisions of the public investors who may become its substantial shareholders before listing on the Exchange;(ii) the applicant will promptly release any price sensitive information to the public in its home jurisdiction;(iii) the applicant's existing core connected persons (including substantial and controlling shareholders, directors and chief executive and their respective close associates) will not deal in the applicant's shares during the prohibited period under Rule 9.09(b); and(iv) the applicant will notify the Exchange of breach of the dealing restriction by any of its core connected persons during the restricted period.
2	<p>The share dealing would not result in any change in the ultimate beneficial owners, for example a distribution in specie by the legal holder of the shares to the ultimate controlling shareholders on a pro-rata basis.</p>
3	<p>The share dealing is due to a corporate reorganisation.</p>
4	<p>There was a pre-existing shareholder agreement for distribution of the applicant's shares in a particular way so as not to dilute the shareholdings of the original shareholders.</p>

¹ Rule 9.03

5	<p>The share dealing is due to a need to comply with the Listing Rules, for example:</p> <ul style="list-style-type: none"> (i) to unwind a pre-IPO investment that does not comply with the Guidance on Pre-IPO Investment, or (ii) to revise the applicant's corporate structure which involves issuing more shares to the controlling shareholder as consideration for injecting its business into the applicant to address the Exchange's concern on conflicts of interest posed by the controlling shareholder's business.
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6. For a Rule 9.09(b) waiver to be granted, applicants must:
- (a) demonstrate that compliance with Rule 9.09(b) would be irrelevant or unduly burdensome based on the facts and circumstances of their case; and
 - (b) disclose in the listing document the reasons for applying a Rule 9.09(b) waiver and the waiver conditions attached.
7. The circumstances that support a Rule 9.09(b) waiver are not exhaustive. Each application will be considered on a case-by-case basis and we may modify or add conditions for granting the waiver.

Rule 9.09(b) may overlap with the restrictions applicable to pre-IPO investments

8. Dealing in the applicant's shares by core connected persons during the prohibited period under Rule 9.09(b) may fall under the Interim Guidance on Pre-IPO Investments. Applicants must ensure that any share dealing complies with the Interim Guidance on Pre-IPO Investments², where applicable.

Early consultation with the Exchange

9. Applicants are encouraged to contact the Exchange at the earliest possible opportunity to seek informal and confidential guidance if needed.

² Interim Guidance on Pre-IPO Investments is available at:
<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl29-12.pdf>