# Whether a listed issuer was required to include convertible preference shares as part of its total issued shares in calculating the public float of its listed shares

## Facts

1. The ordinary shares of a listed issuer (**Company A**) were listed on the Exchange. It proposed to issue convertible preference shares (**CPS**) to settle part of the consideration for its acquisition of assets from a connected person.

2. Under the terms of the CPS, they would be non-redeemable. Each CPS would be convertible into one ordinary share of Company A subject to adjustments. Holders of the CPS would be entitled to dividends, if any, that would be paid with respect to the ordinary shares on an "as converted" basis. They would have no voting rights at Company A's general meetings, except for a resolution to vary the rights of the holders of the CPS or to wind up Company A.

3. The CPS would not be listed. Company A would apply to the Exchange for a listing of the ordinary shares to be issued upon conversion of any CPS.

4. Holders of the CPS could not convert the CPS if it would result in the public float of the listed shares falling below the minimum level required in the Listing Rules.

5. The public float of Company A's listed shares exceeded 25% of its total issued share capital before the proposed transaction. However, it would fall below 25% if the CPS were to be included as part of the total issued share capital.

## Relevant 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 must at all times be held by the public.

   …"

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

## Analysis

7. Rule 8.08 seeks to ensure that a sufficient amount of listed shares are in public hands at all times in order to maintain an open market for trading in the securities.

8. The Rule states that its purpose is *normally* achieved when the public float of listed shares represents at least 25% of the issuer's total issued share capital.

9. In this case, Company A's total issued share capital would include two classes of shares, i.e. the listed shares and the CPS. Having considered the terms of the CPS, they were similar to debt securities. The Exchange was satisfied that the public float would not be affected as a result of the issue of the CPS. It allowed Company A to exclude the CPS when calculating the public float of its listed shares.

## Conclusion

10. It was not necessary for Company A to include the CPS as part of its total issued share capital for the purpose of calculating the public float of its listed shares.

*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. The Rule amendments would not change the analysis and conclusion in this case.*