

HKE_x LISTING DECISION
HKE_x-LD52-2013 (published in March 2013)

Summary	
Party	Company A – a company listed on a PRC stock exchange which proposed to convert its entire B Shares into H Shares and sought a listing of the H Shares on the Main Board of the Exchange by way of introduction
Issue	(i) Whether Company A’s listing by way of introduction would be acceptable (ii) Whether Company A’s requested waivers would be granted
Listing Rules	Rules 2.04, 4.01(1), 7.14, 7.15, 8.06, 8.08(1)(b), 8.08(3), 19A.18(1) and paragraph 37 of Appendix 1A
Decision	The Exchange considered that: (i) Company A’s listing by way of introduction was acceptable; and (ii) the waivers were granted to Company A based on its particular facts and circumstances and should not be treated as precedents for other companies seeking to convert their B shares into H shares. Waiver applications of future cases will be considered on a case-by-case basis.

FACTS

1. Company A was incorporated in the PRC and both its A shares (“**A Shares**”) and its B shares (“**B Shares**”) had been listed on a PRC stock exchange for more than ten years.
2. Company A proposed to convert its entire B Shares into H shares (“**H Shares**”) and sought a listing of the H Shares on the Main Board of the Exchange by way of introduction (the “**Proposed Introduction**”). Its B Shareholders could choose to become H Shareholders or sell their B Shares before the Proposed Introduction to an independent third party (the “**Third Party**”) to be arranged by Company A (the “**Cash Offer**”).
3. Company A considered that the Proposed Introduction was an appropriate method of listing. It would undertake the Proposed Arrangement detailed in paragraph 14(iii) to ensure that a sufficient number of public shareholders deposited their H Shares with Hong Kong brokers ready for trading upon the Proposed Introduction.
4. Company A was able to comply with the profit test requirement under Rule 8.05(1). It applied for waivers from strict compliance with certain requirements under the Rules, including the following:

- (i) Minimum public float requirements¹ (in the event of non-compliance with those requirements after the Cash Offer):
 - (a) Rule 8.08(1)(b) to allow a minimum H Share public float of 10% with a market capitalisation of about HK\$3 billion; and
 - (b) Rule 8.08(3) so that the aggregate shareholding of the three largest public shareholders would not exceed 65% of the total H Share public float upon the Proposed Introduction;
- (ii) Financial statements requirements:
 - (a) Rule 4.01(1) and paragraph 37 of Appendix 1A to the Rules so that the accountants' report would be replaced by Company A's published financial statements for the latest three financial years (the "**Historical Financial Information**"); and
 - (b) Rule 8.06 to disclose interim financial information for the current financial year which had not been audited or reviewed by the reporting accountants ("**Interim Financial Information**"); and
- (iii) Residency of independent non-executive director ("**INED**"):
 - (a) Rule 19A.18(1) so that Company A was not required to have an INED ordinarily resident in Hong Kong until its next annual general meeting ("**AGM**").

APPLICABLE RULES AND PRINCIPLES

Listing by way of introduction

5. Rule 7.14 states that introductions will normally be appropriate where, among others, the securities for which listing is sought are already listed on another stock exchange.
6. Rule 7.15 states that an introduction will only be permitted in exceptional circumstances if there has been a marketing of the securities in Hong Kong within the six months prior to the proposed introduction where such marketing was made conditional on listing being granted for those securities. Furthermore, there may be other factors, such as a pre-existing intention to dispose of securities, a likelihood of significant public demand for the securities or an intended change of the issuer's circumstances, which would render an introduction unacceptable to the Exchange.

¹ Company A had a B Share public float of about 20% of its total issued Shares. For the avoidance of doubt, Company A only needed one of these two waivers after completion of the Cash Offer:

- (i) if the Third Party acquired 10% or more of the total issued Shares, it would not be regarded as a public shareholder. Company A would have a H Share public float of about 10% and would require a minimum public float (Rule 8.08(1)(b)) waiver; or
- (ii) if the Third Party acquired 9.99% or less of the total issued Shares, it would be regarded as a public shareholder. Company A would maintain a H Share public float of about 20% but it would require a waiver for the aggregate shareholding of the three largest public H Shareholders (Rule 8.08(3)).

7. In addition, the Exchange announced in December 2009 that it would only consider an application for listing by way of introduction if the new applicant and its sponsor could satisfy the Exchange that there would be adequate precautionary measures in place on and from the first day of listing on the Exchange to ensure that the new applicant's shares would be traded on an orderly, informed and fair basis.

Waivers

8. Rule 2.04 states that the Exchange may waive, modify or not require compliance with the Rules in individual cases (to suit the circumstances of a particular case), as a variety of circumstances may exist which require it to make decisions in particular cases.
9. Rule 8.08(1)(b) states that where an issuer has one class of securities or more apart from the class of securities for which listing is sought, the total securities of the issuer held by the public (on all regulated market(s) including the Exchange) at the time of listing must be at least 25% of the issuer's total issued share capital. However, the class of securities for which listing is sought must not be less than 15% of the issuer's total issued share capital, having an expected market capitalisation at the time of listing of not less than HK\$50,000,000.
10. Rule 8.08(3) requires that 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.
11. Rule 4.01(1) and paragraph 37 of Appendix 1A to the Rules require accountants' reports to be included in a listing document issued by a new applicant.
12. Rule 8.06 states that in the case of a new applicant, the latest financial period reported on by the reporting accountants must not have ended more than six months before the date of the listing document.
13. Rule 19A.18(1) states that at least one of the INEDs must be ordinarily resident in Hong Kong for a PRC issuer.

ANALYSIS

Listing by way of introduction

14. The Exchange considered Company A's listing by way of the Proposed Introduction acceptable after taking into account:
 - (i) both its A Shares and its B Shares had been listed on the PRC stock exchange for more than ten years;
 - (ii) all the H Shares (representing about 50% of Company A's total issued shares) would be registered on the Hong Kong share register, and apart from the H Shares held by the existing substantial shareholders (representing about 30% of Company A's total issued shares) which were subject to voluntary lock-up, all the H Shares would be available for trading on the Exchange;

- (iii) to ensure adequate liquidity in the trading of H Shares upon the Proposed Introduction, Company A proposed to procure at least 300 public B Shareholders to deposit the converted H Shares in broker accounts opened in Hong Kong, and those converted H Shares would have a minimum market capitalisation of HK\$1 billion and be ready to trade on the Exchange upon the Proposed Introduction (the “**Proposed Arrangement**”). These H Shares would be well above the latest 30-day accumulated trading volume of the B Shares on the PRC stock exchange and the required minimum market capitalisation of shares held by the public of HK\$50 million under Rule 8.09(1);
- (iv) the Cash Offer was not considered marketing activities of Company A’s shares in Hong Kong before listing given that it would be completed in the PRC before the Proposed Introduction. In addition, the Cash Offer was to protect the B Shareholders’ interests if they did not intend to convert their B Shares into H Shares, and therefore it should not be deemed as a situation involving “*marketing*” or “*pre-existing intention to dispose of securities*” under Rule 7.15; and
- (v) Company A would disclose:
 - (a) in its listing document the Proposed Arrangement and a risk factor that its effectiveness might be subject to limitations, and the historical share price and trading volume of the B Shares by month for the last five years; and
 - (b) by way of announcements on the websites of both the Exchange and the PRC stock exchange, the closing prices of the A Shares and B Shares on each of the three trading dates immediately before the Proposed Introduction.

Waivers

15. The Exchange agreed to grant the requested waivers to Company A having considered, among others, that:

Minimum public float requirements

- (i) the Proposed Arrangement as set out in paragraph 14(iii) indicated that there would be sufficient liquidity in the H Shares;
- (ii) if the requested 10% H Share public float waiver was granted, the market capitalisation of the 10% H Share public float would be about HK\$3 billion. If the requested waiver to allow the aggregate shareholding of the three largest public shareholders not exceeding 65% of the total H Share public float was granted, the market capitalisation of H Share public float excluding the three largest public H Shareholders would be about HK\$2 billion. The market capitalisation of the relevant H Share public float under both circumstances would be well above the minimum public float market capitalisation of HK\$50 million under Rules 8.08(1)(b) and 8.09(1);
- (iii) Company A had a B Share public float of about 20%, more than 60% of them were held by investors outside the PRC;

- (iv) Company A had undertaken to increase the H Share public float to 15% as required under Rule 8.08(1)(b) within one year from the Proposed Introduction, subject to the China Securities Regulatory Commission's approval; and
- (v) Company A is a listed company with a market capitalisation of about HK\$30 billion;

Financial statements requirements

- (vi) the Proposed Introduction would not involve any new investors and all the existing shareholders had already been provided with the Historical Financial Information². The same financial information would be provided to Hong Kong investors as to Company A's existing shareholders. If an accountants' report were to be prepared for Company A, no adjustment to the Historical Financial Information was expected;
- (vii) Company A and its sponsor considered that the Historical Financial Information would provide adequate and sufficient information on its performance and financial position during the track record period to its existing shareholders and Hong Kong investors. In addition, Company A would disclose in its listing document a directors' confirmation that all material information had been included in the listing document and the information contained was accurate and complete in all material respects and not misleading or deceptive; and
- (viii) Company A's auditors and reporting accountants would provide it and its sponsor with a comfort letter with respect to the Interim Financial Information based on certain agreed upon procedures performed under China Standards on Related Services 4101³ and the Interim Financial Information was for the interim period ended two months before Company A's listing document;

Residency of INED

- (ix) Company A required more than three months to appoint an additional INED ordinarily resident in Hong Kong. The term of the current board would expire in the forthcoming AGM to be held within five months after the Proposed Introduction and Company A undertook to appoint an INED ordinarily resident in Hong Kong at the AGM; and
 - (x) Company A proposed to appoint professional parties which are familiar with business, legal and regulatory issues in Hong Kong such as a Hong Kong legal adviser so long as Company A was listed on the Exchange.
16. Company A subsequently withdrew the public float waiver applications as soon as it became aware that it had sufficient public float under Rules 8.08(1)(b) and 8.08(3) after the Cash Offer.

² The Historical Financial Information had been prepared under China Accounting Standards for Business Enterprises (acceptable accounting standards for PRC issuers under Rule 4.11) and audited by an approved PRC auditor under Rule 19A.08.

³ China Standards on Related Services 4101 is a comparable standard to that required by the Hong Kong Institute of Certified Public Accountants and the International Federation of Accountants.

17. These waivers were granted based on the particular facts and circumstances of Company A. All waivers granted to Company A will not be treated as precedents for other companies seeking to convert their B shares into H shares.

CONCLUSION

18. The Exchange considered that:
- (i) Company A's listing by way of introduction was acceptable; and
 - (ii) the waivers were granted to Company A based on its particular facts and circumstances and should not be treated as precedents for other companies seeking to convert their B shares into H shares. Waiver applications of future cases will be considered on a case-by-case basis.
