

HKEx LISTING DECISION

Cite as HKEx-LD56-1 (September 2006) (Updated in September 2010, January 2013 and August 2023 and withdrawn in January 2024)

[This listing decision is withdrawn and superseded by FAQ No. 137-2023.]

Summary	
Name of Party	Company X - a Main Board listing applicant Company Y – a shareholder of Company X
Subject	Whether and under what circumstances could the domestic shares of Company X held by Company Y be listed on the Exchange as H shares and sold in the open market
Listing Rule	Listing Rules 2A.05, 9.12 ¹ , 2.03(2) and (4), 2.13, 11.07 and 13.09(1) ³ ; Listing Rules, Part C1 of Appendix 5, Paragraph 3 ²
Decision	<p>Based on the fact that Company X had established a clear methodology for the transfer of domestic shares to H shares and had publicly announced that methodology to investors together with other appropriate disclosure regarding the transfer process in a listing document published before any proposed transfer, the Exchange determined that:</p> <ul style="list-style-type: none">(i) subject to prior approval by the China Securities Regulatory Commission (CSRC)⁴ and compliance with the transfer procedures duly established and announced by Company X, domestic shares of Company X could be transferred to Hong Kong, listed on the Exchange as H shares and sold in the open market;(ii) the transfer of domestic shares to Hong Kong would be required to meet the established administrative procedures for listing on the Exchange, including the submission of necessary documentation and the delivery of the shares for inclusion in the Hong Kong share registrar;(iii) Company X could apply to list all or any portion of its domestic shares on the Exchange as H shares in advance of any proposed transfer to ensure that the transfer process could be completed promptly upon notice to the Exchange and delivery of shares for inclusion in the Hong Kong share registrar. However, as the listing of additional shares after a company's initial listing was ordinarily considered by the

Exchange to be a purely administrative matter, the Exchange did not require such prior application as a condition for the transfer, listing and sale of shares in the form of H shares; and

(iv) no further approval by the shareholders of Company X in general meetings and/or class meetings⁵ would be required for the transfer, listing and sale of domestic shares held by Company Y in the form of H shares.

SUMMARY OF FACTS

1. Company X was incorporated in Mainland China and proposed to list its domestic shares on the Exchange following a Global Offering and initial public offering (IPO) in Hong Kong. The domestic shares of Company X held by Company Y (being a shareholder of Company X), which represented approximately 70 per cent of Company X's issued shares upon completion of the Global Offering, were deposited with the China Securities Depository and Clearing Corporation Limited. The domestic shares would be identical in all material respects to the H shares except that dividends on domestic shares would be payable in renminbi and the H shares would be held on the Hong Kong share registrar of Company X.
2. Company X's articles of association provided that the special voting procedures for shareholders of different categories⁵ would not apply in the circumstances where the shares of Company X held by founding shareholder(s) were transferred or converted to foreign investment shares upon the approval of the State Council or its authorised approving authorities (such as the CSRC)⁴ and publicly tradable on one or more overseas stock exchanges. The articles of association of Company X had been reviewed by the CSRC and complied with relevant requirements of the Chinese Company Law and with Chapter 19A of the Listing Rules. There were no published interpretations of relevant PRC laws, rules, regulations or administrative procedures relating to the transfer of domestic shares or A shares to H shares.
3. The listing document of Company X stated that the shares held by Company Y would only be admitted and listed as H shares on the Exchange upon the approval of the CSRC⁴ and completion of the procedural requirements which involved the withdrawal of such shares from the China Securities Depository and Clearing Corporation Limited and re-registration of such shares on Company X's share registrar maintained in Hong Kong.
4. The listing document of Company X also stated that in order for Company Y to withdraw its shares that were deposited with the China Securities Depository and Clearing Corporation Limited and re-register such shares on Company X's Hong Kong share registrar, Company Y would issue to Company X a removal request in a prescribed form in respect of a specified number of shares and attach the

relevant documents of title. Company X would then issue a notice to its Hong Kong share registrar with instructions that, with effect from a specified effective date, its Hong Kong share registrar would issue H-share certificates to Company Y for such specified number of shares and Company Y's shareholding interest deposited with the China Securities Depository and Clearing Corporation Limited would then be correspondingly reduced. In addition, after receiving the approval from the CSRC⁴ and completing the withdrawal procedures, Company X would issue an announcement to inform shareholders and the public of such fact not less than three days prior to the proposed effective date.

5. Company X had made disclosure under the "Risk factors" section of its listing document that any future re-registration of domestic shares held on the China Securities Depository and Clearing Corporation Limited into H shares could have a material adverse effect on the market price of Company X's H shares and result in dilution of shareholdings of the investors subscribing shares in the Global Offering.
6. Until the domestic shares were re-registered on Company X's Hong Kong share registrar, Company Y would not be entitled to attend and vote at meetings of H shareholders in respect of such shares.
7. As part of its Global Offering, and in order to ensure that any future transfer process could be completed promptly upon notice to the Exchange, Company X applied to the Exchange to authorise for listing on the Exchange all of the domestic shares held by Company Y in Company X.
8. The sponsor also submitted that any transfer of Company Y's shares for listing on the Exchange would not invalidate or limit certain transfer restrictions applicable to Company Y's shares and described in Company X's listing document.

THE ISSUE RAISED FOR CONSIDERATION

9. Whether and under what circumstances could the domestic shares of Company X held by Company Y be listed on the Exchange as H shares and sold in the open market

APPLICABLE LISTING RULE OR PRINCIPLE

10. Listing Rule 2A.05 states that the Listing Committee has reserved to itself the power to approve all applications for listing from a new applicant.
11. Listing Rule 9.12¹ requires a formal application for listing in the form set out in Form C1 be lodged with the Exchange, in the case of a new application at least four clear business days prior to the date of hearing of the application by the Listing Committee.

12. Listing Rules, Part C1 of Appendix 5, Paragraph 3² requires Form C1 containing amounts and descriptions of securities for which application is now made.
13. Listing Rule 2.03(2) and (4) require that:
 - (2) the issue and marketing of securities is conducted in a fair and orderly manner and that potential investors are given sufficient information to enable them to make a properly informed assessment of an issuer ...
 - (4) all holders of listed securities are treated fairly and equally;
14. Listing Rule 2.13 provides that any listing document must be prepared having regard to the general principle that the information contained in the document must be accurate and complete in all material respects and not be misleading or deceptive. It is the responsibility of the directors of new listing applicants to ensure to their own satisfaction that the listing document is accurate in all material respects.
15. Listing Rule 11.07 provides that:

all listing documents issued by a new applicant ... must, as an overriding principle, contain such particulars and information which, according to the particular nature of the issuer and the securities for which listing is sought, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the issuer and of its profits and losses and of the rights attaching to such securities.
16. Listing Rule 13.09(1) provides that the Exchange, shareholders and the public should be informed by a listed issuer, as soon as reasonably practicable, of any information which is expected to be price-sensitive³. (*Updated January 2013*)

ANALYSIS

17. The Exchange acknowledged that the requirements concerning the transfer of domestic shares or A shares to the H-share market were governed by PRC law and were subject to change, re-interpretation and clarification from time to time.
18. However, the Exchange also considered that information regarding the transfer of domestic shares to H shares / shares between the A-share and H-share markets was material information for purposes of Rule 2.13 and Rule 13.09(1))³. Listing applicants, listed companies and their directors were therefore under an obligation to ensure that all material details of the transfer process were disclosed and explained to public shareholders.

19. The appropriate methods for explaining the process of transferring domestic shares or A shares to the H-share market could vary based on the circumstances of the individual company including, but not limited to, previous public statements the company has made regarding the subject, and the amount of information in the public domain on the subject generally, including published interpretations of relevant PRC laws, rules, regulations and administrative procedures.
20. In the present case, the Exchange noted that:
- a. The domestic shares of Company X were identical in all material respects to H shares except that dividends on domestic shares were payable in renminbi and the H shares would be held on the Hong Kong share registrar of Company X.
 - b. Company X's articles of association had been reviewed by the CSRC and established a clear methodology for the transfer of domestic shares to H shares under which no further approval from Company X's shareholders would be required for the transfer.
 - c. There were no published interpretations of relevant PRC laws, rules, regulations or administrative procedures relating to the transfer of domestic shares or A shares to H shares.
 - d. Company X had made disclosure in the "Risk factors" section of the listing document that any future re-registration of domestic shares held on the China Securities Depository and Clearing Corporation Limited into H shares could have a material adverse effect on the market price of Company X's H shares and result in dilution of shareholdings of the investors subscribing shares in the Global Offering.
 - e. Company X would publicly announce the transfer methodology to the public in a listing document (its IPO prospectus) that included significant details of the transfer process including the required mechanics for withdrawal of domestic shares from the China Securities Depository and Clearing Corporation Limited and the re-registration of such shares on Company X's share registrar maintained in Hong Kong.
 - f. Company X would issue an announcement to inform shareholders and the public of any transfer of domestic shares to the H-share market not less than three days prior to the proposed effective date.
21. Based on the above, the Exchange considered that Company X had adequately explained the process of transferring its domestic shares to the H-share market for purposes of Rule 2.13. No further approval from the shareholders of Company X in general meetings and/or class meetings⁵ would be required for the transfer, listing and sale of shares held by Company Y in the form of H shares.

22. The Exchange agreed that Company X could apply to list all or any portion of its domestic shares on the Exchange as H shares in advance to ensure that the transfer process could be completed promptly upon notice to the Exchange and delivery of shares for inclusion in the Hong Kong share registrar. However, as the listing of additional shares after a company's initial listing was ordinarily considered to be a purely administrative matter, the Exchange did not require such prior application as a condition for the transfer, listing and sale of shares in the form of H shares.

DECISION

23. Based on the fact that Company X had established a clear methodology for the transfer of domestic shares to H shares and had publicly announced that methodology to investors together with other appropriate disclosure regarding the transfer process in a listing document published before any proposed transfer, the Exchange determined that:
- (i) subject to prior approval by the CSRC⁴ and compliance with the transfer procedures duly established and announced by Company X, domestic shares of Company X could be transferred to Hong Kong, listed on the Exchange as H shares and sold in the open market;
 - (ii) the transfer of domestic shares to Hong Kong would be required to meet the established administrative procedures for listing at the Exchange, including the submission of necessary documentation and the delivery of the shares for inclusion in the Hong Kong share registrar;
 - (iii) Company X could apply to list all or any portion of its domestic shares on the Exchange as H shares in advance of any proposed transfer to ensure that the transfer process could be completed promptly upon notice to the Exchange and delivery of shares for inclusion in the Hong Kong share registrar. However, as the listing of additional shares after a company's initial listing was ordinarily considered by the Exchange to be a purely administrative matter, the Exchange did not require such prior application as a condition for the transfer, listing and sale of shares in the form of H shares; and
 - (iv) no further approval by the shareholders of Company X in general meetings and/or class meetings⁵ would be required for the transfer, listing and sale of domestic shares held by Company Y in the form of H shares.

Note:

1. *Rule 9.12 has been repealed since November 2009.*
2. *The formal application form (Form C1) no longer applies to new listing applicants after the rule amendments in November 2009. (Updated September 2010)*

3. *Following the statutory backing of an issuer’s continuing obligation to disclose inside information, consequential amendments were made to the Rules with effect from 1 January 2013. The old Rule 13.09(1) is now replaced by Rules 13.09(1) and (2)(a) which require disclosure of (i) information necessary to avoid a false market and (ii) inside information which requires disclosure under the Inside Information Provisions. (Updated January 2013)*
4. *For a domestic company directly offering and listing overseas, shareholders of its domestic unlisted shares applying to convert such shares into shares listed and traded on an overseas trading venue shall conform to relevant regulations promulgated by the CSRC, and authorize the domestic company to file with the CSRC on their behalf under Article 18 of the Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies (the “**Trial Measures**”) which came into effect on 31 March 2023. (Updated in August 2023)*
5. *Class meeting requirement applicable to holders of domestic shares and H shares are no longer necessary upon the repeal of the Special Regulations on the Overseas Offering and Listing of Shares by Joint Stock Limited Companies and the Mandatory Provisions for Companies Listing Overseas pursuant to the Decision of the State Council to Repeal Certain Administrative Regulations and Documents and the Trial Measures which came into effect on 31 March 2023. (Updated in August 2023)*