

**HKEx LISTING DECISION  
HKEx-LD79-1 (October 2009)**

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

<b>Summary</b>	
<b>Parties</b>	Company A - a Main Board applicant listed on a foreign exchange Parentco - Company A's largest single and controlling shareholder
<b>Subject</b>	Whether to waive Rule 10.07(1)(b) to allow dilution of Parentco's interest in Company A from conversion of convertible bonds issued by Company A.
<b>Listing Rules</b>	Rule 10.07(1)(b) and 10.08; HKEx-LD41-3; HKEx-LD68-1
<b>Decision</b>	The Exchange waived Rule 10.07(1)(b) to enable dilution of Parentco's interest in Company A during the second 6-month period following its listing, subject to:  a. Parentco's undertaking not to dispose of any of its interests in Company A in the first 12 months after its listing, except for the dilution of its interest from the issue of conversion shares; and  b. Company A making satisfactory disclosure in the prospectus and regular reports after listing.

**SUMMARY OF FACTS**

1. Company A was listed on a foreign exchange and it sought a dual primary listing by way of introduction on the Main Board.
2. It proposed to enter into an agreement with certain potential investors before listing for the issue of convertible bonds convertible at the option of the investors 6 months after its listing. Upon conversion, Parentco's shareholding in Company A might be diluted to below 30% according to the conversion formula based on the latest market price of the shares. Company A applied for a waiver from Rule 10.07(1)(b).

**THE ISSUE RAISED FOR CONSIDERATION**

3. Whether to waive Rule 10.07(1)(b) to allow dilution of Parentco's interest in Company A from conversion of convertible bonds issued by Company A.

## **APPLICABLE LISTING RULES OR PRINCIPLE**

4. Rule 10.07(1)(b) provides that the controlling shareholder of an issuer (as shown in the listing document) shall not, during the second 6-month period after the listing of the issuer's shares on the Exchange, dispose of any shares if, immediately following the disposal, it would cease to be a controlling shareholder.
5. Rule 10.08 provides that, with certain exceptions, no further shares of an issuer may be issued or form the subject of any agreement to issue within 6 months from the date on which securities of the issuer first commence dealing on the Exchange.

## **THE ANALYSIS**

6. The spirit of Rule 10.07(1) is to require the controlling shareholder to demonstrate its commitment to the issuer during the early stage of its listing on the Exchange. This is to protect investors by preventing dilution of their interests and changes in the shareholding structure during the early stage of listing.
7. For a waiver of Rule 10.07(1)(b) to be granted, Company A must demonstrate to the satisfaction of the Exchange:
  - a. how the commitment of the controlling shareholder is fulfilled; and
  - b. how the interests of the shareholders will be protected.
8. The Exchange considers that Rule 10.07(1)(b) applies to a deemed disposal resulting in a dilution of the controlling shareholder's interest from the issue of shares by the issuer.

## ***Precedent Cases***

9. Listing Decision HKEx-LD41-3 describes the factors that the Exchange considered in granting a Rule 10.08 waiver to allow a GEM issuer transferring to the Main Board to issue shares within 6 months after the transfer and a Rule 10.07 waiver to allow a deemed disposal of the controlling shareholders' interests.
10. Listing Decision HKEx-LD68-1 describes the factors the Exchange considered in granting a similar Rule 10.08 waiver to an issuer listed on a foreign exchange and which was seeking a dual listing on the Exchange by way of introduction.
11. The present waiver application differed from HKEx-LD41-3 and HKEx-LD68-1 in that Parentco applied for a waiver from the restriction on disposal of shares during the second six months after listing; while the two previous cases related to a waiver during the first six months after listing.

### ***Present Waiver Application***

12. When considering the waiver application, the Exchange took into consideration that:
  - a. Company A was already listed on a foreign exchange. The Exchange noted that the restriction under Rule 10.07(1)(b) might hinder potential business opportunities and development of Company A, such as the proposed issue of convertible bonds;
  - b. Company A was seeking a listing on the Exchange by way of introduction which would not involve any issue of new shares and would not result in any dilution of the shareholders' interest in Company A.
  - c. Parentco had demonstrated its commitment to Company A by not disposing of any shares since its establishment. It would undertake not to dispose of any shares in the first 12 months following Company A's listing, except for the deemed disposal resulting from the conversion of convertible bonds.
  - d. The proposed issue of the convertible bonds would be structured so that Parentco's interest in Company A would not be diluted below 28% in the first 12 months after its listing. Under this structure, Parentco would continue to be the single largest shareholder, though not the controlling shareholder, of Company A.
  - e. Company A would set out the details of the proposed issue of the convertible bonds, including the use of the proceeds, in the prospectus; and there would be regular updates of the progress in its future regular reports.

### **THE DECISION**

13. The Exchange waived Rule 10.07(1)(b) to enable dilution of Parentco's interest in Company A during the second 6-month period following Company A's listing, subject to:
  - a. Parentco's undertaking not to dispose of any of its interests in Company A in the first 12 months after its listing, except for the dilution resulting from the issue of conversion shares; and
  - b. Company A making satisfactory disclosure of the convertible bonds in the prospectus and future regular reports after listing.