

HKE_x LISTING DECISION
HKE_x-LD12-2011 (June 2011)

Parties	Company A – a listing applicant seeking a secondary listing on the Main Board of the Exchange
Issue	Whether the Interim Guidance on Pre-IPO Investments applied to Company A’s proposed issue of securities to independent investors
Listing Rules and Regulations	Main Board Listing Rule 2.03 Interim Guidance on Pre-IPO Investments issued on 13 October 2010 (Interim Guidance)
Decision	The Interim Guidance did not apply to Company A’s case

FACTS

1. Company A’s shares were primary listed on the Australian Stock Exchange (**ASX**). It sought a secondary listing of the same class of shares on the Exchange which would involve a public offer of new shares. Shares would be fully transferable and fungible between Hong Kong and Australian markets.
2. Before filing a listing application with the Exchange, Company A proposed to issue shares and convertible bonds (**Pre-HKIPO Investments**) to some independent investors (**Pre-HKIPO Investors**) to finance its business operation. The Pre-HKIPO Investments would be subject to shareholders’ approval according to ASX rules.
3. If the Interim Guidance applies to the Pre-HKIPO Investments, Company A has to wait for 180 business days after the completion to list on the Exchange.
4. Company A sought an exemption from the Interim Guidance.

APPLICABLE RULES, REGULATIONS AND PRINCIPLES

5. Rule 2.03 requires that the issue and marketing of securities is conducted in a fair and orderly manner and all holders of listed securities are treated fairly and equally.
6. Under the Interim Guidance, pre-IPO investments must be completed either (a) at least 28 clear days before the date of the first submission of the first listing application form or (b) 180 clear days before the first day of trading of the applicant’s securities, except in very exceptional circumstances.

ANALYSIS

7. The Exchange considered the following factors to determine whether to apply the Interim Guidance:

- a. Company A was already listed on the ASX, an exchange accepted by the Exchange as providing comparable protection to shareholders;
- b. it is normal for a listed company to enter into financial arrangements, like the Pre-HKIPO Investments, to finance its operations;
- c. Company A was required under ASX rules to seek shareholders' approval for the Pre-HKIPO Investments and the terms of the Pre-HKIPO Investments would be fully disclosed to its shareholders for approval purpose;
- d. the Pre-HKIPO Investors were independent third parties;
- e. the pricing of the shares was based on the prevailing market price of the shares traded on ASX and there would be no price adjustment after issue;
- f. the initial conversion price of the convertible bonds represented a premium to the prevailing market price of the shares, although there would be some conversion price adjustments, including, for example, if the Hong Kong IPO price was lower than the market price upon which the initial conversion price was set;
- g. the sponsors were satisfied that the Pre-HKIPO Investments complied with Rule 2.03; and
- h. Company A would fully disclose the terms of the Pre-HKIPO Investments in the Hong Kong prospectus for its listing on the Exchange.

CONCLUSION

8. The Exchange considered the Interim Guidance not applicable to the Pre-HKIPO Investments.