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[online version](http://www.charltonslaw.com/hong-kong-stock-exchange-publishes-listing-decision-on-allowing-a-prc-listed-company-to-convert-its-entire-b-shares-into-h-shares-and-list-the-h-shares-on-the-main-board-by-way-of-introduction/)

# Hong Kong Stock Exchange Publishes Listing Decision On Allowing A PRC Listed Company To Convert Its Entire B Shares Into H Shares And List The H Shares On The Main Board By Way Of Introduction

## Introduction

The Hong Kong Exchanges and Clearing Limited (the **Exchange**) published Listing Decision [HKEx-LD52-2013](http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld52-2013.pdf) ([see archive](ld52-2013.pdf)) (**Listing Decision**) on 8 March 2013, providing a detailed explanation of its decision to allow a company listed on a PRC stock exchange to convert its entire B shares into H shares and list the H shares on the Main Board of the Exchange by way of introduction. The Exchange also explained the rationale behind its decision to grant the various waivers requested by the Company. It noted however that the waivers granted were based on the company’s particular facts and circumstances and should not be regarded as precedents for other companies seeking to convert their B shares into H shares: waiver applications in future cases will be considered by the Exchange on a case-by-case basis.

## Background

### Listing by way of introduction

Listing Rule (**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. 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. 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.

### Proposal to list Company A by way of introduction

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. 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**). Company A considered that the Proposed Introduction was an appropriate method of listing. It undertook to ensure adequate liquidity in the trading of H Shares upon the Proposed Introduction by procuring 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**).

## Decision

The Exchange considered Company A’s listing by way of the Proposed Introduction acceptable after taking into account both its A Shares and its B Shares had been listed on the PRC stock exchange for more than ten years and the fact that 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

## Analysis and Waivers Requests

Company A was able to comply with the profit test requirement under Rule 8.05(1). However it applied for waivers from strict compliance with certain other requirements under the Rules.

### Public Float Requirement

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. 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.

The Exchange granted the requested waiver of the minimum public float requirement after taking account of the following:

1. the Proposed Arrangement as set out in paragraph 14(iii) indicated that there would be sufficient liquidity in the H Shares;
2. 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 to exceed 65% of the total H Share public float was granted, the market capitalisation of the 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);
3. Company A had a B Share public float of about 20%, more than 60% of them were held by investors outside the PRC;
4. 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
5. Company A is a listed company with a market capitalisation of about HK$30 billion

The waiver applications made by Company A in relation to the public float were later withdrawn as soon as the Company became aware that it had sufficient public float under Rules 8.08(1)(b) and 8.08(3) after the Cash Offer

### Financial Statements Requirement

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. Company A’s 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. In granting the waiver the Exchange considered the following:

1. the Proposed Introduction would not involve any new investors and all the existing shareholders had already been provided with the Historical Financial Information. 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;
2. 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
3. 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 4101 (a standard comparable to that required by the Hong Kong Institute of Certified Public Accountants and the International Federation of Accountants) and the Interim Financial Information was for the interim period ended two months before Company A’s listing document.

### Residence of INED

Rule 19A.18(1) requires that at least one of the independent non-executive directors (**INEDs**) of a PRC issuer must be ordinarily resident in Hong Kong. In granting a waiver from this requirement, the Exchange considered Company A’s submission that it required more than three months to appoint an additional INED ordinarily resident in Hong Kong. The Exchange also took into account the fact that 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’s undertaking to appoint an INED ordinarily resident in Hong Kong at the AGM; together with the fact that Company A proposed to appoint professional parties 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.

The Exchange agreed to grant waivers requested by Company A but stressed that the 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.

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