

HKE_x LISTING DECISION
HKE_x-LD72-2013 (published in May 2013)

Parties	Company A – a Main Board issuer Company B – Company A’s subsidiary proposed to be listed on a PRC stock exchange
Issue	Whether the Exchange would waive the assured entitlement requirement for Company A’s proposal to spin-off Company B
Listing Rules	Paragraph 3(f) of Practice Note 15 to the Main Board Rules
Decision	The Exchange waived the requirement

FACTS

1. Company A proposed to spin-off Company B for listing on a PRC stock exchange. This would involve Company B offering new A shares in the Mainland under the PRC laws and regulations. The deemed disposal of interest in Company B would be a discloseable transaction for Company A.
2. Company B’s business operations were mainly located in the Mainland. Company A considered that the proposed spin-off was in the interest of the company and its shareholders. It would be able to comply with all the spin-off requirements under Practice Note 15 to the Listing Rules except the requirement to provide its shareholders with an assured entitlement to the A shares of Company B.
3. Based on its PRC counsel’s advice, Company A submitted that foreign natural persons, legal persons or institutions cannot invest in the A-share market in the PRC unless they are qualified foreign institutional investors. As many existing shareholders of Company A were not qualified investors, there was a legal impediment to Company A’s providing provide them with an assured entitlement to Company B’s A shares under the proposed spin-off. It would be burdensome for Company A to propose a resolution in general meeting to waive the assured entitlement as the legal restriction could not be overridden even if the resolution was voted down by its shareholders.
4. Company A therefore sought a waiver from the assured entitlement requirement for the spin-off proposal.

APPLICABLE LISTING RULES

5. Paragraph 3(f) of Practice Note 15 states that:

“The Listing Committee expects the Parent to have due regard to the interests of its existing shareholders by providing them with an assured entitlement to shares in Newco, either by way of a distribution in specie of existing shares in Newco or by way of preferred application in any offering of existing or new shares in Newco. The percentage of shares in Newco allocated to the assured entitlement tranche would be determined by the directors of the Parent and by its advisers, and all shareholders of the Parent would be treated equally. There would be no bar to the controlling shareholder receiving his proportion of shares under such entitlement. Where Newco is proposed to be listed elsewhere than in Hong Kong, and where shares in Newco under the assured entitlement can only be made available to existing shareholders of the Parent by way of a public offering in Hong Kong, the Listing Committee would consider submissions as to why the assured entitlement requirement would not be for the benefit of the Parent or its shareholders. Further, the minority shareholders of the Parent may by resolution in general meeting resolve to waive the assured entitlement, even where Newco is to be listed in Hong Kong.

Note: In case where Newco is made subject to this Practice Note by virtue of the Note to paragraph 2, the Parent should use its best endeavours to provide its shareholders an assured entitlement to the shares in Newco. Whether such assured entitlement is available will be taken into account by the Exchange when considering whether to approve the spin-off proposal.”

ANALYSIS

6. Practice Note 15 sets out the Exchange’s principles when considering proposals of issuers to effect separate listings on the Exchange or elsewhere of assets or businesses wholly or partly within their existing groups.
7. The purpose of Paragraph 3(f) of Practice Note 15 is ensure that the issuer would give due regard to the interests of its shareholders by providing them with an assured entitlement to shares in the entity to be spun. Paragraph 3(f) further provides that if the issuer does not propose to offer such entitlement to its shareholders, it would need to obtain its minority shareholders’ approval in general meeting.

8. When considering Company A's waiver application, the Exchange noted that:
- The proposed spin-off was not a material transaction for Company A and did not require shareholders' approval under the Rules.
 - Company B was proposed to be listed on a PRC stock exchange and would need to comply with PRC laws and regulation. Company A could not provide its shareholders with an assured entitlement of Company B's shares due to legal restrictions in the PRC.

CONCLUSION

9. The Exchange granted the waiver on the condition that Company A would disclose in its announcement for the proposed spin-off details of the waiver including the reasons for not providing its shareholders with an assured entitlement to Company B's A shares, and the legal restriction under the PRC laws and regulation on providing the assured entitlement.