



Hong Kong Law

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HONG KONG STOCK EXCHANGE PUBLISHES LISTING DECISION ON CONTROLLING SHAREHOLDERS' POST-IPO LOCK-UP RESTRICTIONS

Introduction

The Hong Kong Stock Exchange's **Listing Decision HKEx-LD85-2015**¹ (the **Listing Decision**) required a shareholder to comply with the Listing Rules' restrictions on controlling shareholders disposing of their shares in newly listed companies. The shareholder was required to comply with the lock-up restrictions that apply in the 12 months following a Hong Kong IPO, notwithstanding that it had ceased to be a controlling shareholder of the company on the exercise of the global coordinator's "green shoe" shortly after the company's listing.

Applicable Rules

The Listing Rules impose certain restrictions on the disposal of shares by controlling shareholders following a company's new listing. A "controlling shareholder" is defined as a person or group of persons who is/are: (i) entitled to exercise control over 30% or more of the voting power at general meetings of the company; or (ii) in a position to control the composition of the majority of its board of directors (Main Board Listing Rules 1.01 and 19A.14/GEM Listing Rules 1.01 and 25.10).

Under Main Board Listing Rule 10.07(1)(GEM Rule 13.16A(1)), a person or group of persons shown by the listing document issued at the time of a company's listing application to be a controlling shareholder of the company, is prohibited from:

¹ HKEx Listing Decision HKEx-LD85-2015 (January 2015) at <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld85-2015.pdf>.

disposing of his/her shares in the listed company in the period commencing on the date by reference to which disclosure of the shareholding of the controlling shareholder is made in the listing document and ending 6 months after the commencement of dealings in the company's securities on the Hong Kong Stock Exchange (the **Exchange**); or

disposing of his/her interest in the listed company if such disposal would result in him/her ceasing to be a controlling shareholder in the period of 6 months immediately following the expiry of the period referred to in paragraph (i) above.

The Facts

The Listing Decision involved a company which had applied to list on the Exchange's Main Board (**Company A**) and its shareholder (**Company B**), which held more than 30% of Company A's shares on the issue date of Company A's listing document. Company B had been established by Company A's founder and executive director for estate planning purposes, but was owned by his son.

On exercise of an over-allotment option by the global coordinator of the IPO following the listing, Company B ceased to be a controlling shareholder of Company A as its interest was diluted to below 30%.

The issue which arose was whether the lock-up provisions still applied to Company B notwithstanding that it had ceased to be a controlling shareholder of Company A.

Decision and Analysis

The decision stated that the intent behind the lock-up restrictions is to require a controlling shareholder to show its commitment to a new listing applicant. They also serve to protect investors by preventing a material change in the company's shareholding structure to ensure that there is no change in the company's controlling shareholder during its first year of listing.

Based on the Rules' intent and the case's particular circumstances, the Exchange determined that Company B was required to comply with the lock-up provisions of Rule 10.07(1), notwithstanding that it had ceased to be a controlling shareholder shortly after the company's listing.

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