

HKEX LISTING DECISION

HKEX-LD85-2015 (published in January 2015) (Updated in November 2016)
(Updated due to issuance of Guidance Letter GL89-16)

Summary	
Name of Party	Company A - Main Board listing applicant Company B - One of Company A's controlling shareholders at the time of the issuance of Company A's listing document
Issue	Whether Company B, which will cease to be a controlling shareholder of Company A shortly after listing, should be subject to a 12-month lock-up of its shares after Company A's listing under Listing Rule 10.07(1).
Listing Rule	Listing Rule 10.07(1)
Decision	The Exchange determined that Company B, despite ceasing to be Company A's controlling shareholder shortly after listing, was required to be subject to a 12-month lock-up of its shares after Company A's listing under Listing Rule 10.07(1).

SUMMARY OF FACTS

1. Company B was one of Company A's controlling shareholders interested in more than 30% of Company A's shares on the issue date of Company A's listing document. Company B was established for estate planning purpose by Company A's founder who was also an Executive Director and actively involved in the management of Company A, although Company B was owned by his son.
2. An over-allotment option was granted to the global coordinator of Company A's IPO. Upon full exercise of the over-allotment option after Company A's listing, Company B's interest in Company A was diluted to less than 30% and it ceased to be a controlling shareholder of Company A as defined under the Listing Rules.

THE ISSUE RAISED FOR CONSIDERATION

3. Whether Company B, which will cease to be a controlling shareholder of Company A shortly after listing, should be subject to a 12-month lock-up of its shares after Company A's listing under Listing Rule 10.07(1).

APPLICABLE LISTING RULES

4. Chapter 1 to the Listing Rules defines “controlling shareholder” as any person who is or group of persons who are together entitled to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings of the issuer or who is or are in a position to control the composition of a majority of the board of directors of the issuer.
5. Listing Rule 10.07(1) states that a person or group of persons shown by the listing document issued at the time of the issuer’s application for listing to be controlling shareholders of the issuer shall not and shall procure that the relevant registered holder(s) shall not:-
 - (a) in the period commencing on the date by reference to which disclosure of the shareholding of the controlling shareholders is made in the listing document and ending on the date which is 6 months from the date on which dealings in the securities of a new applicant commence on the Exchange, dispose of, nor enter into any agreement to dispose of or otherwise create any options, rights, interests or encumbrances in respect of, any of those securities of the issuer in respect of which he is or they are shown by that listing document to be the beneficial owner(s); or
 - (b) in the period of 6 months commencing on the date on which the period referred to in Listing Rule 10.07(1)(a) expires, dispose of, nor enter into any agreement to dispose of or otherwise create any options, rights, interests or encumbrances in respect of, any of the securities referred to in Listing Rule 10.07(1)(a) if, immediately following such disposal or upon the exercise or enforcement of such options, rights, interests or encumbrances, that person or group of persons would cease to be a controlling shareholder.

THE ANALYSIS

6. Listing Rule 10.07(1) is to require any person or group of persons, being a controlling shareholder or group of controlling shareholders shown by the listing document issued at the time of the issuer’s application for listing, to demonstrate (unless it is already clearly disclosed in the issuer’s listing document that such person or group of persons intends to sell shares as part of the offering) its commitment to a new applicant and to protect investors by preventing a material change in the shareholding structure to

the extent that a controlling shareholder no longer controls the applicant during the first year of the applicant's listing. ***(Updated in November 2016)***

7. Having considered the facts and circumstances of Company B and the intention of Listing Rule 10.07(1), Company B was required to be subject to a 12-month lock-up of its shares after Company A's listing under Listing Rule 10.07(1) (i.e. maintaining at least the same number of shares as stated in Company A's listing document for 12 months after Company A's listing).

THE DECISION

8. The Exchange determined that Company B, despite ceasing to be Company A's controlling shareholder shortly after listing, was required to be subject to a 12-month lock-up of its shares after Company A's listing under Listing Rule 10.07(1).