

## Listing Decision on Waiver of Connected Transaction Requirements

### Quick Read

Hong Kong Exchanges and Clearing Limited (HKEx) published its listing decision “HKEx-LD16-2011” on 29 July 2011 pursuant to which it decided to waive certain connected transaction requirements in relation to the possible issue of new A shares by a dual-listed company (Listco X) to its connected persons under a proposed public offer in Mainland China.

### Background

Listco X was a company whose H shares were listed on The Stock Exchange of Hong Kong Limited (SEHK) and whose A shares were listed on a Mainland China stock exchange. It intended to issue new A shares (New Issue) through a public offer in Mainland China.

Pursuant to the proposed New Issue, the existing A-share holders of Listco X would be given preferential rights to subscribe for the new A Shares on a pro rata basis. If any A-share holders did not exercise such rights, the new A Shares not taken up (Excess Shares) would then be offered to the public by online subscription through the Mainland China stock exchange system and offline placement.

It was anticipated that the new A shares would represent around 15% of Listco X’s existing issued share capital and the issue price of the new A shares

would be determined with reference to the prevailing market price of the existing A shares listed on the Mainland China stock exchange at the relevant time. The proceeds from the New Issue would be used for general working capital of Listco X.

Under the articles of association of Listco X and Rule 19A.38 of the Rules Governing the Listing of Securities on SEHK (Listing Rules), the New Issue would require approvals by (i) shareholders at a general meeting and (ii) A-share holders and H-share holders at separate class meetings. It would also require approvals of the relevant Mainland China regulatory authorities.

Listco X did not have any controlling shareholder and had a wide spread of shareholder base. As some connected persons were A-share holders (PRC Connected Persons), they would be entitled to subscribe for the new A shares on a pro rata basis. They might also be entitled to apply for the Excess Shares if available.

Having said that, any subscriptions of the new A shares by the PRC Connected Persons would be subject to the same terms and conditions as those available to the other A-share holders or independent investors. The Excess Shares, if any, would be allocated on a fair and equal basis and in compliance with the relevant Mainland China requirements. No preferential treatment would be given to the PRC Connected Persons.

## Relevant Listing Rules

Rule 14A.31 (3)(a) of the Listing Rules states that where a listed issuer issues new securities to a connected person and the connected person receives a pro rata entitlement to securities in its capacity as shareholder, such transaction will be exempt from all the reporting, announcement and independent shareholders' approval requirements under Chapter 14A of the Listing Rules (i.e. Connected Transactions).

## Issues

Listco X clarified with SEHK on whether the subscriptions of the new A shares by the PRC Connected Persons would fall within the exemption under Rule 14A.31(3)(a).

If the reply was negative, Listco X would seek a waiver from the connected transaction requirements to seek independent shareholders' approval of, and to include an opinion from the independent board committee and the independent financial advisers on, the possible issue of new A shares to the PRC Connected Persons under the proposed New Issue (Requirements).

## SEHK Decision

After consideration, SEHK decided that the exemption under Rule 14A.31(3)(a) did not apply as the existing H-share holders of Listco X would not be granted the pro rata entitlements to the new A shares.

However, SEHK agreed to waive the Requirements based on the following factors:

- The proposed New Issue must comply with the relevant Mainland China law and regulations.
- Any issue of the new A shares to the PRC

Connected Persons would be made on the same terms and conditions as the other A-share holders or independent investors and there would not be any preferential treatment to the PRC Connected Persons.

- As Listco X had a wide spread of shareholder base, most of the new A shares would be offered to existing A-share holders who were not connected persons of Listco X. The offer was not made with an intention to give preferential benefits to the PRC Connected Persons.
- The proposed New Issue would require approval of the H-share holders of Listco X at a separate class meeting. Accordingly, the H-share holders could veto the proposed New Issue and their rights would be protected.

Copies of the listing decision can be downloaded via the link below:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld16-2011.pdf>

## Contact Us

For inquiries related to this Legal Update, please contact the following persons or your usual contacts with our firm.

### **Jeckle Chiu**

Partner

T: +852 2843 2245

E: [jeckle.chiu@mayerbrownjms.com](mailto:jeckle.chiu@mayerbrownjms.com)

### **Juliana Lee**

Associate

T: +852 2843 2455

E: [juliana.lee@mayerbrownjms.com](mailto:juliana.lee@mayerbrownjms.com)

---

Mayer Brown JSM is part of Mayer Brown, a global legal services organisation advising clients across the Americas, Asia and Europe. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

#### OFFICE LOCATIONS

AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Washington DC

ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai

EUROPE: Berlin, Brussels, Cologne, Frankfurt, London, Paris

TAUIL & CHEQUER ADOVADOS in association with Mayer Brown LLP: São Paulo, Rio de Janeiro

ALLIANCE LAW FIRM: Spain (Ramón & Cajal)

Please visit our web site for comprehensive contact information for all our offices.

[www.mayerbrownjism.com](http://www.mayerbrownjism.com)

This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is intended to provide a general guide to the subject matter and is not intended to provide legal advice or a substitute for specific advice concerning individual situations. Readers should seek legal advice before taking any action with respect to the matters discussed herein. Please also read the Mayer Brown JSM legal publications Disclaimer.

Mayer Brown is a global legal services organisation comprising legal practices that are separate entities (the Mayer Brown Practices). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; Mayer Brown JSM, a Hong Kong partnership, and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2011. The Mayer Brown Practices. All rights reserved.