

Summary: HKSE Guidance Letter on issues relating to “controlling shareholder”

And related Listing Rules implications (HKEX-GL-89-16)

The Guidance Letter clarifies HKEX’s interpretation and practice in relation to:

- the definition of “controlling shareholder”
- (our focus being listed companies) the continuing obligations for “controlling shareholders” regarding disclosure, and restrictions for voting under certain circumstances

I. Definition of “controlling shareholder” under Rule 1.01

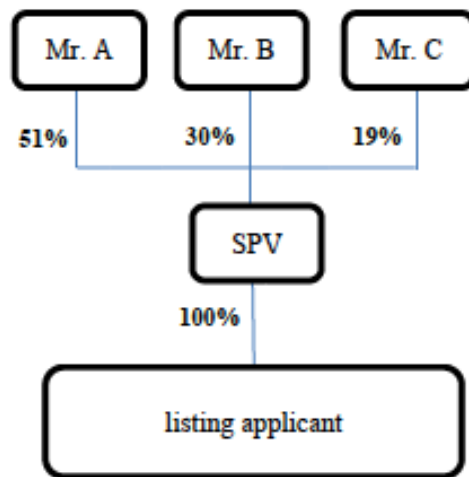
Main Board Rule 1.01 defines “controlling shareholder” as any person who is or group of persons who are together:

- (i) entitled to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Code on Takeovers and Mergers as being the level for triggering a mandatory general offer) or more of the voting power at general meetings of the issuer; or
- (ii) in a position to control the composition of a majority of the board of directors of the issuer.

II. HKEX’s interpretation of “controlling shareholder”

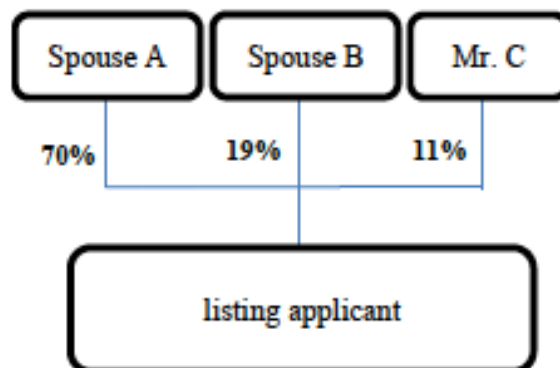
- (1) HKEX stresses that the determination of “controlling shareholders” is a case-by-case assessment. It has the power to deem any shareholder to be a “controlling shareholder” or a “group of controlling shareholders” based on the facts and circumstances of that case.
- (2) It gave 4 examples of simplified and common structures. We would focus on examples 3 and 4 (the first two examples are straight forward cases), under which HKEX will “presume” (which may be rebutted, to its satisfaction) certain shareholders as “a group of controlling shareholders”:

(a) Example 3 – shareholders holding interests in issuer via a SPV



- Obvious that both SPV and Mr. A fall within the definition of “controlling shareholder”
- On the basis that Mr. A, Mr. B and Mr. C have decided to restrict their ability to exercise direct control over the listing applicant by holding their interests through a common investment holding company (namely SPV), HKEX will presume Mr. A, Mr. B and Mr. C to be a group of controlling shareholders of the issuer

(b) Example 4 – “associates”



- HKEX will presume Spouse A and Spouse B (the latter individually holds less than 30%) to be a group of controlling shareholders by virtue of their relationship of being spouses
- same presumption to apply to all shareholders who are “close associates” of each other as defined in Main Board Rule 1.01

III. Continuing obligations -- voting restrictions and disclosures applicable to “controlling shareholders”

- (1) Newly listed companies are also subject to lock-up arrangements, which are not our focus here.
- (2) (a) **Restrictions from voting in favor of certain material corporate actions**, including **withdrawal of listing** (Main Board Rule 6.12); **rights issue/open offer enlarging share capital by over 50%** (Main Board Rules 7.19 and 7.24); **refreshment of general mandate** (Main Board Rule 13.36(4)), **reverse takeovers** (Main Board Rule 14.55) and **spin-offs** (Paragraph 3(e) in Practice Note 15 of the Main Board Rules)
 - (b) the above rules typically catch “associates” of the controlling shareholders already
- (3) For **issuers listed for one year or less**, abstain in voting on acquisitions or disposals or other transactions which would result in a fundamental change in the principal business of the issuer (Main Board Rules 14.89 to 14.91)
- (4) Announcements and disclosure in **quarterly/interim/annual reports** on (i) details of **loans requiring controlling shareholders to pledge shares** (Main Board Rule 13.17/paragraphs 6.3 and 40.3 of Appendix 16 to the Main Board Rules) **or to fulfill specific performance obligations** (Main Board Rule 13.18/ paragraphs 6.3 and 40.3 of Appendix 16 to the Main Board Rules) (ii) **contracts of significance** (paragraph 16 of Appendix 16 to the Main Board Rules)
- (5) **Connected transaction implications**: acquisition of interest in a target company from third party is a connected transaction if target company’s substantial shareholder is or is proposed to be a controlling shareholder of the listed issuer (Main Board Rule 14A.28)

December, 2016