Listing in Hong Kong

David Richardson

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Introduction (1)

- David Richardson is with the Hong Kong office of the law firm of Dorsey & Whitney , which have a strong mineral resources practice.
- Dorsey was named “Mining Law Firm of the Year” by ACQ Magazine in its inaugural ACQ Finance Magazine Country Law Awards. Dorsey was selected based on feedback to ACQ’s judging panel from industry experts and legal industry peers. The award recognizes Dorsey’s commitment to the mining industry and its successful work with clients on cross-border transactions during 2008.

Introduction (2)

- Dorsey & Whitney consistently ranks among the top legal advisors for U.S. and international deals completed, and we are a go-to firm for companies in the mining industry.

Sino Gold Mining Limited Secondary Listing on the Hong Kong Stock Exchange ("HKEx") and Global Offering of Shares US$120 Million Acquisition of dual listed TSX and ASX company CAN$100 Million Private Placement AUS$150 Million Renounceable entitlement offer of share structured in parts – institutional offer, institutional bookbuild retail offer and retail bookbuild AUS$210 Million **Counsel to Sino Gold Mining Limited**	**NovaGold Resources Inc.** Two International Public Offerings of Common Shares US$375 Million **Counsel to NovaGold Resources Inc.**	**Goldcorp Inc.** Acquisition of Glamis Gold Ltd. US$8 Billion **Counsel to Goldcorp Inc.**
	IAMGOLD Corporation Acquisition of Cambior Inc. US$1.25 Billion **Counsel to IAMGOLD Corporation**	**Uranium One Inc.** Acquisition of UrAsia Energy Ltd. US$3 Billion **Counsel to UraniumOne Inc.**
	Aluminum Corporation of China Acquisition of Peru Copper Inc. US$795 Million **Counsel to Aluminum Corporation of China**	

Introduction (3)

- David advised in a secondary listing on the HKEx of Sino Gold Mining Limited which raised approximately US$120 million. The Company is the only mineral resource explorer and producer presently listed on the HKEx. The Company was, at the time of listing, the largest foreign producer of gold in the PRC. David had previously acted in the listing of Zijin Mining, one of the largest domestic producer of gold in the PRC.
- David is presently acting for a number of overseas mineral companies in their listings on the HKEx.

Introduction (4)

- The HKEx is characterized by great liquidity. Part of this liquidity is as a result of the qualified domestic institutional investor scheme, introduced in 2006, to channel China's foreign reserves into the HKEx and to alleviate the liquidity glut in the economy. Despite the global financial crises, the HKEx will therefore be a relatively safe haven.

Introduction (5)

- While the HKEx is dominated by Hong Kong and mainland Chinese companies, to alleviate this dependence, the HKEx implemented a policy in 2007 to attract foreign companies to list on it. Sino Gold Mining Limited from Australia was the first foreign company to list on the HKEx under this policy. Foreign companies are increasingly looking to list on the HKEx. The premiums for resource companies on the HKEx remain strong.

General (1)

Mongolia Energy (Listed on the HKEx) Price Performance Oct 2008 – April 2009

Date	Highest	Lowest	Closing Price	Market Cap (HK$M)
31/10/2008	3.8500	2.8000	3.2000	19,354.31
28/11/2008	2.2300	2.1000	2.1500	13,003.67
31/12/2008	2.4500	2.3500	2.3800	14,394.76
30/01/2009	2.1900	2.0900	2.1900	13,245.60
27/02/2009	2.1100	1.9400	2.1100	12,761.74
31/03/2009	2.2600	2.1700	2.2400	13,548.01
30/04/2009	2.2900	2.1800	2.2400	13,548.01

General (2)

	Main Board	GEM
Types of securities	Equities (shares and depositary receipts), debts, third party derivatives, unit trusts and investment vehicles.	Equity (shares only) and debt securities only (including options, warrants and convertible securities).
What are HDRs	Hong Kong depositary receipts (HDRs) are securities issued by a depositary bank representing underlying shares of a corporation which have been deposited with the depositary bank or its nominated custodian. One HDR represents a number of underlying shares (or a fraction of a single share}, according to the HDR ratio to be agreed between the depositary bank and the issuer.	

General (3)

	Main Board	GEM
Key Features of HDRs	Overview • All local or overseas companies fulfilling the Main Board listing requirements of the HKEx can apply to list by way of HDRs, provided that their shares are not already listed on the HKEx • For HDRs, the same listing regime as for the listing of shares on the HKEx's Main Board applies - admission requirements, listing process. and continuing obligations • HDR issuers have to comply with additional requirements on the appointment of a depositary bank and entering into a depositary agreement • HDR issuers have to maintain a register of HDR holders in Hong Kong via an approved share registrar • HDRs are in scrip-form, i.e. a paper-based system • Arbitrage between HDRs and shares in local market (if not restricted) can take place	

General (4)

	Main Board	GEM
Key Features of HDRs	Depositary Bank • Each HDR issuer must appoint a depositary bank acceptable to the HKEx • The depositary bank will act as a bridge between the HDR holders and the issuer, and be responsible for the transmission of entitlements, dividends and corporate communications from the issuer to the HDR holders, and transmit the HDR holders' instructions back to the issuer Trading and Settlement Arrangements • HDRs can be traded in HK dollars or US dollars at the choice of the issuer • Trading arrangements and trading platform for trading of HDRs are the same as for shares • Issuers' underlying shares will be fungible with HDRs provided there are no restrictions otherwise; If the underlying shares are listed on an overseas market, arbitrage between the two markets can take place subject to arrangements between host and remote registrars	

General (5)

	Main Board	GEM
Debt securities	Allows the listing of debt securities without the listing of a new applicant's or its parent's equity securities.	The listing of debt securities is permitted only if: • the issuer's equity securities are listed or will be simultaneously listed on GEM; or • the equity securities of the parent of the debt issuer are or will be simultaneously listed on GEM
Theme of the market	Capital formation for larger and more established companies which meet our profit or other financial standards requirements.	A second board and a stepping stone towards the Main Board.
Dual listing	Allows dual listings with different requirements for primary and secondary listings.	Allows dual listings, but not secondary listings.

General (6)

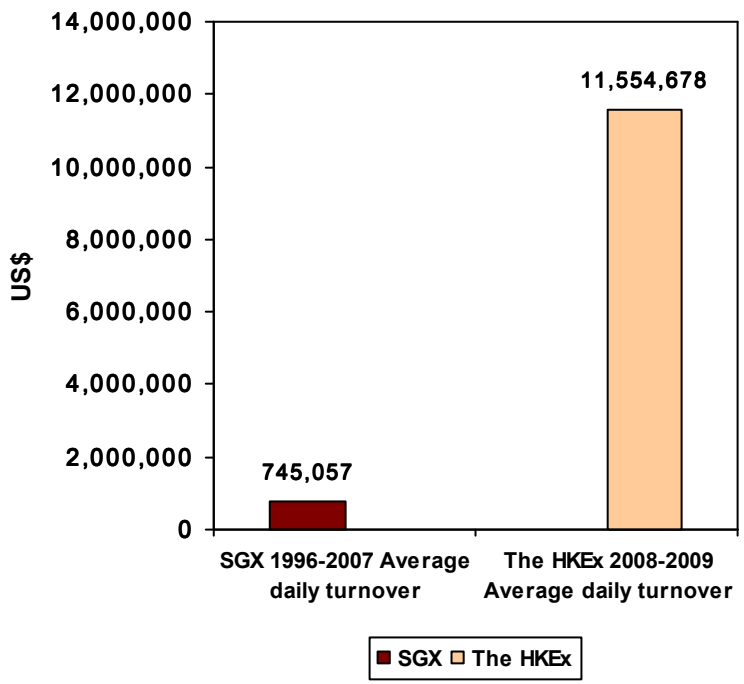
Companies move to list on the HKEx from other exchanges

From SGX- Want Want China Holding Ltd.	From SGX – China Kanda Food Co. Ltd.	From AIM RCG Holdings Ltd.
• Listed on the SGX in May 1996 and delisted in Sep 2007	• Listed on the SGX in Oct 2006 and raised US$29 million	• Listed on AIM in Apr 2004 and including secondary fund raising, raised US$154million
• Listed on the HKEx in March 2008 and raised US$1.045 million	• Listed on the HKEx by introduction in December 2008	• Listed on the HKEx by introduction in February 2009
• Price increased by 30% compared with issue price and traded at P/E of 25x as of 30 April 2009.		• Price traded at 5% premium on the HKEx over AIM as of 28 May 2009
		• When market started to pick up, raised funds of US$18.5 million in April 2009

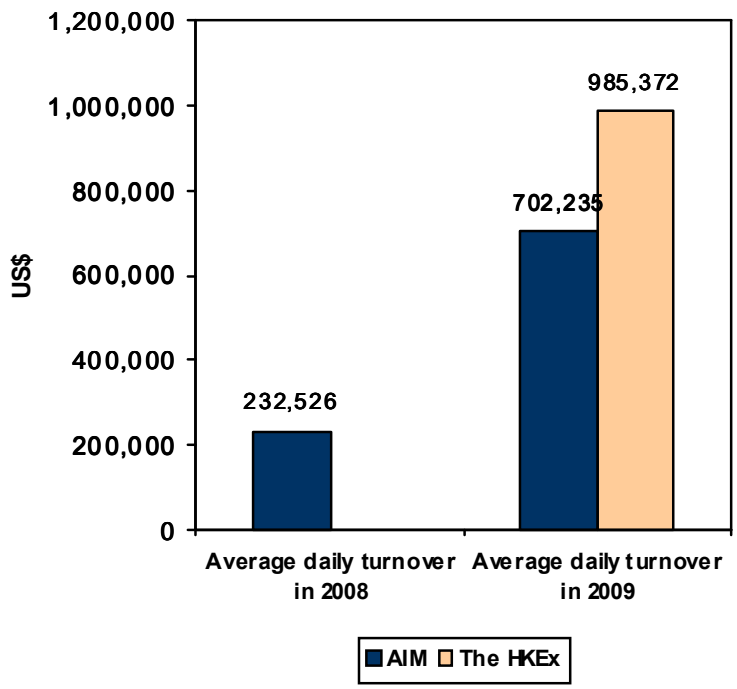
General (7)

Turnover before and after listing on the HKEx

Want Want – on the SGX and the HKEx



RGC- Before and after listing on the HKEx



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General (8)

	Main Board	GEM
Place of incorporation	All Australian states, the Canadian province of British Columbia, Cyprus, Singapore and Luxembourg are accepted by the HKEx.	
	Hong Kong, Bermuda, the Cayman Islands or the People's Republic of China are acceptable. Other jurisdictions accepted on a case by case basis.	

Listing Requirements (1)

	Main Board				GEM
	A Main Board new applicant must fulfill one of three financial criteria:				
Financial requirement		1. Profit Test	2. Market Cap/ Revenue Test	3. Market Cap/ Revenue/ Cashflow Test	A GEM new applicant must fulfill the following financial criteria
	Profit Attributable to Shareholders	Profits of HK$50 million (US$6.4 million) in the last 3 years (with HK$20 million (US$2.6 million) in the most recent year and an aggregate of HK$30 million (US$3.8 million) in the two preceding years)	N/A	N/A	N/A
	Market Cap	At least HK$200 million (US$26 million) at the time of listing	At least HK$4 billion (US$513 million) at the time of listing	At least HK$2 billion (US$256 million) at the time of listing	At least HK$100 million (US$13 million)

Listing Requirements (2)

	Main Board				GEM
Financial requirement	Revenue	N/A	At least HK$500 million (US$64 million) for the most recent audited financial year	At least HK$500 million (US$64 million) for the most recent audited financial year	N/A
	Cashflow	N/A	N/A	Positive cashflow from operating activities of at least HK$100 million (US$13 million) in aggregate for the three preceding financial years	Positive cashflow from operating activities of at least HK$20 million (US$2.6 million) in aggregate for the two preceding financial years
	Possible Waiver for Profit Attributable to Shareholders Requirement The HKEx will consider granting waivers to individual applicants applying for initial public offerings on the Main Board from complying with the profit test requirements, where their profit over track record has been temporarily and adversely affected by the financial crisis.				

Listing Requirements (3)

	Main Board	GEM
Financial requirement	The global market downturn has adversely affected the economy. It has also highlighted a limitation of the existing profit test as an indicator of an applicant's future performance where circumstances have changed radically. The financial crisis may have negatively impacted the profit attributable to shareholders for potential applicants for a listing on the Main Board. This may be a result of mark to market write-downs or impairment losses, rather than because of recurrent losses or fundamental deterioration of commercial or operational viability.	

Listing Requirements (4)

	Main Board	GEM
Financial requirement	Potential listing applicants may apply for a waiver to the HKEx who may exercise its sole discretion to grant a waiver from the requirement of Profit Attributable to Shareholders. The HKEx will consider each waiver application on its own merits based on the facts and circumstances of each applicant. The following factors are relevant in the assessment of any waiver application: • An applicant must have an aggregate profit attributable to shareholders of at least HK$50 million in respect of the last three financial years immediately preceding the application for initial public offering. • An applicant should be able to show that, were it not for temporary condition(s), its operating profit over those three years would have been significantly in excess of HK$50 million. • The three year track record period must include at least one financial year that ended on or after 31 December 2008.	

Listing Requirements (5)

	Main Board	GEM
Financial requirement	• There must be a positive cashflow generated from operating activities in the ordinary and usual course of business before changes in working capital and taxes paid in the last financial year during the track record period. • An applicant must demonstrate to the satisfaction of the HKEx that the condition(s) and circumstance(s) which led to its inability to meet the existing profit test are temporary. The listing document must also contain adequate disclosure regarding: − the likelihood of continuance or recurrence of these condition(s) and circumstance(s); and − the measure(s) that it has taken or will take to mitigate the impact of these condition(s) and circumstance(s) on future profits. • An applicant must demonstrate that it will have adequate working capital for 12 months operation after listing. These factors are not exhaustive and will not by themselves determine the outcome of a waiver application.	

Listing Requirements (6)

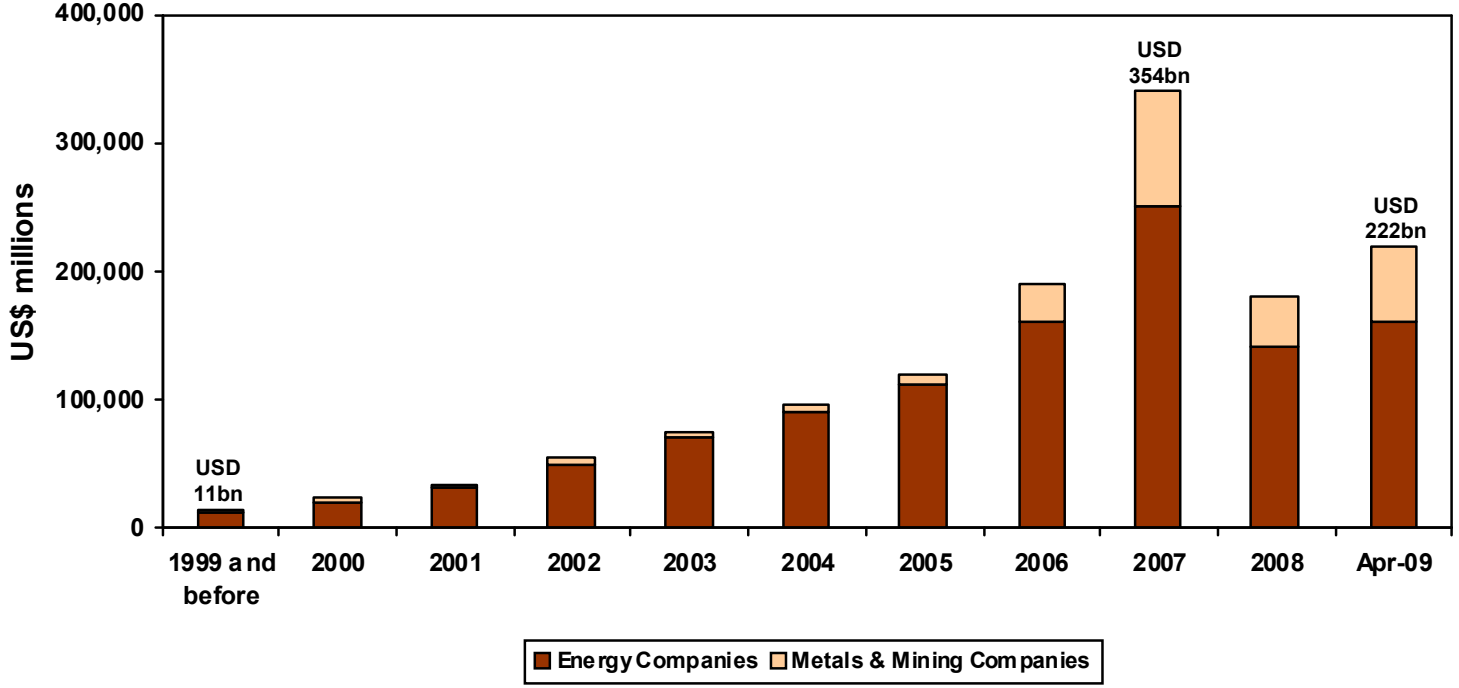
	Main Board	GEM
Operating history and management	New applicants must have a trading record of at least **3 financial years** with: • management continuity for at least the 3 preceding financial years; and • ownership continuity and control for at least the most recent audited financial year.	New applicants must have a trading record of at least **2 financial years** with: • management continuity throughout the 2 preceding financial years; and • ownership continuity and control throughout the preceding full financial year.
Relaxation of operating history and management requirement	The HKEx may accept a shorter trading record and/ or waive or vary the operating history and management requirement for **mineral companies**.	The HKEx may accept a shorter trading record period and/or waive or vary the ownership and management requirements for **natural resources exploitation companies**.

Listing Requirements (7)

Resources companies are taking an increasingly larger share of the market cap in Hong Kong:

- market cap grew more than 20x since 1999

Market capitalisation of resources companies listed on the HKEx (as of April 2009)



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Listing Requirements (8)

Secondary fund raise of natural resources companies in 2009

Type of companies	Number of companies	Market Capitalisation as at of April 2009 (US$billion)	IPO Fund Raised (US$billion)	Post-IPO Fund Raised (US$billion)	Post-IPO Fund Raised to Total Fund Raised
Metals & Mining	87	56.4	16.8	18.7	64%
Oil, Gas & Energy	50	165.0	10.6	18.9	64%
Total	137	221.4	27.4	37.6	

Listing Requirements (9)

	Main Board	GEM
Mineral companies	Activities include exploration for or production of natural resources. Application for listing from a company whose current activities consist **solely of exploration** not normally considered unless the issuer is able to establish: • existence of adequate economically exploitable reserves of natural resources; • estimate of the capital cost of bringing the issuer into a productive position; and • estimate of the time and working capital required to bring the issuer into a position to earn revenue.	

Listing Requirements (10)

	Main Board	GEM
Mineral companies	These qualifications are in addition to the basic conditions for listing set out in Chapter 8. However, **financial requirements may not apply if** the HKEx is satisfied that the **directors and management of the issuer have sufficient and satisfactory experience of at least three years in mining and/or exploration activities**. Issuer whose activities include exploration for natural resources to a material degree must have available to it the technical advice of an independent person. Statement made in any listing document as to the existence of natural resources must be substantiated by professional adviser.	

Listing Requirements (11)

	Main Board	GEM
Mineral companies	In the case of a new applicant whose activities include to a material extent exploration for natural resources, the listing document must contain at least the following information: • estimate of the capital cost of bringing the issuer into a particulars of the technical adviser; • statement of the interests of each promoter or technical adviser in the share capital of the issuer; • general nature of the business of the issuer; • issuer's rights of exploration and exploitation and a description of the properties to which such rights attach;	

Listing Requirements (12)

	Main Board	GEM
Mineral companies	• in the case of proposed exploitation of mineral bodies, the issuer's rights and the properties to which such rights attach; • report by the technical adviser to the issuer with respect to the estimated reserves and the evidence on which the estimate is based; • statement setting out additional information where it is necessary for a proper appraisal of any special factors affecting the exploration business of the issuer; • in addition to the statement as to the sufficiency of working capital which is required to be given by the directors:	

Listing Requirements (12)

	Main Board	GEM
Mineral companies	– estimate of the **requirements** of the issuer **for funds for at least two years following the issue** of the listing document; – where the issuer already has income, or expects to receive income during the period covered by this statement, particulars of the **estimated cash flow for at least the two years following the issue** of the listing document; and – estimate of the **further finance required to enable the issuer to exploit its proven reserves** and commence recoveries on a commercial scale, together with an estimate of the time needed to achieve this;	

Listing Requirements (13)

	Main Board	GEM
Mineral companies	• particulars of the interest, of every director, technical adviser or promoter named in the listing document, in the promotion of, or in any assets which have been within the two years immediately preceding the issue of the listing document; and • statement of claims in relation to exploration rights by third parties against the issuer or vice versa.	
Statement of business objectives	No such specific requirement but a new applicant is expected to include a general statement of future plans and prospects.	A new applicant must state its overall business objectives and explain how it proposes to achieve them over the period covering the remaining financial year during which listing occurs and the 2 financial years thereafter.

Listing Requirements (14)

	Main Board	GEM
Minimum market capitalisation	**Shares and Depositary Receipts** Market capitalisation of a new applicant of at least **HK$200 million (US$26 million)** at the time of listing. Market capitalisation at the time of listing is determined by multiplying the number of issued shares by the expected issue price. In the case of depositary receipts, the depositary receipts and the underlying shares will be taken into account when calculating the market capitalisation, provided that such depositary receipts and the underlying shares are fungible.	**Shares** Market capitalisation of a new applicant of at least **HK$100 million (US$13 million)** at the time of listing. Market capitalisation at the time of listing is determined by multiplying the number of issued shares by the expected issue price.
	Options, warrants or similar rights Market capitalisation of HK$10 million (US$1.3 million) at the time of listing.	**Options, warrants or similar rights** Market capitalisation of HK$6 million (US$0.8 million) at the time of listing.

Listing Requirements (15)

	Main Board	GEM
Minimum public float	**At least 25%** of the issuer's total issued share capital subject to a **minimum of HK$50 million (US$6.4 million)** must at all times be held by the public. In the case of depositary receipts, where the depositary receipts are fungible with the underlying shares, the total shares and shares represented by depositary receipts held by the public on both the HKEx and any overseas market(s) will count towards the 25%.	**At least 25%** of the issuer's total issued share capital subject to a **minimum of HK$30 million (US$3.8 million)** must at all times be held by the public.
	For issuers with an expected market capitalisation of over HK$10 billion (US$1.3 billion) at the time of listing, the HKEx may accept a lower percentage of between 15% and 25%. Minimum public float as determined above must be maintained at all times.	

Listing Requirements (16)

	Main Board	GEM
Spread of shareholders	The equity securities in the hands of the public should be held among **at least 300 holders** (if qualifying under the Profit test or Market Cap/Revenue/Cashflow test) and 1,000 holders (if qualifying under the Market Cap/Revenue test).	The equity securities in the hands of the public should be held among at least 100 persons.
	No more than 50% of the securities in public hands at the time of listing can be **beneficially owned by the 3 largest public shareholders**.	
Underwriting arrangement	Public tranche must be fully **underwritten**.	**Underwriting is not compulsory**. However, if new capital is to be raised by the issuer in an amount not fully underwritten, a listing may only proceed if the minimum subscription amount set out in the prospectus has been raised.

Listing Requirements (17)

	Main Board	GEM
Offering mechanism	There are specific restrictions on the basis of allocation within the public subscription tranche and the claw back mechanism between the placing tranche and the public subscription tranche in the event of over-subscription. A new applicant may not list only by way of placing if there is likely to be significant public demand for its securities.	A new applicant is free to decide its offering mechanism as long as full disclosure is made.
Appointment of sponsor	A new applicant must appoint a sponsor to assist with its listing application	

Contents of Listing Documents

	Main Board	GEM
Profit forecast	Profit forecast is not compulsory	
Accountants' report	To cover 3 financial years except for exempted companies. Can be prepared in accordance with either **Hong Kong Financial Reporting Standards or International Financial Reporting Standards** for primary listings on the HKEx. May be prepared in accordance with generally accepted accounting principles in the United States of America (**US GAAP**) or other acceptable accounting standards acceptable to the HKEx under certain circumstances.	To cover a period of at least **2 financial years**. Can be prepared in accordance with **either Hong Kong Financial Reporting Standards or International Financial Reporting Standards**. Can be prepared in accordance with generally accepted accounting principles in the United States of America (**US GAAP**) if the applicant is or will be simultaneously listed on either the New York Stock HKEx or the NASDAQ National Market.

Moratorium

	Main Board	GEM
In respect of controlling shareholders	The HKEx imposes certain restrictions on the disposal of shares by controlling shareholders following a company's new listing. Essentially, any person regarded as **a controlling shareholder** at the time of listing shall not: • **dispose of his shares** in the listed issuer 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 on the date which is **six months** from the date on which dealings in the securities of a new applicant commence on the HKEx; or • **dispose of his interest** in the issuer if such disposal would result in him **ceasing to be a controlling shareholder** in the period of **six months** commencing on the date on which the period referred to above expires. Controlling shareholder(s) of a new applicant must undertake to the issuer and the HKEx to **disclose any pledge/charge** of any securities beneficially owned by him/them in favour of an authorised institution for a period commencing on the date by reference to which disclosure of the shareholding of the controlling shareholder(s) is made in the listing document and ending on the date which is **12 months** from the date on which dealings in the securities of a new applicant commence on the HKEx.	
Restrictions on the issue of new shares	The HKEx does not normally permit **further issues of shares** or securities convertible into equity securities of a listed issuer within **6 months** of listing.	

Transfer of listing from GEM to Main Board

	Main Board	GEM
Eligibility	• Meeting Main Board admission requirements • **Listed on GEM for one year**.	
Mechanism	• No sponsor is required • Require an announcement by the issuer, to be pre-vetted by the Listing Division and approved by the Listing Committee • Not require the confirmation of a financial adviser of information which are not already the subject of public disclosures, and rely on directors' assurance	