HKEx LISTING DECISION
HKEx-LD48-2013 (published in January 2013)

Summary	
Party	Company A, Company B, Company C, Company D, Company E and Company F – Main Board listing applicants Company G, Company H, Company I Company J and Company K – GEM listing applicants
Issue	To provide guidance on why the Exchange returned certain listing applications
Listing Rules	Main Board Rule 9.03(3) and GEM Rules 12.09 and 12.14
Decision	The Exchange returned the applications

APPLICABLE RULES, REGULATIONS AND PRINCIPLES

1. Main Board Rule 9.03(3) states that the Exchange expects to receive an advanced proof of the prospectus with the listing application form that is not the initial proof to enable the Exchange's review is able to commence immediately upon lodgement of the application. The disclosure of the requisite information as set out in Chapter 11 must be substantially completed in the advanced proof of the prospectus. If the Exchange considers the draft prospectus submitted with the Form A1 is not in an advanced form, the Exchange will not commence reviewing the application. All documents, including the Form A1 and the initial listing fee, submitted to the Exchange will be returned to the sponsor(s). The sponsor(s) will be required to resubmit a new Form A1 together with the advanced proof of the prospectus.

2. GEM Rule 12.09 states that the Sponsor must ensure that the draft listing document has been verified in all material respects prior to submission. Note 1 to GEM Rule 12.09 states that if the Exchange considers that the draft listing document submitted with the listing application form is insufficiently finalised, the Exchange will not commence review of that or any other documents relating to the application.

3. GEM Rule 12.14 requires that the listing application form must be accompanied by certain documents. The Listing Division may return to the sponsor any application for listing which it considers to be incomplete, together with the initial listing fee.

ANALYSIS

4. The following set out the reasons why the Exchange considered the applications were not in an advanced form and returned certain listing applications during the period from January 2012 to November 2012.

Company A

5. Company A provided certain maintenance works. There were several deficiencies in disclosures:

(i) *Business model*

It was unclear whether Company A acted as a main contractor or a sub-contractor in its completed projects during the track record period and in future projects. For the service segment, there was no information on whether Company A obtained service projects through bidding or negotiation; and how it carried out its services (e.g. whether special approval from the government and traffic arrangement were required). For the equipment segment, there was no detail on whether Company A participated in tender bidding.

(ii) *Financial position*

The discussion of Company A's trade and bills receivables was too general. There was no meaningful explanation on (i) why Company A accumulated significant amounts of trade and bills receivables given that it required advanced deposits from new customers and did not generally grant credit to new customers; (ii) circumstances giving rise to the increasing amount of impairment of trade receivables during the track record period; and (iii) underlying reasons for delays in settlement from certain customers. There was no meaningful explanation for Company A's delay in settlement of certain payments for raw materials and subcontracting costs and the significant increase in trade payables aged over 1 year.

(iii) *Future plans and business strategies*

There was insufficient justification for the 100% increase in production capacity and the expansion plan given that Company A's current geographic coverage in the relevant country appears extensive.

(iv) *Others*

The "Summary" section of the prospectus lacked sufficient information to provide investors with a concise overview of Company A's operation model and highlights of significant matters. Company A did not use HKEx-GL27-12 as guidance.

Company B

6. Company B submitted its listing application in August 2012. The audited financial information included in the prospectus covered each of the three financial years ended 31 December 2011 and therefore the Company did not comply with the requirement of Rule

8.06 which states that the latest financial period reported on by the reporting accountants must not have ended more than six months before the listing document. The sponsor also had not provided the confirmation under paragraph 4.6 of Guidance Letter HKEx-GL6-09 for the Exchange to accept early filing.

7. The PRC legal opinion revealed that Company B's controlling shareholder and executive director was implicated in two bribery convictions which might have implications for his suitability as a director. These concerns were not brought to the Exchange's attention in the documents submitted together with the listing application form (e.g. under paragraph 27 of Checklist I.B. - confirmation that there are no other material issues which could detrimentally affect the suitability of listing). There was also no submission from the sponsor on why it considered the individual as suitable to be a director under the Listing Rules.

Company C

8. Company C was engaged in the production of a certain metal. There were several deficiencies in disclosure:

(i) Company C did not use HKEx-GL27-12 as guidance for disclosure in the "Summary" section of the prospectus; and

(ii) although the price of the relevant metal fluctuated heavily during the track record period, there was no sensitivity analysis on how the movement in the price impacted Company C's profits during the track record period, and the basis to support its profit forecast.

9. An article revealed that a company with a similar name to Company C's operating subsidiary was accused of emitting hazardous gas and discharging waste water into a drinking water protection area and causing lead-related pollution. No information on the allegation was provided in the listing application.

Company D

10. Company D was a mining company operating in a country subject to sanctions from the United Nations and the European Union. It was a mineral company under Chapter 18 of the Listing Rules and sought a waiver from the minimum profits requirement.

11. In response to pre-IPO enquiries raised by the sponsors on behalf of Company D, the Exchange requested the sponsors and Company D to critically assess the issues of (i) suitability for listing and (ii) competition with controlling shareholder before submitting a listing application.

12. Company D subsequently submitted the listing application. In relation to sanctions, there was a directors' confirmation which was brief and did not state the basis of the directors' view. There was also no view provided by the sponsors.

13. On competition, the disclosures did not fully comply with the requirement under Rule 8.10(1)(a), including reasons for the exclusion of the excluded business, size of such business and how such business may compete with Company D's business, etc.

14. Other disclosure deficiencies:

(i) Company D did not have any customers and had not entered into any legally-binding sales or off-take agreements. There was lack of details on how new customers were to be procured.

(ii) The "Industry Overview" section did not provide any outlook or forecast information on the industry in certain countries in which Company D operated.

(iii) Based on the biographies of the directors and senior management, it appeared that they lacked experience in operating mining businesses in overseas countries. The prospectus did not give sufficient information for readers to appraise the future outlook of Company D, and that Company D's business was sustainable.

(iv) The prospectus did not provide any information on Company D's future business model after commencing commercial production. In addition, certain aspects of Company D's operation were unclear, including: (i) details of the outstanding permits, approvals and licenses for commercial production and (ii) which activities would be carried out by Company D or contractors, and where the functions are outsourced, details of these functions and experience of the contractors.

Company E

15. Company E was a property development company.

16. The Exchange had previously accepted its listing application for vetting. The Exchange issued a letter to the sponsor stating its intention to reject the listing application on the ground that Company E had not demonstrated its working capital sufficiency and its ability to meet its profit forecast. The Exchange issued a letter to the sponsor upon the lapse of the application stating that unless the sponsor had resolved to the Exchange's satisfaction the issues stated in the letter and provided updated accounts, the Exchange would not accept Company E's renewed listing application.

17. Company E re-submitted a new listing application. The Exchange considered that the sponsor had not provided sufficient information to fully address the concerns raised in its previous letter. In particular, Company E had not provided an updated profit forecast and working capital forecast memorandum and the audited accounts had not been updated.

Company F

18. Company F engaged in the property businesses.

19. Company F's accountants' report covered the three financial years ended 31 December 2011 and the six months ended 30 June 2012. Whilst Company F reported net profits attributable to shareholders for financial years 2009 to 2011, it incurred a net loss for the six months ended 30 June 2012.

20. Company F applied for a waiver from the requirement of Rule 4.04(1) such that it would not be required to update its accountants' report to cover the year ended 31 December 2012. If the waiver was not granted, it was doubtful whether Company F could meet the

minimum profits requirement for the latest financial year (i.e. 2012) given the net loss incurred in the first half of 2012.

21. The Exchange considered it not appropriate to recommend the requested waiver.

22. There were also several deficiencies in disclosure:

(i) *Summary section*

The disclosure did not follow the guidance in the Guidance Letter HKEx-GL27-12. Missing information included:

- a detailed discussion of Company F's fair value gains of the investment properties and realized gain on disposal of an investment property holding subsidiary, their contribution to the profit of Company F and relevant sensitivity analysis;
- breakdown of Company F's revenue contribution and key operating data during the track record period, with commentary on material fluctuations;
- historical non-compliances;
- identities, background and relationships with major customers and suppliers; and
- an update on the recent development of Company F's operations and financial performance in accordance with Guidance Letter HKEx-GL41-12.

(ii) *Business model and future plans*

- details of the properties held by the Company F;
- in respect of the land/properties acquired by Company F, details of the tendering process and the decision making process and the measures/ policies to monitor the Company F's leasing business, occupancy rates, rental yield and liquidity and financial positions;
- how Company F's development plan would affect Company F's business risk profile and highlight the associated risks and impact in the "Summary" and "Risk Factors" sections; and
- how Company F's strategy of developing residential projects aligned with its policy, the commercial rationale for this strategy and how Company F planned to achieve the relevant strategy.

(iii) *Non-compliance incidents*

The disclosures on non-compliance incidents were unclear and insufficient. The rectification measures and internal controls were not specific and could not be aligned to the non-compliances. There was also limited disclosure on the maximum penalties and liabilities.

(iv) *Regulatory overview*

The prospectus lacked disclosure on the relevant rules and regulations applicable to Company F's business and operations.

(v) *Disclosure of the financial position*

Company F had net current liabilities and negative operating cash flow. The prospectus should have provided more meaningful discussion on Company F's tight liquidity position and how the Group would improve its liquidity position and finance its purchase of land/ properties.

Company G

23. There were several deficiencies in disclosure:

(i) *Description of business model*

The disclosure on Company G's principle businesses was unclear and delineation between different segments was vague. It was not clear when and how Company G derived and recognized revenue for each business segment. It was unclear whether the agent customers served as the Group's distributors or end-customers.

There was inadequate disclosure on how Company G priced its products and/or services and no disclosure on the renewal status of Company G's operating license.

(ii) *Summary section*

The disclosure did not follow the guidelines in the Guidance Letter HKEx-GL27-12.

(iii) *Potential Tax Liabilities*

Company G's subsidiary might be exposed to additional tax liabilities due to non-compliance with the relevant laws and regulations and might also be subject to penalty. However, the disclosure on details of the non-compliances was unclear and convoluted. The prospectus also lacked information on the root causes of the non-compliances. The sponsor also did not provide its view on these non-compliances and how they might impact on Company G and whether its directors have the character and competency to run a listed company.

24. There was no sponsor's view on Company G's executive director and non-executive director who served in another company which a number of articles had criticized on human rights abuses, ignoring indigenous people's human rights, perpetrating political corruption and neglecting the environment in relation to its forestry logging activities.

Company H

25. Company H did not submit, together with the listing application form, the anticipated final draft of the sponsor's letter on working capital sufficiency as required under GEM Rule 12.22(13).

Company I

26. Company I was a distributor of certain products. There were several deficiencies in disclosure:

(i) *Summary section*

The "Summary" section of the prospectus lacked sufficient information to provide investors with a concise overview of Company I's operation model and highlights of significant matters. Company I did not use HKEx-GL27-12 as guidance. Examples of material information missing included description of the usage of Company I's main products, the classification of distributors, how Company I determined the pricing of its products with its suppliers and distributors, the price control under the relevant PRC laws and regulations and legal proceedings against Company I.

(ii) *Competition with the Controlling Shareholder*

The prospectus did not provide details to demonstrate (i) how the distribution businesses of Company I and its controlling shareholder could be delineated, and (ii) that there were adequate and effective corporate governance measures to manage conflicts of interest and competition between them.

(iii) *Distributorship*

There was insufficient disclosure on the relationship between the different types of distributor customers and measures to address the potential conflict of interests. The degree of Company I's control over its distributors with respect to compliance with the national pricing policy, sales and avoidance of cannibalisation and the competition between different types of distributors were unclear.

The prospectus should have also included information to address the issue of independence of distributors according to Guidance Letter HKEx-GL36-12. The prospectus should have provided an explanation on what value-added services Company I provided to its distributor customers to sustain its level of gross profit margin which was particularly high when compared to its peers.

(iv) *Industry and Regulatory Overview*

The prospectus lacked information about the regulations on price control. There was no detailed analysis of the extent to which Company I was affected by the controlled price changes during the track record period, the measures taken to mitigate the adverse impact of price reductions, and an update on relevant laws and regulations applicable to Company I and their impact.

(v) *Future plans and business objectives*

There was insufficient information on Company I's plan to expand its distribution network by obtaining new exclusive distribution rights for new products. There was also insufficient information on why Company I needed to enhance the development

of products through alliance or partnership, given that Company I was only engaged in distribution, but not research and development.

Company J

27. Company J did not highlight matters which might have significant adverse impact on its operation and financial position in the foreseeable future in the "Summary" and other relevant sections as required under Guidance Letter HKEx-GL27-12. For example, there was no discussion regarding the potential significant decrease in revenue resulting from the recent reorganization and massive layoff plan of one of Company J's top five customers, and the anticipated substantial decline in net profit.

28. There was insufficient disclosure of the key terms of agreements with major customers.

29. Certain information requested in the Exchange's pre-IPO guidance letter had not been adequately disclosed.

Company K

30. There were several deficiencies in disclosure:

(i) There was no disclosure on the reason for the absence of title certificates for Company K's production facilities, the estimated impact on Company K in case of forced eviction, the legality of the lease agreement in respect of collectively-owned land, and analysis on the adequacy and sufficiency of contingency measures.

(ii) The risks associated with Company K's business in international-sanctioned countries had not been adequately highlighted.

(iii) There was inadequate disclosure on Company K's arrangements with subcontractors.

(iv) There was limited information on Company K's business rationale to raise significant bank borrowings to acquire numerous properties from the controlling shareholders shortly before submitting the listing application.

(v) The commentary on the year-on-year fluctuation on financial statement items and financial ratios was framed in very general terms.

31. Company K submitted the listing application shortly after the latest audited financial period end date. Given such a limited period of time, there were concerns on whether adequate and sufficient audit work and due diligence had been performed by the reporting accountants and the sponsor on the financial information.

THE DECISION

32. The Exchange returned the applications.

33. Subsequently, all but 2 applicants re-filed listing applications 3 to 119 days after the Exchange returned their previous applications. As they had disclosed and/ or provided the missing information/ documents, the Exchange accepted the re-filed applications.

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