

HKE_x LISTING DECISION
HKE_x-LD97-1 (July 2010)

Parties	Company A – a Main Board listing applicant and its subsidiaries
Issue	Whether Company A’s regulatory non-compliance record made it unsuitable for listing
Listing Rules	Rules 8.04 and 2.13
Decision	Company A’s regulatory non-compliance was not so serious as to render it unsuitable for listing and the issue could be dealt with by disclosure

FACTS

1. Company A was mainly engaged in mining, processing and producing minerals. It breached certain laws and regulations of the place of its operation during the track record period.

APPLICABLE LISTING RULES

2. Rule 8.04 requires both the issuer and its business, in the opinion of the Exchange, to be suitable for listing.
3. Rule 2.13 requires information contained in the listing document to be accurate and complete in material aspects and not be misleading or deceptive.

ANALYSIS

Factors to consider

4. The Exchange considers that intentional, repeated breaches of laws and regulations by an issuer may affect its suitability for listing. The Exchange will take into account the following factors in determining the impact of non-compliance on an issuer’s listing:
 - a. the nature, the extent and the seriousness of the breaches, for example, whether the breaches involve dishonesty, or whether the breaches involved newly established laws and regulations which may be subject to different interpretations by legal professionals;

- b. the reasons for the breaches: whether the breaches were intentional or due to negligence or recklessness;
 - c. the impact of the breaches on the issuer's operations;
 - d. the rectification measures adopted; and
 - e. the precautionary measures put in place to avoid future breaches.
5. The Exchange will normally require the issuer to provide:
- a. a detailed account of the involvement of the directors and senior management in the breaches; and
 - b. an explanation of whether the directors involved possess the expected qualities to the standard required under Rules 3.08 and 3.09.
6. The Exchange will also request the sponsor to provide the basis of its view that the applicant has sufficient internal controls under Rule 3A.15(5) given the regulatory non-compliance matters. On a case by case basis, the Exchange may request the sponsor's view to be disclosed in the prospectus.
7. While the Exchange has accepted issuers with non-compliance records for listing, it has also expressed concerns over the applicants' listing where the non-compliance had been more serious and only approved listing after the applicants had demonstrated steady compliance for a reasonable period of time.

Precedent case

8. In one case, during the track record period, the applicant had obtained trade financing from banks by providing invoices which were not supported by actual purchases in order to take advantage of the lower interest rate offered by the banks. Advised by its legal advisers, the applicant stopped the illegal practice when it prepared for listing.
9. The Exchange considered that the illegal financing raised serious concerns about suitability for listing. The Exchange also expressed concerns about the directors' suitability to act as directors and the applicant's standard of business conduct.
10. The Exchange determined that the applicant's application would only be considered in the future if it could demonstrate that it could operate without the illegal financing for a considerable period of time.
11. When the applicant came back to the Exchange in a renewed application to demonstrate continuing compliance, the Exchange was provided with submissions that: (i) the breach was not criminal in nature; (ii) the applicant received

confirmation from its PRC legal counsel and the relevant government agencies that the applicant, its directors and senior management would not be subject to any liabilities or penalties in the Mainland as a result of the non-compliance; and (iii) the banks gave confirmation that they would not claim against the applicant for any liabilities arising from the illegal practice. Listing approval was granted on the condition that the applicant adopted a series of measures to strengthen its internal controls.

Present Case

12. The Exchange noted that Company A was unable to rectify all the regulatory non-compliance before listing:-

<i>Details of Non-compliance</i>	<i>Rectification measures</i>
Failure to provide information and reports as required by the regulator and the condition under its operating licence	Company A undertook to rectify this non-compliance by providing the relevant information to the regulator.
Failure to hold all the licences and permits required to conduct its operation	Company A undertook to obtain the required licences and permits. The directors view was that there was no legal impediment to obtain them.
Failure to start site production as required under the licence	The delay was justified due to the sites' complex nature and Company A expected to commence production in the relevant sites in due course.
Failure to maintain sufficient net assets in one subsidiary in accordance with the laws where it operated	Company A would replenish the insufficient net assets by cash injection before listing

13. The Exchange also noted that:-
- a. the sponsor considered that Company A's internal control was adequate to ensure compliance with the applicable legal and regulatory requirements;
 - b. the sponsor was satisfied that the non-compliance incidents did not cast doubt on the suitability of the directors;
 - c. the directors had attended training sessions on directors' duties conducted by legal advisers;

- d. additional personnel were hired to Company A's legal department to ensure compliance with the licence agreements and all applicable laws and regulations;
- e. Company A undertook to provide updates in its interim and annual results/reports on the progress of obtaining the outstanding licences and permits, and would publish announcements upon obtaining those licences and permits; and
- f. the listing document would disclose in tabular form:
 - (i) the details of and reasons for the non-compliance incidents;
 - (ii) the legal opinion on the potential maximum penalty and impact on Company A; and
 - (iii) remedial actions taken, expected timeframe for the non-compliance to be rectified and the measures undertaken to avoid future non-compliance.

CONCLUSION

14. Having considered that the remaining non-compliance incidents could be rectified within a reasonable time frame and they were not so serious as to affect Company A's business viability, the Exchange considered that they would not render Company A unsuitable for listing and the issue could be dealt with by disclosure.