

HKEx REJECTION LETTER
Cite as HKEx-RL12-06 (April 2006)

Summary	
Listing Rule	Listing Rule 8.04
Reason for rejection and the subsequent disposal of the case on review	<p>The Listing Division rejected the listing application of the Company as the Company failed to satisfy the “capability of carrying on its business independently” requirement of Listing Rule 8.04.</p> <p>The Listing Division’s rejection decision was upheld by the Listing Committee.</p>
Contents	<p><u>LETTER 1:</u> Extracts of the decision letter of the Head of Listing, the Stock Exchange of Hong Kong Ltd</p> <p><u>LETTER 2:</u> Extracts of the decision letter of the Acting Secretary to the Listing Committee on hearing the application of the Company to review the decision of the Listing Division</p>

LETTER 1

[Date]

[Name and Address of Sponsor]

Dear Sirs,

Re: Application for new listing of a listing applicant
(the “Company” together with its subsidiaries, the “Group”)

We refer to your application form dated *[*day*month*year]* applying, on behalf of the Company, for the listing of the shares of the Company on the Main Board of the Exchange. We also refer to your submissions dated *[*day*month*year]* (the “**Submissions**”) in response to our comments dated *[*day*month*year]*. Capitalized terms used in this letter have the same meanings as defined in the 2nd Submission Proof of the Company’s prospectus dated *[*day*month*year]* (the “**Prospectus**”), unless otherwise stated.

Based on the facts and submissions provided to us, the Listing Division is of the view that the Group is not able to demonstrate to our satisfaction that it is capable of

carrying on its business independently of *[Parent X]*. We would like to take this opportunity to explain in detail our reasoning in reaching this conclusion.

1. Background

1.1 The Group is a provider of *[certain financial services, namely “Service 1”, “Service 2” and “Service 3”]*, in Hong Kong with access to an extensive distribution network in *[Asia]*, operating for over 25 years. Upon completion of the proposed listing, *[Parent X]* will be the ultimate controlling shareholder of the Company controlling, directly and indirectly, approximately *[75%]* of the Company’s issued share capital and will be entitled to nominate all members of the board of directors of the Company and control matters requiring shareholders’ approval. There are proposed to be ten members of the Board of Directors of the Company, five of whom have long-standing working relationships with *[Parent X]* and are officers or directors of *[Parent X]* or an affiliated company:

- *[Mr. A]*, a non-executive director, is the Chairman of *[Parent X]*;
- *[Mr. B]*, a non-executive director, is the President of *[Parent X]*;
- *[Mr. C]*, an executive director, is a director of *[Parent X]* and the President of *[Parent Group T]*, a subsidiary of *[Parent X]*, and intends to devote 50% of his time to the business of the Group;
- *[Mr. D]*, an executive director, is a director of *[Parent Group U]*, a subsidiary of *[Parent X]*, and intends to devote 50% of his time to the business of the Group; and
- *[Mr. E]*, an executive director, is a director and an executive vice president of *[Parent Group V]*, a subsidiary of *[Parent X]*,

1.2 Immediately after the proposed listing, both the Group and *[Parent X]* will be engaged in (1) *[Service 1]*; (2) *[Service 2]*; and (3) *[Service 3]*. The proposed delineation of the business of the Group from that of *[Parent X]* is described in detail in the Prospectus. However the Prospectus also states that in conducting its operations the Group is, to a certain extent, dependent on *[Parent X]*. Among other things, the Group relies on *[Parent X]* for:

- the referral of clients;
- the distribution services *[relating to Service 1]* through *[Parent X’s]* branch network in *[Asia]*;
- the information technology system necessary to perform certain core functions, including the processing of *[services required for Service 1]*;
- *[the trading revenue generated by Service 3]*;
- certain support services, such as strategic research and development, product development and marketing for *[Service 1]*; and
- correspondent *[financial]* services.

1.3 In addition, the Group includes a *[subsidiary engaging in the provision of Service 2]* which is regulated by the Hong Kong Monetary Authority (“HKMA”) and the HKMA requires *[Parent X]* to provide the Group company with such support and assistance as may be required to ensure that

the Group company maintains its capital and liquidity levels in accordance with the requirements of the HKMA.

1.4 The Prospectus includes a description of a number of exempt and non-exempt connected transactions between the Group and *[Parent X]*. In particular, the non-exempt continuing connected transactions described include:

- provision of inter-group lending services by members of the Group to *[Parent X's]* Group;
- purchase of *[certain foreign currency]* from *[Parent X]*;
- sale of *[certain foreign currency]* to *[Parent X's]* Group;
- provision of support services by *[Parent X's]* Group to the Group, specifically:
 - distribution support services;
 - arranging cash to do remittances by third party companies;
 - conducting credit reviews; and
 - seconding of management and supervisory staff from *[Parent X]* to the Group;
- provision of *[certain auxiliary financial services]* by *[Parent X's]* Group to the Group; and
- licence of *[certain]* system software to *[Parent X's]* Group.

2. Issues

2.1 Given the nature of the relationship between the Group and its controlling shareholder, *[Parent X]*, has the Company demonstrated to the satisfaction of the Exchange that the Group's business can be carried out independently of *[Parent X]* as contemplated by paragraph 27A of Appendix 1A of the Listing Rules? If not, should the Company and its business be considered unsuitable for listing under Rule 8.04 of the Listing Rules?

2.2 *[Portion of Letter Purposely Omitted Regarding a Waiver Application Which Does Not Form the Subject Matter of the Rejection].*

3. Analysis – Independence and Suitability for Listing

Independence from [Parent X]

3.1 The Listing Division has reviewed the relationship of the Group with *[Parent X]* in both quantitative and qualitative terms.

Quantitative Aspects

3.2 For the quantitative aspects, our analysis focused principally on the following three types of services provided by the Group:

- *[Service 1]*;
- *[Service 2]*; and
- *[Service 3]*.

3.3 *[Service 1]*

3.3.1 According to the breakdown by business segment as shown on page [*] of the Prospectus, *[Service 1]* accounted for *[approximately 60%]*, *[approximately 70%]*, *[approximately 60%]* and *[approximately 70%]* of the Group's total income for each of the three years *[of the Track Record Period ("Year 1", "Year 2" and "Year 3")]* and the six months *[immediately after the Track Record Period ("Stub Period")]* respectively. We note that the Group relies on the distribution network of *[Parent X]* in *[Asia]*.

3.3.2 We note your argument that while unlikely, it is technically possible for the Group to arrange the delivery of the *[relevant service]* through a *[third party]* network in *[Asia]* instead of through *[Parent X]*. However, although the Group could look for alternative distribution network in *[Asia]* for distribution, in our view, it has not demonstrated whether another alternative distribution network could be easily identified and utilized, particularly in light of *[Parent X's]* controlling shareholder position.

3.3.3 As such, we consider that the distribution network of *[Parent X]* is a crucial part of the operation of *[Service 1]*. This is supported by the Prospectus itself which recognizes that in the event that *[Parent X]* is unable to handle distribution on behalf of the Group, the Group might not be able to establish its own distribution network in *[Asia]* on terms acceptable to the Group and the Group's business would be adversely affected.

3.4 *[Service 2] [note: Service 2 involves payment of interest to the Group's customers]*

3.4.1 According to the breakdown by business segment as shown on page [*] of the Prospectus, *[Service 2]* accounted for *[approximately 40%]*, *[approximately 30%]*, *[approximately 20%]* and *[approximately 20%]* of the Group's total income for each of the three years of the *[Track Record Period]* and the *[Stub Period]* respectively. We note that the *[operation of Service 2]* by the Group and related financial services division receives client referrals from *[Parent X]*, in particular clients who are residents of *[Asia]* with long-standing relationships with *[Parent X]*.

3.4.2 We also note from your reply of your submission of *[*day*month*year]* that the interest expenses paid to customers arising from those clients referred from *[Parent X]* represented *[approximately 60%]*, *[approximately 70%]*, *[almost all]* and *[almost all]* of the Group's total interest expense for each of the three years of the *[Track Record Period]* and the *[Stub Period]* respectively. As such, we consider that nearly all of the Group's clients are referred from *[Parent X]*.

3.5 *[Service 3]*

- 3.5.1 According to the breakdown by business segment as shown on page [*] of the Prospectus, *[Service 3]* accounted for *[approximately 20%]* and *[approximately 10%]* of the Group's total income for *[Year 3]* and the *[Stub Period]* respectively. We note that for this income stream, the Group engages in *[the provision of the relevant service]* for *[Parent X's]* various international branches, and the Group relies on *[Parent X's]* needs to generate the trading revenue for *[Service 3]* of the Group.
- 3.5.2 According to the Prospectus and the submissions by the Sponsor, the Group began to actively pursue this segment of *[Service 3]* in *[Year 3]* to diversify its business from *[Service 1]*. In fact, we note from the breakdown of turnover to connected persons on page [*] of the Prospectus that the Group derived income relating to *[Service 3]* from *[Parent X]* branches of approximately HK\$*[10]* million in *[Year 3]* (compared with the net profit of the Group for *[Year 3]* of approximately HK\$*[30]* million) and no such income was generated in *[Year 1]* and *[Year 2]*. Without the income from *[Service 3]* derived from *[Parent X's]* branches, the Group may not be able to meet the minimum profit requirement as required under Rule 8.05(1)(a) of the Listing Rules.

Qualitative Aspects

- 3.6 For the qualitative aspects, our analysis focused principally on the following two areas:
- support and guarantee from *[Parent X]* to comply with requirements of HKMA; and
 - reliance on infrastructure of *[Parent X]*.
- 3.7 Support and guarantee from *[Parent X]* to comply with requirements of HKMA
- 3.7.1 We note that *[Subsidiary A]*, a principal operating subsidiary of the Company, is a company *[that involves in provision of Service 2]*. As such, HKMA requires *[Parent X]* to provide *[Subsidiary A]* with such support and assistance as may be required to ensure that *[Subsidiary A]* maintains its capital and liquidity levels in accordance with the requirements of HKMA.
- 3.7.2 If *[Parent X]* does not give such support or guarantee to *[Subsidiary A]*, *[Subsidiary A]* would not be able to satisfy the requirements of HKMA and *[Subsidiary A]* would not be qualified to operate as a registered company *[under the relevant regulations prescribed by HKMA]*. In such situation, the Group's business and operations relating to *[Service 2]* would be seriously affected.

3.7.3 As a result of these regulatory requirements, we consider the Group's reliance on *[Parent X]* to be substantial and not easily replaced.

3.8 Reliance on infrastructure of *[Parent X]*

3.8.1 We note that the Group relies on *[Parent X's]* information technology system to perform functions such as data-processing of remittances. *[Parent X]* has also agreed to provide to the Group certain support services using its expertise such as *[*]*.

3.8.2 In order to implement such support services, *[Parent X]* would provide the Group with access to its information technology and technological support *[for the provision of services relating to Service 1]*.

3.8.3 Although we note that a fee is being charged by *[Parent X]* on normal commercial terms in the provision of the above services, we consider the reliance on the infrastructure of *[Parent X]* to be critical for the Group's operations. If *[Parent X]* does not provide such information technology and technical support to the Group, the Group would be required to find replacement to obtain such support under which the terms of the support services might not be negotiated on terms acceptable to the Group. Even if the Group were able to obtain such information technology and technical support to implement and process its services, it may incur extra operating costs and its financial results may be adversely affected.

3.9 Conclusion

3.9.1 Our analysis on the relationship of the Group with *[Parent X]* in both quantitative and qualitative terms set forth above has led us to conclude that the Group is not able to demonstrate to our satisfaction that it is capable of carrying on its business independently of *[Parent X]*.

Suitability for Listing

3.10 The Sponsor submitted in its Form A1 that, among other things, all the qualifications for listing set out in the Listing Rules have been met or fulfilled, insofar as required to be met or fulfilled prior to application. This included Listing Rule 8.04 which requires the Group and its business to be suitable for listing.

3.11 The Listing Division considers that the requirement under paragraph 27A of Appendix 1A of the Listing Rules is not merely a disclosure issue if the listing applicant is so dependent on its controlling shareholder that consequently it cannot carry on its business independently of its controlling shareholder. The Listing Division is of the view that it is crucial for the listing applicant to be independent from the controlling shareholder after listing such that the influence of controlling shareholder on the listing applicant is kept to a minimum and the interest of the shareholders can be protected accordingly. Otherwise, the listing applicant and its business will be, in the opinion of the

Exchange, considered unsuitable for listing under Rule 8.04 of the Listing Rules.

4. Conclusion

4.1 Based on the analysis set forth above and having considered the information submitted, we consider that the Group's relationship with *[Parent X]* is so fundamental to its business operations that the Group has not able to demonstrate to our satisfaction that it is capable of carrying on its business independently of *[Parent X]*. As such, the Company and its business are, in the opinion of the Exchange, considered unsuitable for listing under Rule 8.04 of the Listing Rules. On this basis, the Listing Division has decided to reject the listing application of the Company.

[Portion of Letter Purposely Omitted]

Please also note that, pursuant to Rule 2B.05 of the Listing Rules, the Company has the right to have the ruling reviewed by the Listing Committee.

[Portion of Letter Purposely Omitted]

Yours faithfully,
For and on behalf of
The Stock Exchange of Hong Kong Limited

[Signed]

Head of Listing

LETTER 2

[Date]

[Name and Address of Sponsor]

Dear Sirs,

Re: Review Hearing of the Listing Committee
(the “Review Hearing”) regarding the Company
Date of the Review Hearing: [* day * month * year]

On [* day * month * year], the Listing Committee of The Stock Exchange of Hong Kong Limited conducted a review hearing (the “Review Hearing”) to consider an application from the Company for a review of the decision of the Listing Division set out in [LETTER 1] dated [* day * month * year], (the “Decision”).

The Review Hearing was conducted before the Listing Committee comprising [names of members purposely omitted] (the “Committee”).

Note: Terms and expressions used and defined in the written submission of the Listing Division shall have the same meanings when used herein unless otherwise defined.

Decision

The Committee considered the submissions (both written and oral) made by the Company and the Listing Division. The Committee decided to uphold the Decision to reject the Company’s listing application on the basis that the Company has failed to satisfy Rule 8.04 of the Listing Rules.

Reasons

The Committee arrived at its decision for the following reasons:

1. The Company is engaged in the provision of [financial services, namely Service 1, Service 2 and Service 3]. The Company acknowledged in its written submission that the Group relied on [Parent X] to a certain extent in conducting its operations. However, the Committee considered that the Group’s business operations were primarily dependent on [Parent X]:

- (a) Referral of clients by [Parent X]

The Group was dependent on [Parent X] for referral [regarding Service 2] during the track record period. This was evidenced by the fact that the interest expenses paid to clients referred by [Parent X] represented [approximately 60%], [approximately 70%], [almost all] and [almost all] of the Group’s total interest expense for each of the three years of the [Track Record Period] and the [Stub Period].

(b) *[Service 1]*

Although it would be possible for the Group to operate *[Service 1]* through third parties in *[Asia]*, this would most likely be on terms that would adversely affect the Group's financial performance and fundamental business model.

(c) *[Service 3]*

In particular, the Group relies on *[Parent X's]* branches and subsidiaries to generate the trading revenue relating to *[Service 3]*. The Company submitted at the Review Hearing that the unaudited profit of the Group for *[Year 3]* was approximately HK\$*[50]* million and *[half of which]* was attributable to trading services relating to *[Service 3]*. This fact corroborated the Committee's finding that the Group's business operations were dependent on *[Parent X]*.

- 2) Given the above, the Committee was of the view that the Company was incapable of carrying on business independently of *[Parent X]*. As such, the Company had failed to satisfy Rule 8.04 of the Listing Rules which requires that both the issuer and its business must, in the opinion of the Exchange, be suitable for listing.

The Company had failed to produce cogent reasons or to illustrate exceptional circumstances to convince the Committee to overturn the Decision.

Yours faithfully
For and on behalf of
The Stock Exchange of Hong Kong Limited

[Signed]

Acting Secretary to the Listing Committee