

HKEx REJECTION LETTER
Cite as HKEx-RL25-09 (April 2009)

Summary	
Listing Rule	GEM Listing Rule 11.06
Reason for rejection and the subsequent disposal of the case on review	<p>The Listing Division rejected the listing application of the Company because the Company was not considered suitable for listing under GEM Listing Rule 11.06. The Company has not adequately demonstrated that it had satisfied the requirements in the Exchange’s announcement on “Gambling Activities Undertaken by Listing Applicants and/or Listed Issuers”.</p> <p>The Division’s decision was upheld by the GEM Listing Committee but reversed by the GEM Listing (Review) Committee, subject to certain conditions.</p>
Contents	<p><u>LETTER 1:</u> Extracts of the decision letter of the Head of Listing, The Stock Exchange of Hong Kong Limited</p> <p><u>LETTER 2:</u> Extracts of the decision letter of the Acting Secretary to the GEM Listing Committee on the Company’s application to review the decision of the Division</p> <p><u>LETTER 3:</u> Extracts of the decision letter of the Secretary to the GEM Listing (Review) Committee on the Company’s application to review the decision of the GEM Listing Committee</p>

LETTER 1

[Date]

[Name and Address of Sponsor]

Dear Sirs

Re: Application for new listing of a GEM listing applicant
(the "Company")

We refer to your application Form 5A made on behalf of the Company (the "Application") and the [*th*] proof of the Company's listing document dated [*day*month*year*] (the "Circular"). We also refer to the materials provided to us together with the Form 5A, and your submissions dated [*day*month*year*] which included two legal opinions issued by [*the Company's legal advisers in Country Q*], [*Firm X*] dated [*day*month*year*] and [*day*month*year*]. Capitalised terms used herein shall have the same meanings as defined in the Circular, unless the context otherwise stated.

Background

The Company had entered into an acquisition agreement with its controlling shareholder, [*CS Co*], to acquire interests in a [*resort*] business (the "Resort") in [*Country Q*] and an investment company. A portion of the premises in the Resort has been leased to [*Gambling Co*]. The acquisition constitutes a very substantial acquisition of the Company pursuant to the GEM Listing Rules and is treated as a new listing under GEM Listing Rule 19.54.

On [*day*month*year*], [*Subsidiary X*], a subsidiary company of [*CS Co*], entered into an agreement with [*Gambling Co*] in relation to a marketing program (the "Marketing Agreement"). Under the Marketing Agreement, [*Subsidiary X*] will bring in punters to [*Country Q*] to gamble in the foreign area of the Resort's casino (the "Foreign Area") with exclusive right granted by [*Gambling Co*]. [*Subsidiary X*] will, among other things, pay [*Gambling Co*] pro-rated daily rate per table to be operated at the Foreign Area, and bear entirely the profit and loss of the Foreign Area.

Based on the information disclosed in Appendix "Business of the Acquired Group" of the Circular, [*the rental*] income received from [*Gambling Co*] represented approximately 90% of the Resort's total annual revenue for the year ended 31 December [*200X*].

The Sponsor takes the view that the principal activity of the acquired business is resort operation and the Company does not and will not operate any casino in [*Country Q*]. It is submitted that the relationship between the Company and [*Gambling Co*] is limited to that of lessor/lessee only.

[*Subsidiary X*] was included as part of the acquisition under the Company's initial proposal, but was subsequently excluded. [*Portion of the Letter Purposely Omitted*]

[*Gambling Co*]

[*Gambling Co*] is a corporation wholly-owned and controlled by the [*Country Q*] government. As stated in the law creating [*Gambling Co*] (the "Charter"), it has been given the legislative franchise to operate and maintain gambling operations in [*Country Q*], and is the only body authorised for the operation of gambling casinos in [*Country Q*]. All financial arrangements and agreements entered into by [*Gambling Co*] with other third parties are subject to review by the independent auditing authority of [*Country Q*] government, [*Audit Commission*].

[*Gambling Co*] may enter into operating or management contracts with any registered and accredited company or qualified person possessing the knowledge, skill, expertise and facilities to ensure the efficient operation of gambling casinos. In its legal opinion dated [**day*month*year*], [*Firm X*] stated that this is the only type of arrangement that is expressly allowed under the Charter to enable private entities other than [*Gambling Co*] to carry on a gambling business in [*Country Q*]. Under such operating and management contracts, the service fee that may be retained by those private entities shall not exceed 10% of the gross income, or a fixed monthly rental determined in a public bidding.

According to [*Firm X*]'s opinion, an entity with 40% or more foreign ownership is not allowed to be a party to the operating and management contracts under the Foreign Investments Act of [*Country Q*].

The Charter does not provide for the procedure for the application, renewal, revocation of contracts for the management or operation of casinos. It does not provide regulatory powers such as supervision and surveillance powers, nor authorise [*Gambling Co*] to deal with application for operating gambling companies in [*Country Q*]. It merely provides that all persons primarily engaged in gambling, together with their allied business, with contract or franchise from [*Gambling Co*], shall register and affiliate their businesses with [*Gambling Co*]. [*Gambling Co*] is mandated to issue the corresponding certificates of affiliation. The certificate of affiliation is used by [*Gambling Co*]-affiliated companies to avail of tax incentives under the Charter.

Applicable GEM Listing Rules

[*Portion of the Letter Purposely Omitted*] The Exchange's announcement on "*Gambling Activities Undertaken by Listing Applicants and/or Listed Issuers*" (the "Exchange's Announcement") provides that it would not be viewed as contrary to public interest for a listing applicant or listed issuer to be involved in the operation of gambling activities which:

- are not unlawful under the Gambling Ordinance, i.e. the gambling activities take place outside Hong Kong and the bookmaking transactions and the parties to the transactions are outside Hong Kong; and
- does not violate any applicable laws in the areas where such activities operate.

Should the operation of such operation of such gambling activities (i) fail to comply with the applicable laws in the areas where such activities operate; and/or (ii) contravene the Gambling Ordinance, the issuer or its business may be considered unsuitable for listing under GEM Listing Rule 11.06.

To comply with the Exchange's Announcement, new listing applicants are expected to use their best endeavours to ensure that the operation of the gambling activities will comply with the applicable laws in the areas where such activities take place and not contravene the Gambling Ordinance of Hong Kong. In vetting new listing applications, the Listing Division ordinarily expects that a listing applicant:

- will operate in a jurisdiction with an established licensing regime for gambling businesses and will be properly licensed or exempt from licensing requirements; and
- will be able to provide evidence, in the form of independent third party verification, to the effect that the activity is being carried out under the express authority of the relevant government.

GEM Listing Rule 11.06 requires that both the Company and its business must, in the opinion of the Exchange, be suitable for listing.

Issues

In light of the requirements of the Exchange's Announcement and based on the facts and circumstances of the Application, the Listing Division has reviewed:

- whether the Exchange's Announcement applies to the Company, given the fact that a portion of the gambling activities expected to take place at the Company's resort facilities will be undertaken by [*Subsidiary X*], a subsidiary of the Company's controlling shareholder, and the Company will hold an option to acquire [*Subsidiary X*]; and
- assuming the Exchange's Announcement applies to the Company, whether:
 - (a) the Company has established that [*Country Q*] has an established licensing regime governing gambling businesses; and
 - (b) the Company holds, or has caused to be held, directly or indirectly, all licenses required under the applicable laws of [*Country Q*], or is otherwise exempt from such licensing requirements.

The Listing Division's Analysis

Application of the Exchange's Announcement

Having considered the circumstances of the Application, including the fact that 90% of revenue is expected to be generated from gambling activities, the controlling shareholder will be a significant participant in those activities through *[Subsidiary X]* and the Company will hold an option to acquire *[Subsidiary X]*, the Listing Division takes the view that a reasonable investor would view the casino business, and in particular, the prospect that it might be injected into the Company, as the Company's business operations. For this reason, the Listing Division considers the Company should not be viewed as just a resort operator but should be seen as a company directly or indirectly involved in gambling activities, and thus subject to the requirements of the Exchange's Announcement.

Whether the Company has established that [Country Q] has an established licensing regime governing gambling businesses

Based on the submissions received by the Listing Division to date, it is clear to the Listing Division that there is no authority in *[Country Q]* charged with specific responsibility for the supervision and inspection of gambling operations. Under the Charter, *[Gambling Co]* is the sole entity that has been given the exclusive right and legislative franchise to operate and maintain gambling casinos in *[Country Q]*. The Listing Division is of the view that *[Gambling Co]*'s ability to appoint companies to conduct gambling operations is more in the nature of franchising than licensing.

While this may be a legitimate policy choice appropriately made by the *[Country Q]* government, in our view it is inconsistent with the expectations of the Listing Committee underlying the Exchange's Announcement.

The Listing Division recognises that *[Country Q]*'s Audit Commission has some responsibility for reviewing the operations of *[Gambling Co]*; however, in our view, based on the materials submitted, this review power does not constitute supervision of the type ordinarily expected when considering whether the requirements of the Exchange's Announcement are met.

Whether the Company holds, or has caused to be held, all applicable licences in [Country Q]

Given that the Company has failed to establish that *[Country Q]* has an established licensing regime governing gambling businesses, the Listing Division considers that the Company has also failed to establish that it holds, or has caused to be held, directly or indirectly, all licenses required under the applicable laws of *[Country Q]*, or is otherwise exempt from such licensing requirements.

The Conclusion

Based on the above and having considered the documents and information submitted, the Listing Division is of the view that the Company has not adequately demonstrated that it has satisfied the requirements as set out in the Exchange’s Announcement. On this basis, the Listing Division has concluded that the Company is not suitable for listing and has therefore determined to reject the Application.

Right to Be Reviewed By The Listing Committee

Pursuant to GEM Listing Rule 4.05, the Company has the right to have this decision reviewed by the Listing Committee. As contemplated by GEM Listing Rule 4.08, any such appeal is required to be filed within 7 business days of the receipt of this letter, or of the reasoned decision if one is requested.

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

On [**day*month*year*], the GEM 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 GEM 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 was not suitable for listing under Rule 11.06 of the GEM Listing Rules.

Reasons

The Committee arrived at its decision for the following reasons:

1. The Committee did not agree with the Company's contention that it was not in the gambling business. The Committee took the view that the Company was in the gambling business, albeit indirectly, for the following reasons: (i) *[Gambling Co]* paid the Resort a nominal rent or *[X%]* of gross wins, whichever was higher. Accordingly, the economics of the Resort was closely tied in with the gambling revenues and the arrangement with *[Gambling Co]* resembled a profit sharing arrangement in the gambling activities and was not merely an ordinary landlord and tenant relationship as claimed by the Company; and (ii) whilst *[Gambling Co]* supplied the personnel, the Resort provided fully-fitted premises and gambling equipment to *[Gambling Co]* and retained ownership of the same. The Committee was also concerned that, because of this particular arrangement, the Company would have little or no control over the gambling activities.
2. It was necessary for the Company to establish that it had some control over the gambling business or to provide comfort that the essential controls were in place with respect to the gambling business. In this respect, the Committee was of the view that it had not been provided with sufficient information to determine whether *[Gambling Co]* had sufficient regulation of its gambling activities to meet standards as suggested in paragraph 31 of the Listing Committee Annual Report 2006. It was therefore incumbent on the Company to provide more information about *[Gambling Co]* to enable the Exchange to make an informed decision.

In order for the Company to re-submit its listing application, the Committee has suggested that the Company: (i) provide more information on how *[Gambling Co]* operates and regulates its gambling activities, in particular, to address issues such as prevention of serious crimes and money laundering activities; and (ii) describe how *[Gambling Co]* runs and controls the gambling activities in the Resort.

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

[Signed]

Acting Secretary to the GEM Listing Committee

LETTER 3

[Date]

[Name and Address of Sponsor]

Dear Sirs,

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

On [**day*month*year*], the GEM Listing (Review) 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 GEM Listing Committee of [**day*month*year*] and set out in the [*LETTER 2*] dated [** day*month* year*] (the “First Decision”).

The Review Hearing was conducted before the GEM Listing (Review) Committee comprising [*names of members purposely omitted*] (the “Review 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 Review Committee considered all the submissions (both written and oral) made by the Company and the Listing Division. The Review Committee decided to overturn the First Decision and allow the Company to proceed with its listing application in accordance with the GEM Listing Rules, subject to the following conditions:

1. That, with the results of the additional due diligence described in paragraph 2 below, the Company provided detailed and prominent disclosure in its Circular of the legal framework in [*Country Q*] governing gambling activities, in particular any laws, rules, regulations or [*Country Q*] government policies that provide for, or impose controls on, gambling activity, prevention of money laundering and other serious criminal activity on premises where gambling

- activities are conducted (the “applicable law”). This disclosure should also include a description of the arrangements and systems in place in *[Country Q]* to administer and enforce the applicable law.
2. While the Review Committee considered that the Company had gone some way to responding to the Committee’s suggestions set out in the First Decision Letter (see sub-paragraphs (i) and (ii) in the last paragraph of Letter 2), the Review Committee considered that there was more the Company and its independent sponsor could reasonably do to disclose in the Circular, in a manner helpful to investors, a description of the controls *[Gambling Co]* has put in place to conduct gambling activities, and to comply with the applicable law. With that in mind, and while acknowledging there are limitations flowing from *[Gambling Co]*’s status as a government-owned and controlled enterprise that is independent of the Company, the Review Committee considers that the Sponsor, as independent sponsor, is in a position to conduct additional due diligence into the manner in which *[Gambling Co]* conducts its business with its resulting views and findings, and the basis for them, becoming part of the disclosure required by the above paragraph.
 3. That the Company include in its Circular a copy of the following documents: (a) the letter dated *[*day*month*year]* from *[Gambling Co]* (*providing confirmation regarding its compliance with all applicable laws of Country Q and some of its internal control measures implemented with respect to the operation of its casino at the Resort*), (b) the letter dated *[* day*month* year]* from *[Country Q]*’s Audit Commission (*confirming that Gambling Co has been in full compliance with all relevant laws in respect of all its gaming activities conducted at the Resort*) and (c) the letter dated *[* day*month* year]* from the Office of the Government Corporate Counsel, a division of the Department of Justice of the *[Country Q]* government (*confirming Gambling Co’s compliance with applicable laws, including the Anti-Money Laundering Law*).

The Review Committee wishes to emphasise that this decision is specific to this particular instance and shall not serve to create a precedent for any other companies.

For the avoidance of doubt, should the Company decide to proceed with its application for new listing, such application will be treated strictly on its merits at the material time, and no representation is given, whether express or implied, as to the acceptability of such application if pursued. The new listing application of the Company in its entirety will be subject to the final approval of the GEM Listing Committee.

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

[Signed]

Secretary to the GEM Listing (Review) Committee

