

HKE~~x~~ REJECTION LETTER

Cite as HKE~~x~~-RL5-05 (March 2005) (Updated in November 2016)

(Updated due to issuance of Guidance Letter GL89-16)

Summary	
Listing Rule	Listing Rule 8.05(1)(c)
Reason for rejection	Failure to satisfy the “ownership continuity and control” requirement under Rule 8.05(1)(c)
Contents	Extracts of the response of the Head of Listing, the Stock Exchange of Hong Kong Ltd

[Date]

[Name and Address of Sponsor]

Dear Sirs

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

We refer to your listing application of the Company (the “Application”), the 1st proof draft prospectus (the “Prospectus”) and the related documents submitted on [** day * month * year*]. We also refer to your submission dated [** day * month * year*] (the “Submission”) providing supplemental information and addressing our concern. Unless the context otherwise requires, capitalized terms used in this letter shall have the same respective meanings as those defined in the Prospectus and the Submission.

Issues raised by the Listing Division

[*Subsidiary A*] is the sole operating subsidiary of the Group. It was previously a Sino-foreign equity joint venture company (“EJV”) established in the PRC. During the [*first eight months in Year 3 of the track record period*] (the “Relevant Period”), [*Subsidiary A*] was equally owned by [*Predecessor X*], a company established in the PRC, and [*Predecessor Y*] a foreign joint venture partner. Subsequent to the disposal by of its entire equity interest in [*Subsidiary A*] in [*Year 3 of the track record period*] (“Transfer Date”), [*Predecessor Y*] has ceased to hold any interest in

[Subsidiary A]. We have raised concern as to the Company's compliance with the requirement of ownership continuity and control under Rule 8.05(1)(c) of the Listing Rules.

Sponsor's Submission

To address our concern, the Sponsor submitted that the Group could satisfy the ownership continuity and control requirement under Rule 8.05(1)(c) based on the following reasons:

1. At all material times for the whole of the most recent financial year and thereafter, *[Predecessor X]* had been a controlling shareholder of *[Subsidiary A]*;
2. During the Relevant Period, each of *[Predecessor X]* and *[Predecessor Y]* was entitled to appoint three directors to the board of directors of *[Subsidiary A]*, which had reflected the equity interest of *[Predecessor X]* and *[Predecessor Y]* in *[Subsidiary A]*. However, *[Predecessor Y]* since *[Year 2 of the track record period]* in fact relinquished its right to exercise equal control over *[Subsidiary A]* by choosing to nominate only two directors to the board of *[Subsidiary A]*;
3. Since *[Year 1 of the track record period]*, *[Predecessor Y]* on a number of occasions stated in writing that it did not intend to be involved in the operation of *[Subsidiary A]*; and
4. Because of the nature of EJV, the exercise of rights, control and influence of the "shareholders" could only be analyzed at the level of the board of directors. As a matter of fact, therefore, since *[Year 2 of the track record period]* *[Predecessor X]* had a majority board control which meant that "it could control over all decision apart from those which require unanimous board consent".

Based on the above, *[Predecessor X]* maintained that it has had dominant influence on the management of *[Subsidiary A]* and has been a "dominant influencing controlling shareholder" during the most recent financial year. So, the Company maintained that it is able to satisfy the ownership continuity and control requirement.

Listing Rules

Listing Rule 8.05(1)(c) requires that an issuer must satisfy "ownership continuity and control for at least the most recent audited financial year".

The official interpretation of such Rule has been established in the Frequently Asked Questions Table on the Exchange's website as "continuous ownership and control of the voting rights attaching to the shares for the latest financial year of the

trading record period by the controlling shareholder or, where there is no controlling shareholder, a single largest shareholder”.

Listing Division’s Analysis

On the basis that *[Predecessor X]* and *[Predecessor Y]* had the same equity interest in *[Subsidiary A]*, equal voting rights and equal rights in respect of appointment of directors to its board, we are of the view that both *[Predecessor X]* and *[Predecessor Y]* should be regarded as the controlling shareholders of *[Subsidiary A]* during the Relevant Period for purposes of Rule 8.05(1)(c). Given that *[Predecessor Y]* had ceased to hold any interest in *[Subsidiary A]* from *[the Transfer Date]*, there had been a change in ownership control of the Group during the most recent audited financial year for purposes of Rule 8.05(1)(c). The Group’s compliance with “ownership continuity and control for the most recent audited financial year” cannot be established by reference only to the continuity of *[Predecessor X]* as owner of *[Subsidiary A]* throughout *[Year 3 of the track record period]*.

Factors supporting our analysis include the following:

1. *In addition to its voting rights as shareholder, [Predecessor Y] held the power to appoint a third director at any time.*

We note that *[Predecessor Y]* had only since *[since the beginning of Year 2 of the track record period]* and up to *[the date immediately before the Transfer Date]*, nominated two directors while *[Predecessor X]* nominated three directors to the board of *[Subsidiary A]*. However, as you have stated in the Submission, “*it itself need not mean that [Predecessor Y] would need to relinquish the level of control available to it at board level, since that was the only channel through which it could exercise its influence as an equity holder of [Subsidiary A]*”. If *[Predecessor Y]* wanted to exercise the right to nominate the third director, it was able to do so at anytime without consent from anyone else. We take the view that the power to appoint an equal number of directors represents a power to control the management of *[Subsidiary A]* relevant for purposes of Rule 8.05 and therefore the actual number of directors nominated by *[Predecessor Y]* is relevant but not decisive.

2. *Certain significant actions required the affirmative approval of the two directors appointed by [Predecessor Y]*

As submitted by the Sponsor, the articles of association of *[Subsidiary A]* listed the matters for which unanimous approval and two-third majority approval by the board of directors are required. In the actual structure of the board of directors of *[Subsidiary A]*, there were five directors, three nominated by *[Predecessor X]* and two nominated by *[Predecessor Y]*. Accordingly, *[Predecessor X]* could not dominate over matters which require unanimous approval and two-third majority approval by the board. Even though the

Chairman was appointed by *[Predecessor X]*, the Chairman could not cast votes at board meetings, as provided in the articles. Obviously, although *[Predecessor X]* had a simple majority control over the board, the statement that “*it could control over all decisions apart from those which require unanimous board consent*” is not supported by the plain meaning of the materials submitted.

3. Control over the management of the listing applicant is relevant, but not decisive

We also acknowledge that *[Predecessor Y]* on a number of occasions stated in writing that it did not intend to be involved in the operation of *[Subsidiary A]*, and throughout *[Year 3 of the track record period]*, *[Predecessor X]* was able to control the management of *[Subsidiary A]*. However, as the requirement regarding management of the listing applicant is separately dealt with under Rule 8.05(1)(b) of the Listing Rules, we are of the view that in considering the ownership continuity and control requirement under Rule 8.05(1)(c), control over the management of the listing applicant is relevant, but not decisive.

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 requirement of ownership continuity and control for at least the most recent audited financial year under Rule 8.05(1)(c). On this basis, the Listing Division has decided to reject the listing application of the Company.

The Way Forward

Pursuant to Rule 2B.05, the Company has the right to have this decision reviewed by the Listing Committee.

In order to comply with the “ownership continuity and control” requirement under Rule 8.05(1)(c), the ownership control of the Company must remain substantially unchanged for the last audited financial year prior to the date of listing application.¹ Provided that there is no subsequent substantial change in the ownership control of the Company, the Company will be able to comply with the “ownership continuity and control” requirement upon completion of the *[next]* financial year. The Company may then wish to submit a new listing application for our consideration.

¹ Pursuant to HKEX-GL89-16 (November 2016), the Exchange has clarified that its practice is to require listing applicants to demonstrate “ownership continuity and control” in the way required by Frequently Asked Questions (Series 1 No. 16) for at least the most recent financial year up until the time immediately before the offering and/or placing becomes unconditional.

[Portion of Letter Purposely Omitted]

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

[Signed]

Head of Listing