

HKE_x LISTING DECISION
HKE_x-LD91-1 (May 2010)

(withdrawn in September 2015, superseded by the revised GL25-11, which has consolidated the relevant contents of this Listing Decision in paragraphs 4.2 and 4.3 of GL25-11)

Summary	
Parties	Company A – a Main Board listing applicant and its subsidiaries
Subject	Whether to waive Rule 4.04(1) for Company A
Listing Rules and Other Reference Materials	Rule 4.04(1) Listing Decision HKE _x -LD31-2 (Superseded by GL25-11 in October 2011)
Decision	The Exchange agreed to waive Rule 4.04(1) subject to Company A disclosing in the prospectus additional information and management discussion on its recent performance

SUMMARY OF FACTS

1. Company A intended to list on the Exchange before March of Year 5.
2. Its prospectus would include an accountants' report reporting on a three financial years ended 31 December (Year 1 to Year 3) and the nine months ended 30 September of Year 4. It would also include a profit estimate based on historical figures for the 3 months ended 31 December of Year 4.
3. It submitted that full compliance with Rule 4.04 would be unduly burdensome if it were to include an accountants' report for the full year ended 31 December of Year 4 shortly after the financial year end. Accordingly, it applied for a waiver of Rule 4.04(1).

THE ISSUE RAISED FOR CONSIDERATION

4. Whether to grant Company A a waiver of Rule 4.04(1)?

APPLICABLE LISTING RULES OR PRINCIPLE

5. Rule 4.04(1) requires that the accountants' report of a new applicant must include the results of the issuer or, if the issuer is a holding company, the consolidated results of the issuer and its subsidiaries in respect of each of the three financial years *immediately preceding* the issue of the listing document.
6. Listing Decision HKEx-LD31-2 (superseded by GL25-11 in October 2011) recorded that for Rule 4.04 to be waived, the maximum allowable gap between the latest financial year-end and the proposed listing date is three months.

THE ANALYSIS

7. HKEx-LD31-2 (superseded by GL25-11 in October 2011) does not mean that the Exchange will automatically waive Rule 4.04 so long as the gap between the latest financial year-end and the proposed listing does not exceed three months.
8. The Exchange has full discretion to grant or refuse any waiver based on all the facts and circumstances of a particular case. For example, the Exchange may consider a downward trend in an applicant's recent business performance as an unfavourable factor for a waiver given the risk of material adverse changes to the company. Those changes should therefore be addressed by a full audited accountants' report that complies with Rule 4.04(1). In other cases, the Exchange may impose conditions on disclosure in the prospectus to ensure that there is reasonably sufficient information to enable investors to form an informed assessment of the issuer absent an accountants' report that complies with Rule 4.04(1).
9. In determining whether a Rule 4.04 waiver should be granted, the Exchange noted that, based on Company A's profit estimate for the year ended 31 December of Year 4, its estimated turnover and net profit for Year 4 would reduce substantially as compared to those for Year 3; its estimated net profit margin would also substantially reduce in Year 4 as compared to that for Year 3 and the nine months ended 30 September for Year 4.
10. Noting the apparent decreasing trend in both Company A's turnover and net profit, the Exchange initially considered it not appropriate to grant a waiver.
11. However, Company A further submitted the following to support its waiver application:
 - a. its directors confirmed that there had been no material adverse change in its financial and trading positions or prospects since 30 September of Year 4 and there was no event which would materially affect the information shown in the accountants' report;
 - b. the profit estimate for the year ended 31 December of Year 4 and the disclosure on subsequent events would provide sufficient information on its financial condition for the year ended 31 December of Year 4 for investors to make an informed assessment of its financial position.

- c. whilst the profit estimate and profit margin for the year ended 31 December of Year 4 represented a decline compared to that for Year 3 , it should be recognised that Company A had performed exceptionally well in Year 3. The profit estimate was significantly higher than its profit for the years ended 31 December of Year 1 and Year 2. Further, the estimated profit and profit margin for the 3 months ended 31 December of Year 4 was higher than its average quarterly profit and profit margin for the first 9 months of Year 4; and
- d. a profit estimate that indicated a decrease in profits as compared to the immediate prior year should not be considered as the sole factor for determining the waiver application.

THE DECISION

12. Having considered the submission mentioned in paragraph 11 above, the Exchange granted a Rule 4.04(1) waiver provided that Company A must disclose in the prospectus additional information and management discussion on Company A's performance in the last quarter of Year 4, in particular highlighting:
 - the improvement in Company A's profit and profit margin for the last quarter of Year 4 as compared to those for the first three quarters of Year 4;
 - the reasons for the improvement; and
 - comment on whether this improvement would be an one-off event or would recur in future.