

HKEx LISTING DECISION
HKEx-LD34-2012 (published in July 2012)

(Withdrawn in March 2019; Superseded by GL68-13)

Parties	Company A – a Main Board listing applicant The Group – Company A together with its subsidiaries The Predecessor – the company holding the Group’s business prior to its disposal to Company A Mr. A and Mr. B – Company A’s executive directors Mr. X – a member of Predecessor’s senior management
Issue	Whether Mr. A’s and Mr. B’s conduct at the Predecessor affected their suitability under Listing Rules 3.08 and 3.09 and Company A’s ability to comply with Listing Rule 8.15.
Listing Rules	Main Board Listing Rules 3.08, 3.09 and 8.15
Decision	The Exchange considered that Mr. A’s and Mr. B’s conduct at the Predecessor had not demonstrated the standard of competence expected of directors of listed companies under Listing Rule 3.09 and that Company A had not yet met the standard required to comply with Listing Rule 8.15. The Exchange determined that a robust monitoring of transactions should be introduced before it would further consider any Company A’s listing application.

FACTS

1. The Predecessor was listed on an overseas stock exchange and Mr. A and Mr. B were its only executive directors. Company A was incorporated and acquired the entire business of the Group from the Predecessor for the purpose of the Hong Kong listing. Company A’s management was essentially the same as that of the Predecessor and Mr. A and Mr. B were also Company A’s only executive directors in the listing application.
2. The Predecessor incurred significant losses in Year 3 from certain transactions that were unrelated to its core business (the “**Transactions**”) although it recorded moderate gains from those transactions in Year 1 and Year 2. It announced that the significant losses in Year 3 were incurred because its internal stop-loss policy was not complied with by Mr. X.

3. Mr. X was the Predecessor's senior management member responsible for the execution and control of the Transactions. He did not communicate the related losses to the Predecessor's board timely and subsequently resigned.
4. Mr. B and Mr. X held monthly meetings to monitor the Transactions and there were no checks between the monthly meetings. The Predecessor's directors had not sought any external advice (e.g. from the auditors) in respect of these Transactions.
5. The Sponsor submitted that Mr. A and Mr. B were suitable to act as directors because:
 - (i) Mr. A and Mr. B did not obtain any personal benefit from the Transactions and entering into the Transactions neither constituted fraudulent or criminal activities nor breach of the overseas stock exchange's rules. Mr. A and Mr. B also did not have any criminal record or record of breaching any overseas stock exchange's rules;
 - (ii) Mr. A and Mr. B had many years of experiences in Company A's industry and the finance industry respectively. They devoted themselves to running the Group's business which was supported by the growth of the Group's revenue during the track record period; and
 - (iii) the Group had adopted certain internal control measures to ensure the Group would not enter into unauthorized transactions in the future.

APPLICABLE RULES AND PRINCIPLES

6. Listing Rule 3.08 states that the board of directors of a listed issuer is collectively responsible for the management and operations of the listed issuer. The directors, both collectively and individually, are expected to fulfill fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law.
7. Listing Rule 3.09 states that every director of a listed issuer must satisfy the Exchange that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of a listed issuer.
8. Listing Rule 8.15 states that without prejudice to the specific requirements for management experience under Listing Rules 8.05A, 8.05B(2) and 18.04, the persons proposed to hold office as directors of the issuer must meet the requirements of Chapter 3 to the satisfaction of the Exchange.

ANALYSIS

9. The Exchange considered that:-
 - (i) the circumstances leading to the losses from the Transactions were a very significant issue for the potential investors. Mr. A and Mr. B had been the only executive directors at the Predecessor when it had incurred the losses and it was

therefore important to assess whether their role was to such as to affect their suitability as directors and hence whether Company A would be suitable for listing;

- (ii) as executive directors of the Predecessor, Mr. A and Mr. B bore responsibility for the significant losses arising from the Transactions; and
- (iii) Mr. A and Mr. B had not exercised good judgment in their oversight of Mr. X and the Transactions he had entered into. They had in substance entirely delegated the undertaking of the Transactions to Mr. X. Had adequate oversight been applied with a consistent review of the Predecessor's affairs, the Transactions which undoubtedly would have made up a large portion of the income of the Predecessor would have been noticed and queried. This could have prevented the losses incurred in Year 3.

CONCLUSION

10. Based on the above, the Exchange considered that Mr. A's and Mr. B's conduct at the Predecessor had not demonstrated the standard of competence expected of directors of listed companies under Listing Rule 3.09 and thus Company A had not yet met the standard required by Listing Rule 8.15.
11. The Exchange determined that a robust monitoring of transactions should be introduced before it would consider any further review of Company A's listing application.
