

HKEx LISTING DECISION
Cite as HKEx-LD50-4 (March 2006)

[Withdrawn in April 2019; Superseded by HKEX-GL35-12]

Summary	
Name of Party	Company A - a Main Board listing applicant and its subsidiaries (the 'Group')
Subject	Whether the inclusion of risk factor disclosure regarding the variability or unreliability of the profit forecast of Company A in its prospectus was inappropriate?
Listing Rules	Listing Rules 2.13 and 11.17
Decision	The Exchange determined that the inclusion of a risk factor on profit forecast in the prospectus was inappropriate, and such a risk factor should be deleted from the prospectus.

SUMMARY OF FACTS

1. Company A proposed to include a profit forecast of the Group in its prospectus in accordance with Listing Rule 11.17.
2. The 'risk factors' section of the prospectus included a risk factor stating that the actual financial performance could vary materially from the profit forecast contained in the prospectus and that some of its underlying assumptions might change or not materialize.
3. The sponsor submitted that the above risk factor should be included in the 'risk factors' section of the prospectus on the following grounds:
 - a. although Company A had exercised due care in preparation of the profit forecast, it was prepared based on assumptions which were subject to unforeseeable future events. As such, the directors of Company A considered that the prospectus should contain a risk factor on the profit forecast so that investors could be informed of the risks and not unreasonably rely on the profit forecast when making investment decisions; and
 - b. information disclosed in the profit forecast would be one of many factors potential investors consider in their assessment of Company A. The directors of Company A considered that the inclusion of such a risk factor

would not undermine the reasonable reliance of an investor on the profit forecast.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether the inclusion of risk factor disclosure regarding the variability or unreliability of the profit forecast of Company A in its prospectus was inappropriate?

APPLICABLE LISTING RULES OR PRINCIPLE

5. Listing Rule 2.13 contains guidance on the presentation of information:

Without prejudice to any specific requirements of the Exchange Listing Rules as to content or responsibility for the document in questions, any announcement, listing document or circular required pursuant to the Exchange Listing Rules must be prepared having regard to the following general principles:

- (1) the information contained in the document must be clearly presented and in the plain language format specified or recommended by the Exchange and/or the Commission from time to time; and
- (2) the information contained in the document must be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, the issuer must not, among other things:-
 - (a) omit material facts of an unfavorable nature or fail to accord them with appropriate significance;
 - (b) present favourable possibilities as certain or as more probable than is likely to be the case;
 - (c) present projections without sufficient qualification or explanation; or
 - (d) present risk factors in a misleading way.

6. Listing Rule 11.17 states that:

The issuer must determine in advance, with its financial adviser or sponsor in the case of a new applicant, whether to include a profit

forecast in a listing document. As required by paragraph 34(2) of Part A and paragraph 29(2) of Part B of Appendix 1, where a profit forecast appears in any listing document (other than one supporting a capitalisation issue), it must be clear, unambiguous and presented in an explicit manner and the principal assumptions, including commercial assumptions, upon which it is based, must be stated and such profit forecast must be prepared on a basis that is consistent with the accounting policies normally adopted by the issuer. The accounting policies and calculations for the forecast must be reviewed and reported on by the reporting accountants and their report must be set out. The financial adviser or sponsor must report in addition that they have satisfied themselves that the forecast has been made by the directors after due and careful enquiry, and such report must be set out....

THE ANALYSIS

General responsibilities of directors and sponsors regarding information in a prospectus

7. It is clear from Listing Rule 2.13 that directors are required to ensure that information presented in a listing document is accurate and complete in all material respects and not misleading or deceptive. When interpreting the requirements of Listing Rule 2.13 in view of the requirements of Listing Rule 11.17, the Exchange ordinarily considers that the Listing Rules do not provide a basis for limiting the responsibilities of directors and sponsors ^{Note 1}.
8. The Exchange ordinarily considers risk factors and other language seeking to limit responsibility for ensuring the accuracy, reliability, and/or completeness of information that is included in a prospectus to be efforts to curtail the application of the Listing Rules in a manner that is not consistent with the responsibilities of directors and sponsors. The Exchange routinely expects such risk factors and limiting language to be removed from the prospectus.

Expert Reports

9. When interpreting the requirements of Listing Rule 2.13 in connection with any part of a prospectus purporting to be an extract from a third party expert report or valuation, directors and sponsors have a responsibility to ensure that the expert report being presented in the prospectus is a fair copy of or extract from the report or valuation of the expert, fairly represents the statements of the expert and does

^{Note 1} See also Listing Rules 3A.11(2) for requirements of sponsor to conduct due diligence inquiries and Listing Rule 3A.15(4) in relation to the standard of the sponsor's declaration that must be submitted to the Exchange in relation to information in the non-expert sections of the listing document.

not omit material facts of an unfavourable nature or fail to accord them with appropriate significance.

10. It is the current practice of the Exchange to interpret Listing Rule 2.13 in light of the requirements in Listing Rule 11.17 as requiring directors to exercise reasonable care when selecting an expert to prepare a report or valuation for inclusion in a prospectus. Such reasonable care would normally be expected to include a review and assessment of the experts' background and credentials. The Exchange would also expect sponsors^{Note 2} to conduct due and careful enquiries in relation to the experts' background and experience, and the reasonableness and appropriateness of the scope of work performed and assumptions made by the experts. For these reasons:
 - The Exchange ordinarily considers risk factors and other language seeking to limit responsibility for ensuring the accuracy, reliability, and/or completeness of such expert reports and/or extracts to be efforts to curtail the application of the Listing Rules in a manner that is not consistent with the responsibilities of directors and sponsors.
 - The Exchange routinely expects such risk factors and limiting language to be removed from the prospectus.
11. The Exchange considered that if Company A had decided to launch an IPO backed up by a profit forecast which was purely voluntary, it would be incumbent upon the directors of Company A to satisfy themselves that the profit forecast had indeed been prepared to such a standard as would justify reasonable reliance upon it by investors. As such, the Exchange interpreted Listing Rule 11.17 as requiring the reporting accountants to confirm that the calculation of and the accounting policies in the profit forecast comply with the bases and assumptions made by the directors of Company A. The Exchange therefore concluded that the existence of the proposed risk factor would serve to undermine the extent to which investors could rely on the profit forecast.
12. Applying the above analysis, the Exchange considered that the risk factor proposed by the sponsor should be deleted.

THE DECISION

13. Based on the above considerations and the Exchange's analysis of the Listing Rules, the Exchange determined that the inclusion of a risk factor on the profit forecast in the prospectus was inappropriate, and such risk factor should be deleted from the prospectus.

^{Note 2} See also Listing Rule 3A.16 regarding the standard of the sponsor's declaration that must be submitted to the Exchange in relation to each expert section in the listing document.