

HKEx LISTING DECISION

Cite as HKEx-LD87-1 (December 2009)

[Streamlined and incorporated into the Guide for New Listing Applicants in January 2024]

Summary	
Parties	Company A – a Main Board listing applicant and its subsidiaries Parentco – Company A’s controlling shareholder which was listed on a foreign exchange
Subject	Whether to allow Parentco to complete Company A’s reorganisation immediately after listing
Listing Rules	Rule 8.04
Decision	<p>The Exchange allowed Company A’s reorganisation to be completed immediately after listing subject to:-</p> <ul style="list-style-type: none">a. there must be clear disclosure in the listing document of the steps of the reorganisation and that the reorganisation would only complete immediately after listing;b. there must be an effective mechanism to ensure the reorganisation would take place immediately after listing and that the IPO proceeds would be applied as disclosed in the listing document;c. Company A must be able to obtain all governmental and third party approvals and consents for the listing and reorganisation before the listing document date;d. Company A’s directors, sponsors and legal advisers must provide written confirmations on the due completion of the reorganisation; ande. Company A must make an announcement on the listing date on the due completion of the reorganisation.

SUMMARY OF FACTS

1. Parentco operated its business in Country X and Country Y. Parentco proposed to spinoff its operation in Country Y to effect a separate listing of Company A on the Main Board.
2. Company A was a shell company with no track record and its reorganisation would involve using the IPO proceeds to acquire Parentco's operation in Country Y. Parentco proposed to complete the reorganisation immediately after listing because the reorganisation was solely to effect the separate listing of Company A. Without Company A's listing, Parentco would not adopt this corporate structure.

THE ISSUE RAISED FOR CONSIDERATION

3. Whether to allow Parentco to complete Company A's reorganisation immediately after listing.

APPLICABLE LISTING RULES OR PRINCIPLE

4. Rule 8.04 requires both the issuer and its business, in the opinion of the Exchange, be suitable for listing.

THE ANALYSIS

5. There is no specific rule requiring when a new applicant should complete its group reorganisation for listing. New applicants normally complete their reorganisation before the prospectus. This provides certainty on the subject matter of the listing. If the reorganisation is only completed after listing, the concern is that the newly listed company is still technically a shell company and the reorganisation remains uncertain.
6. The Exchange noted that the reorganisation of Company A involved the spin-off of Parentco's operation for a separate listing on the Exchange. This was not for the purpose of circumventing the Listing Rules. The proposed reorganisation did not affect Company A's ability to satisfy the ownership and management continuity requirements.
7. To ensure there would be sufficient financial information on the subject matter of the listing, Company A's accountants' report would have to include:
 - a. the stand-alone accountants' report on Company A (essentially a shell company);

- b. the combined historical financial information of the business to be acquired from Parentco, ie. the spun-off entity, the subject of the listing; and
 - c. the proforma financial information for the post-IPO group reflecting the application of the IPO proceeds and the acquisition of the spun-off entity from Parentco in accordance with Rules 4.28 and 4.29, except that it would only reflect the changes to Company A's equity and additional paid-in capital. This deviation was acceptable because the acquisition would have no impact on the proforma financial results and cash flows, and the Exchange was satisfied that this presentation would be adequate to reflect the effect of the acquisition.
8. The Exchange took the view that Parentco's proposal to list Company A was similar to the approach in listing Real Estate Investment Trusts (REITs). In REIT listings, the listed entity is formed solely to hold the investment portfolio, which is acquired a split-second after listing using the IPO proceeds.

THE DECISION

9. The Exchange allowed Company A's reorganisation to be completed immediately after listing subject to:
- a. there must be clear disclosure in the listing document on the steps of the reorganisation and that the reorganisation would only complete immediately after listing;
 - b. there must be an effective mechanism to ensure the reorganisation would take place immediately after listing and that the IPO proceeds would be applied as disclosed in the listing document;
 - c. Company A must be able to obtain all governmental and third party approvals and consents for the listing and reorganisation before the listing document date;
 - d. Company A's directors, sponsors and legal advisers must provide written confirmations on the due completion of the reorganisation; and
 - e. Company A must make an announcement on the listing date on the due completion of the reorganisation.