HKEx LISTING DECISION
HKEx-LD106-1 (October 2010) (Updated in January 2013)

Parties	Company A – a Main Board listing applicant and its subsidiaries JCE X – an entity under the joint control of Company A and another venturer
Issue	Whether a new applicant operating under a jointly controlled entity structure was suitable for listing
Listing Rules	Rule 8.05B(3)
Decision	Company A's listing met the conditions the Exchange imposed for applicants operating under a jointly controlled entity framework. In light of the exceptional listing conditions, each future application should be decided on a case by case basis

FACTS

1. Company A manufactured and sold automobiles in the Mainland through JCE X.

2. The Listing Rules currently do not have any provisions to regulate jointly controlled entitles (**JCEs**).

3. Company A could not consolidate JCE X's results to satisfy Rules 8.05(1), (2) and (3). It applied for listing under Rule 8.05B(3).

APPLICABLE LISTING RULES

4. Rules 8.05(1), (2) and (3) only take into account the results of the issuer and its group. Results of associated companies and JCEs are excluded.

5. Rule 8.05B(3) deals with exceptional circumstances where the issuer or its group has a trading record of at least two financial years if the Exchange is satisfied that the listing of the issuer is desirable in the interests of the issuer and investors and that investors have the necessary information available to arrive at an informed judgement concerning the issuer and the securities for which listing is sought.

ANALYSIS

6. In 2005, the Exchange developed a framework to assess the eligibility for a new applicant operating under a JCE framework. This framework consists of two parts:

   a. a set of exceptional circumstances for assessing the applicant's eligibility under Rule 8.05B(3); and

   b. conditions imposed on the applicant after listing.

7. The principle is to regulate JCEs (including JCEs newly established after listing) in a manner consistent with regulating subsidiaries under the Listing Rules.

8. This framework has been applied to a Mainland automobile manufacturer operating through JCEs.

Eligibility criteria

9. The Exchange will apply the following criteria to determine whether the "exceptional circumstances test" is met: -

   a. the applicant must be able to meet the large market capitalisation test in Rule 8.05(3) if the proportionate results of its JCEs are included;

   b. the JCEs structure must be common in the applicant's industry, or be the result of the regulatory environment;

   c. the joint venture partners must participate in the management of the JCEs together with the applicant;

   d. the applicant and the joint venture partners must be able to make contributions to the JCE's operation and growth, such as management expertise, production techniques, patents or production facilities;

   e. the joint venture agreement must contain safeguards to avoid the applicant's share of the JCE's profits flowing to other entities without the applicant's consent;

   f. the joint venture agreement must set out clear terms of distribution of the JCE's assets upon termination of the agreement;

   g. the listing document must contain disclosure of the historical dividend payment patterns and its future dividend policies;

   h. the listing document must include the terms of the joint ventures and disclose the risk factors of the JCE's structure and business; and

i. the applicant must comply with the continuing obligations imposed as a condition of listing.

Post-listing conditions

10. The Exchange will impose the following continuing obligations to treat the JCEs as subsidiaries:

a. The JCEs will be subject to the continuing obligations governing subsidiaries, including those in Chapters 13, 14, 14A, 15, 17 and Practice Note 15 subject to the modifications below.

Chapter 13

b. The JCE's activities will be treated as the applicant's activities and will be subject to the obligation to disclose information under Rule 13.09(1)[1]. However Rules 13.12 to 13.19 will not apply to JCEs. *(Updated January 2013)*

Chapter 14

c. The percentage ratio tests for classifying different transactions will be adjusted to take into account only the proportionate interest of the applicant's in the JCE. For example, in an acquisition by a 50/50 JCE, the applicant will only pick up 50% (being its proportionate share in the JCE) of the acquisition cost of the target in calculating the numerator of the consideration ratio.

Chapter 14A

d. The percentage ratio tests for de minimis connected transactions with JCEs will be adjusted to take into account the proportionate interests of the applicant in the JCEs.

e. Connected persons of the applicant will include the directors and joint venture partners of the JCEs and their respective associates. As a result, transactions between the applicant (including the JCEs) and i) the joint venture partners and their associates; ii) the directors of JCEs and their associates; or iii) the connected persons of the applicant (e.g. the substantial shareholder and its associates), will be considered connected transactions.

f. The Exchange may deem transactions involving amending the terms of the joint venture to be connected transactions. The decision will involve an assessment of materiality and minority shareholders' protection.

CONCLUSION

11. The Exchange considered that Company A met all eligibility criteria and post-listing conditions under the JCE framework. The Exchange considered that its listing would be desirable to the company and investors and that the investors would have available the necessary information to arrive at an informed investment judgement.

12. In light of the exceptional listing conditions, each future application should be decided on a case by case basis.

Note

1. Following the statutory backing of an issuer's continuing obligation to disclose inside information, consequential amendments were made to the Rules effective from 1 January 2013. The old Rule 13.09(1) is now replaced by Rules 13.09(1) and (2)(a) which require disclosure of (i) information necessary to avoid a false market and (ii) inside information which requires disclosure under the Inside Information Provisions. (Updated January 2013).