

**HKEx LISTING DECISION**  
**Cite as HKEx-LD46-3 (July 2005)**

<b>Summary</b>	
<b>Name of Party</b>	Company A – a Main Board listed issuer and its subsidiaries ( the ‘Group’)
<b>Subject</b>	Whether the requirement that a listing applicant must be legally established under Listing Rule 8.02 could be satisfied where the Group utilised a number of cross-shareholdings among its subsidiaries in order to comply with the laws of the place in which these subsidiaries were incorporated and operated their business?
<b>Listing Rule</b>	Listing Rule 8.02
<b>Decision</b>	The Exchange determined that Company A had demonstrated the legality of the cross-shareholdings structure used by Company A. Subject to appropriate disclosures in the prospectus of the corporate structure and the risks associated therewith, the Exchange determined that Company A had complied with Listing Rule 8.02

**SUMMARY OF FACTS**

1. Company A’s corporate structure was characterized by a number of cross-shareholdings among its subsidiaries which were incorporated and operated their business in the People’s of Republic of China (the ‘PRC’).
2. Typical cross-shareholdings amongst subsidiaries of Company A would comprise a non-wholly owned subsidiary of Company A in the form of Subsidiary X which would own majority shareholding in Subsidiary Y, which in turn, would own majority shareholding in Subsidiary Z. At the same time, Subsidiary Z would be a minority shareholder of Subsidiary X and Subsidiary Y.
3. In the course of its review of Company A’s listing application, the Exchange reviewed whether Subsidiary Z’s interests in each of its holding companies, Subsidiary Y and Subsidiary X, were in violation of PRC laws and regulations. The Exchange also reviewed whether such shareholding arrangements constituted reduction or withdrawal of paid-up capital from each of Subsidiary Y and Subsidiary X and whether they constituted repurchases of shares.
4. In support of Company A’s listing application, Company A’s PRC legal advisers submitted that:

- the complex group structure was the result of historical developments and legal restrictions in the PRC requiring that limited companies must have at least two shareholders none of which hold more than 80% in the relevant company and a PRC company may not invest more than 50% of its net asset value in the capital of other companies. A practical effect of this structure was that the Group's economic interest in all of the subsidiaries operating business in the PRC was 100% controlled by Company A;
- according to the company law of PRC and other relevant rules and regulations, the shareholdings of Subsidiary Z, Subsidiary Y and Subsidiary X did not constitute any reduction, repurchase or withdrawal of the respective registered capital of Subsidiary Y and Subsidiary X;
- such shareholding structure neither violated the company law of the PRC nor other relevant PRC rules and regulations; and
- Company A would make all disclosures regarding the above corporate structure in the prospectus to the effect that the relevant PRC laws or regulations might be subject to change in or different interpretation. In such event, Company A would be required to reorganize the group structure and this might have adverse effect on its operation and financial condition.

#### **THE ISSUE RAISED FOR CONSIDERATION**

6. Whether the requirement that a listing applicant must be legally established under Listing Rule 8.02 could be satisfied where the Group utilised a number of cross-shareholdings among its subsidiaries in order to comply with the laws of the place in which these subsidiaries were incorporated and operated their business?

#### **APPLICABLE LISTING RULES OR PRINCIPLES**

7. Listing Rule 8.02 provides that '[T]he issuer must be duly incorporated or otherwise established under the laws of the place where it is incorporated or otherwise and must be in conformity with those laws and its memorandum and articles of association or equivalent documents'.
8. Listing Rule 8.04 provides that '[B]oth the issuer and its business must, in the opinion of the Exchange, be suitable for listing.'

#### **THE ANALYSIS**

9. In the course of its review of compliance with Listing Rule 8.02, the Exchange continued its established practice of requesting Company A to demonstrate that it

had complied in fact and in good faith with all relevant laws and regulations. If Company A could discharge this burden of proof and satisfy the standard of compliance, it would not be considered to be in non-compliance with Listing Rule 8.02 by reason that the corporate structure was unusual.

11. Based on the submissions of the sponsor which were supported by legal opinions from the PRC legal advisers, the Exchange determined that Company A had demonstrated that it had satisfied the above requirements. The Exchange found there to be adequate support for Company A's finding that the cross-shareholdings amongst the subsidiaries of Company A were legal and binding and that Company A had the ability to consolidate all the economic benefits of all its subsidiaries as presented in its financial statements. Given that there would be full disclosure of the corporate structure in the prospectus and the risk associated therewith, the Exchange determined that the use of the cross-shareholdings among the subsidiaries were acceptable and in compliance with Listing Rule 8.02.

## **THE DECISION**

12. Based on the above facts and the circumstances and the analysis of the Listing Rules, the Exchange determined that Company A had demonstrated the legality of the cross-shareholdings structure used by Company A. Subject to appropriate disclosures in the prospectus of the corporate structure and the risks associated therewith, the Exchange determined that Company A had complied with Listing Rule 8.02.