

HKEx LISTING DECISION
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[Withdrawn in March 2019; Superseded by HKEX-GL68-13]

Name of Parties	Company A and its subsidiaries (the “ Group ”) – a Main Board listing applicant Company A’s parent (the “ Parent ”)
Subject	Whether Company A’s reliance on its Parent for the editorial content of certain publication materials upon which Company A relied for its advertising business rendered Company A not suitable for listing?
Listing Rules	Listing Rule 8.04; Part A of Appendix 1 of the Listing Rules, paragraph 27A
Decision	The Exchange accepted that that the level of reliance that Company A had placed on the Parent could be addressed by disclosure in the prospectus of the relevant arrangements between the Group and the Parent relating to the Group’s operation including a description of the associated risks.

SUMMARY OF FACTS

1. Company A was incorporated in the People’s Republic of China (the “**PRC**”) and sought listing of its H-shares in Hong Kong. The Parent was responsible for the production of the editorial content of a number of media publications. The Group’s principal business was in the sale of advertising space and in printing production of several publication materials owned by the Parent (the “**Publication Materials**”) on an exclusive basis pursuant to an advertising agreement entered into between Company A and the Parent.
2. The Exchange noted that under PRC law, foreign invested enterprises were not permitted to engage in the media industry (including the creation of editorial content of any publication) and there was no official timetable for the relaxation of this restriction. Upon the public listing of the H-shares of Company A, Company A would be considered a foreign invested enterprise prohibited from owning the editorial function of any publication.
3. The Parent had granted Company A a call option to acquire from it any or all of its editorial rights in relation to several of those publications, exercisable from such time as and when restrictions on the ownership and operation of such rights would be liberalized under PRC law.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether Company A's reliance on its Parent for the editorial content of certain publication materials upon which Company A relied for its advertising business rendered Company A not suitable for listing?

APPLICABLE LISTING RULES

5. Listing Rule 8.04 provides that:

"[B]oth the issuer and its business must, in the opinion of the Exchange, be suitable for listing".

6. Part A of Appendix 1 of the Listing Rules, paragraph 27A requires a statement explaining how the issuer is satisfied that it is capable of carrying on its business independently of the controlling shareholder (including any close associate¹ thereof) after listing, and particulars of the matters that it relied on in making such statement.
7. When interpreting the requirements under Part A of Appendix 1, Paragraph 27A of the Listing Rules, the Exchange normally requires an applicant to take into account the following:-
 - a. financial independence;
 - b. independent access to sources of supplies/ raw materials for production;
 - c. independence of production/ operation capabilities; and
 - d. independence of access to customers and independent management.

THE ANALYSIS

8. The Exchange noted that the success of the Group's advertising business was dependent on the quality and popularity of the editorial content provided by the Parent. In this regard, the Exchange considered that the Group was reliant on the editorial function provided by the Parent.
9. The Exchange recognized that a company's reliance on its parent might translate into a concern about whether the company could operate on a stand-alone basis suitable for listing. The Exchange found that the issue of reliance in the present case was no different from other forms of reliance in cases where the companies were reliant on their parent companies for raw materials or sales. Thus, the factor that Company A was reliant on the Parent for editorial content, per se, would not render Company A not independent for the purposes of the Listing Rules.
10. In reviewing the issue of reliance, the facts and circumstances of the Group in light of the business environment were relevant to the Exchange's analysis and therefore should be taken into account.
11. Taking this view, the following considerations and arrangements were regarded as relevant:

¹ Rule amended in July 2014.

- a. the Exchange recognized that the media industry was traditionally one of the highly regulated industries in the PRC but it was PRC government's intention to gradually open up and commercialize the regulated industries including the media industry;
- b. the Group's reorganization from the Parent was based on a "separation of business model". Under this business model the commercial activities of the publication business was separated from the editorial functions. The Exchange also noted the sponsors' view that this model was the only viable model under current regulatory environment;
- c. it was demonstrated to the Exchange that relevant PRC government agencies supported and approved the business model of Company A;
- d. the conflicts of interest between the Parent and the Group had been minimized by integrating the commercial function of the business into the Group while the regulated and non-commercial editorial function remained with the Parent. In this regard, the Exchange was of the view that the present case was no different from other cases involving H-share issuers where the controlling shareholder, being the government body, was also the major supplier/ customer of services through a series of connected transactions. Outstanding examples were H-share issuers that operated power plants and telecommunication facilities; and
- e. the structure adopted by Company A was simple and relatively stable and had included the following built-in mechanisms for the protection of minority shareholders:
 - (i) the Group was conferred a call option on the editorial function which could be exercised once Company A was allowed to assume editorial function;
 - (ii) the advertising agreement entered into between Company A and the Parent secured for the Group's advertising business relating to the Publication Materials; and
 - (iii) advertising agreement was subject to the connected transactions provisions of the Listing Rules. Further, the decision whether to exercise the call option or not would be determined by independent directors of Company A and any change to the terms of the agreement would require independent shareholders' approval.

THE DECISION

12. Based on the facts and the circumstances of the case and the Exchange's analysis of the Listing Rules, the Exchange determined that the level of reliance that Company A had placed on the Parent could be addressed by disclosure in the prospectus of the relevant arrangements between the Group and the Parent relating to the Group's operation including a description of the associated risks.
