

HKEx LISTING DECISION
Cite as HKEx-LD50-5 (March 2006)

[Withdrawn in March 2019]

Name of Parties	Company A – a Main Board listing applicant and its subsidiaries (the ‘Group’) Mr. P – one of the founders of the Group and the controlling shareholder and chairman of Company A upon listing
Subject	Whether a known breach of applicable investment laws committed by the controlling shareholder in his home jurisdiction would prejudice Company A’s suitability for listing where such breach was settled prior to listing by agreement with the relevant authority?
Listing Rule	Listing Rule 8.04
Decision	In light of the final settlement with the relevant legal authority, the Exchange did not consider that Company A was unsuitable for listing due to the past actions of the controlling shareholder. Details of the relevant events were required to be disclosed in the prospectus.

SUMMARY OF FACTS

1. The Group operated its business in the People’s Republic of China (the ‘PRC’). In the history of the Group, Mr. P had, at different times, held his interests in the Group either directly under his name or through companies he controlled outside of the PRC.
2. Applicable laws in Mr. P’s home jurisdiction (outside the PRC) required investors to obtain approvals from the relevant authorities for investing in the PRC. No such approvals had been obtained by Mr. P for his investment in the Group.
3. Mr. P’s unauthorised investment in the PRC was uncovered in the course of the Exchange’s review of Company A’s IPO application. Company A’s legal advisers on the laws of Mr. P’s home jurisdiction (the ‘legal advisers’) subsequently filed all relevant documents with the relevant authorities seeking retrospective approval of Mr. P’s investments in Company A/ Group. After a penalty had been duly paid, the relevant authorities ratified Mr. P’s investments in the Group.
4. The legal advisers of Company A were of the opinion that the approvals by the relevant authorities were conclusive evidence of the legality of Mr. P’s investments in the Group. As such Mr. P would not be subject to any regulatory risk of any order being imposed on him requiring him to cease his investment. Furthermore, under relevant regulations, the relevant authorities only had authority to impose penalties on the investor himself and not on the Group itself.

THE ISSUE RAISED FOR CONSIDERATION

5. Whether a known breach of applicable investment laws committed by the controlling shareholder in his home jurisdiction would prejudice Company A's suitability for listing where such breach was settled prior to listing by agreement with the relevant authority?

APPLICABLE LISTING RULE OR PRINCIPLE

6. Listing Rule 8.04 provides that:

Both the issuer and its business must, in the opinion of the Exchange, be suitable for listing.

THE ANALYSIS

7. When considering Company A's suitability for listing under Listing Rule 8.04, the Exchange reviewed whether the Group's business operations complied with all applicable laws and regulations.
8. In the course of its review, the Exchange continued its established practice of utilising a principally disclosure-based approach. Based on this approach, the sponsor and the directors of Company A had the burden of proof to demonstrate, by a clear preponderance of the materials submitted for review, including legal and other expert opinions, that it had complied in fact and in good faith of all applicable laws and regulations that might have a significant effect on the existing and future operations of the Group. If Company A could meet the above burden of proof and satisfy the standard of compliance, it would not be considered unsuitable for listing on the Exchange.
9. Following the above analysis and based on the facts and the circumstances of the case, in particular, the opinion of the legal advisers that:

(a) retrospective approvals had been obtained from the relevant authorities in respect of Mr. P's investments in the Group and all penalties had been paid; and

(b) the Group would not be subject to further risks of penalties or remedial orders,

the Exchange determined that the issue of previous non-compliance with investment laws by Mr. P in his home jurisdiction would not render Company A unsuitable for listing.

THE DECISION

10. Based on the facts and the circumstances of the case, and the Exchange's analysis of the Listing Rules, and in light of the final settlement with the relevant legal authority, the Exchange did not consider that Company A was unsuitable for listing due to the

past actions of the controlling shareholder. Details of the relevant events were required to be disclosed in the prospectus.

11. The Exchange expected that appropriate disclosure be made in the prospectus as to which of the measures mentioned in paragraph 8 above were adopted by Company A, and if any of those measures were not adopted, the reason for not doing so.
