

HKEx LISTING DECISION
Cite as HKEx-LD52-2 (Published in March 2006)
(Withdrawn in March 2019; Superseded by HKEX-GL100-19)

Summary	
Name of Parties	Company A – a Main Board listing applicant and its subsidiaries (the “ Group ”) Parentco – the controlling shareholder of Company A and a Main Board listed issuer Parentco Group – Parentco and its subsidiaries (other than the Group)
Subject	Whether Company A could meet the requirements of independence from its parent company as contemplated under Paragraph 27A of Part A of Appendix 1 of the Listing Rules in light of the overlapping of directorships between Company A and its parent group?
Listing Rules	Paragraph 27A of Part A of Appendix 1
Decision	The Exchange determined Company A had demonstrated independence from its parent company for the purpose of Paragraph 27A of Part A of Appendix 1 of the Listing Rules.

SUMMARY OF FACTS

1. Parentco proposed to spin-off of a principal line of business for listing. Upon listing, Parentco would be interested in approximately more than 40% of the issued share capital of Company A.
2. The board of directors of Company A comprised five executive directors, six non-executive directors and three independent non-executive directors. Overlapping of directorships between Company A and Parentco occurred in the following instances:
 - a. the chairman of Company A was also an executive director of Parentco;
 - b. an executive director of Company A was also an executive director and deputy general manager of Parentco as well as a director and deputy general manager of the ultimate holding company of Parentco, (“**Ultimate Parentco**”);

- c. an executive director of Company A was also the general manager of a wholly-owned subsidiary of Parentco, (“**Parentco Subsidiary**”);
 - d. an executive director of Company A was also the director and the chief accountant of Parentco Subsidiary; and
 - e. a non-executive director of Company A was the chairman of Ultimate Parentco and the chairman and an executive director of Parentco.
3. Parentco had ten executive directors, two non-executive directors and three independent non-executive directors.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether Company A could meet the requirements on independence from its parent company as contemplated under Paragraph 27A of Part A of Appendix 1 of the Listing Rules in light of the overlapping of directorships between Company A and its parent group?

APPLICABLE LISTING RULES OR PRINCIPLE

5. Listing Rule 8.04 states that:

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

6. Paragraph 27A of Part A of Appendix 1 of the Listing Rules requires disclosure of the following in the prospectus:

Details of any controlling shareholder of the issuer, including the name or names of any such controlling shareholder, the amount of its or their interest in the share capital of the issuer and 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. *[Repealed]*

THE ANALYSIS

8. When interpreting the requirements under Paragraph 27A of Part A of Appendix 1 the Exchange normally requires an applicant to take into account factors relating to the conduct of the applicant’s business independently from its controlling shareholder, in areas including financial independence, operational independence and management independence. An applicant may be dependent

¹ Rule amended in July 2014.

on its controlling shareholders in one or more of these areas. Where the degree of independence is excessive, this may translate into a concern about the suitability of an applicant for listing.

9. In analysing whether the requirements of Paragraph 27A of Part A of Appendix 1, were complied with in the present case, the Exchange took into account the following factors submitted by the sponsor:
 - a. after the appointment of a new executive director two out of five executive directors of Company A (i.e. 40%) were also executive directors of Parentco and was broadly in line with Parentco's more than 40% interest in Company A upon the proposed listing. Further, out of the five executive directors and six non-executive directors of Company A and the ten executive directors and two non-executive directors of Parentco, there were only three common directors on the respective boards of Company A and Parentco;
 - b. the two common executive directors were in charge of strategic planning and general management of the Group but not daily operations;
 - c. the daily operations of the Group were principally managed by the other three executive directors. Although two of these executive directors held positions in Parentco Subsidiary, the business of Parentco Subsidiary was different from that of the Group;
 - d. the chairman of Parentco was only a non-executive director of Company A and he would not participate in the daily management and operations of the Group;
 - e. with the exception of the Parentco Group's indirect 25% shareholding interest in an associate, the Group was the only group of companies in the Parentco Group operating the Group's present business. As such, there was a clear delineation of business between the Group and the Parentco Group (the "**Remaining Parentco Group**");
 - f. there were not many continuing connected transactions between the Group and the Remaining Parentco Group after listing and the amount involved was not material; and
 - g. the senior management of the operating subsidiaries within the Remaining Parentco Group and the Group were independent of each other.
10. The Exchange further noted that the test for dependence in the present case was similar to a spin-off requirement under Paragraph 3(d) of Practice Note 15 of the Listing Rules which states that:

In considering an application for listing by way of spin-off, the Listing Committee would apply the following principles:

(ii) Newco should be able to function independently of the Parent. As well as independence as regards its business and operations, the Listing Committee would expect from Newco:

- independence of directorship and management. While common directors would not be a bar to qualification under this test, the Listing Committee would require to be satisfied that Newco would operate independently and in the interests of its shareholders as a general body, and not in the interests of the Parent only, where the former interests and the latter were actually or potentially in conflict;

THE DECISION

11. Based on the above facts and the circumstances of the case and the Exchange's analysis of the Listing Rules, the Exchange determined that Company A had demonstrated independence from Parentco for the purpose of Paragraph 27A of Part A of Appendix 1 of the Listing Rules.