

**HKE<sub>x</sub> LISTING DECISION**  
**HKE<sub>x</sub>-LD76-2013 (published in December 2013)**

[Withdrawn in March 2019; Superseded by HKEX-GL101-19]

<b>Summary</b>	
<b>Name of Party</b>	Company A and B - Main Board listing applicants
<b>Subject</b>	Whether the Applicants were suitable for listing under Rule 8.04 given that they had conducted businesses in certain countries which were subject to trade or economic sanctions imposed by overseas governments before and during the Track Record Period, and if so, how the issue could be addressed.
<b>Listing Rules</b>	Listing Rules 2.13(2) and 8.04
<b>Decision</b>	The Exchange determined that given the Applicants have undertaken measures to minimise sanctions risk, including terminating the relevant sanctionable activities or transferring the contracts in the Sanctioned Countries before listing, the Applicants' past business in the Sanctioned Countries would not render them unsuitable for listing, and the issue could be addressed by disclosure.

**SUMMARY OF FACTS**

1. Certain overseas governments such as the government of the United States (the “**US**”), the member states of European Union (“**EU**”) and Australia impose trade or economic sanctions on certain countries (e.g. Iran, Cuba, Syria and Sudan) (the “**Sanctioned Countries**”) by restricting their nationals from making assets or services available, directly or indirectly, to persons or entities that are subject to sanctions or are controlled by persons subject to sanctions.
2. Some of the sanctions imposed by overseas governments are very wide in scope and may have (i) extra-territorial effect on persons who are not their own nationals; and (ii) implications on activities or investments which may, directly or indirectly, be regarded as financing, facilitating or contributing to the enhancement of a Sanctioned Country's ability to develop certain specific products or industries. Companies or individuals that enter into contracts with sanctions targets or persons connected with sanctions targets or have business in Sanctioned Countries may risk violating the relevant sanctions laws and regulations.
3. In light of the above, the Exchange was concerned about whether listing applicants who had projects/businesses in the Sanctioned Countries, their

potential investors, shareholders and other entities who may be involved in the listing process would be subject to sanctions risk.

*Case 1*

4. Company A, incorporated and based in the PRC, entered into several engineering or construction contracts with certain companies in a Sanctioned Country (the “**Contracts**”) during the track record period. The revenue derived by Company A from its business in the Sanctioned Country accounted for less than 1% of its total revenue during the track record period.
5. There was an issue as to whether the proposed listing of Company A’s shares could be regarded as having the effect of facilitating or financing a sanctionable activity under applicable laws and regulations. Implications on approving Company A’s listing application were raised with respect to the sanctions risk posed to Company A itself, its investors and shareholders (US and non-US investors alike) and persons who might, directly or indirectly, be involved in permitting the listing, trading and clearing of Company A’s shares including the Exchange and related group companies (the “**Relevant Persons**”). To minimise sanctions risk, Company A terminated all the Contracts in the Sanctioned Country before listing. As the sanctions laws may change from time to time, Company A stated in its prospectus that it might undertake new businesses in the Sanctioned Countries if they would not expose it to any sanctions risk to maximize the interests of Company A and its shareholders. To achieve this, Company A had implemented a number of measures to control its exposure to sanctions risk.
6. Company A undertook to the Exchange that it would under no circumstances use the IPO proceeds or any other funds raised through the Exchange (the “**Monies**”), directly or indirectly, to finance or facilitate any projects or businesses in the Sanctioned Countries, or pay any damages in case Company A was legally required to compensate the counterparty for terminating the Contracts. To ensure that this undertaking would be duly observed, Company A would deposit the Monies in a designated bank account separate from its other funds.
7. Company A also undertook to the Exchange that it would not perform any of its obligations under the Contracts under any circumstances. It was prepared to pay damages (which were capped under the terms of the Contracts) if and when ordered by the court to pay such damages resulting from a breach of the Contracts.
8. Furthermore, Company A implemented the following measures to control its exposure to sanctions risk, among other things:
  - a. the risk management committee (the “**RM Committee**”), headed by Company A’s chairman, would evaluate its sanctions risk, with the advice of external sanctions law legal counsel, to determine whether it should embark on new business opportunities with sanctioned targets;

- b. the RM Committee would ensure the IPO proceeds and any other funds raised through the Exchange would not be applied to the Contracts or any other business in the Sanctioned Countries;
  - c. regular training programs would be provided by external sanctions law legal counsel to senior management and relevant personnel to assist them in evaluating the potential sanctions risk in Company A's daily operations; and
  - d. the directors would disclose the status of Company A's future business, if any, in the Sanctioned Countries and its business intention relating to the Sanctioned Countries in the interim and annual reports, and make timely disclosure on the Exchange's website if it believed its business in the Sanctioned Countries would put investors and shareholders at risk.
9. Company A disclosed in its prospectus that according to the legal opinions from U.S., EU, United Nations ("UN") and Australian advisers, sanctions risk to Company A, its investors and shareholders, and the Relevant Persons, as a result of the listing and trading of Company A's shares on the Exchange, would be very low based on the undertaking and measures in paragraphs 5 to 8 above. Company A's prospectus also disclosed the PRC legal opinion that Company A had not breached any PRC laws regarding the business in the Sanctioned Country.

*Case 2*

10. Company B, incorporated and based in the PRC, entered into several engineering contracts with companies in the Sanctioned Countries. Revenue generated from these Sanctioned Countries accounted for 3% to 8% of Company B's total revenue during the track record period.
11. The same issues and implications as mentioned in 5 above were raised. Company B submitted that it:
- a. would carry out a restructuring to terminate or transfer to other parties all its ongoing projects and trading business in the Sanctioned Countries, and close all representative offices in the Sanctioned Countries before listing;
  - b. would not engage in any activity in the Sanctioned Countries after listing and undertook to the Exchange that it would not, directly or indirectly, use any proceeds from the Global Offering, or make such proceeds available to any individual or entity, to fund any activities or business in connection with sanctions related activities. To ensure that this undertaking would be duly observed, Company B would open and maintain separate bank accounts which would be designated for the sole use of deposit and deployment of the proceeds from listing;
  - c. had implemented the following measures, among other things, to control its

exposure to sanctions risk:-

- (i) Company B's export control office (with three members who had all received education in law and legal training) would be responsible for project approval, risk management for compliance with export control regulations and day-to-day communication with domestic and foreign government departments relating to export control. Should the export control office identify any actual or potential sanctions risk in existing or potential businesses, it would report to Company B's operation and risk management committee (headed by an ED), which would then seek advice from an appropriate legal counsel and formulate risk management measures. The operation and risk management committee would also monitor the use of the net proceeds of the Global Offering;
  - (ii) Company B had established an export control committee (headed by Company B's ED) which would be responsible for conducting compliance audit for Company B's export operations including its internal compliance program on export control;
  - (iii) the export control office would organize regular training to senior management and relevant personnel on sanctions and export control laws of the PRC and the US, with the help of external legal advisers, relevant experts or non-governmental organizations which have expertise on the relevant topics; and
  - (iv) Company B would disclose on the Exchange's and its own websites if there were any violation or potential violation of sanctions laws, and would disclose in the annual reports/ interim reports the efforts on monitoring its business exposure to sanctions risk.
12. In respect of payments relating to some previously completed projects in the Sanctioned Countries (the "**Deferred Payments**"), Company B submitted that sanctions risk lay with the potential clearing of U.S. dollar payments within the U.S.. As Company B and the project owners concerned had in the past settled and would continue to settle the Deferred Payments in currencies other than U.S. dollars or have them transferred on the books of Chinese financial institutions without actions within U.S. jurisdiction, there would be no U.S. sanctions risk to Company B.
13. Company B concluded that the above arrangements would substantially mitigate sanctions risk.

## **THE ISSUE RAISED FOR CONSIDERATION**

14. Whether Company A and Company B (the “**Applicants**”) were suitable for listing under Rule 8.04 given that they had conducted businesses in the Sanctioned Countries before and during the Track Record Period, and if so, how the issue could be addressed.

### **APPLICABLE LISTING RULES**

15. Listing Rule 2.13(2) provides that the issuer must not, among other things, omit material facts of an unfavourable nature or fail to accord them with appropriate significance in the listing document.
16. Rule 8.04 states that both the issuer and its business must, in the opinion of the Exchange, be suitable for listing.

### **THE ANALYSIS**

17. In general, the sanctions risk is applicable only to listing applicants who have business relationships in the Sanctioned Countries. Given the broad scope of sanctions imposed on the Sanctioned Countries, there was a concern that apart from the listing applicant and its directors and controlling shareholders, other parties who might be involved in an initial public offering or the listing application process, including investors, shareholders and the Relevant Persons, may be exposed to sanctions risk or be subject to actual or potential sanctions under the relevant sanctions laws and regulations, where they apply extraterritorially.
18. A listing applicant should obtain a confirmation from its legal advisers on whether it, its investors and shareholders, and the Relevant Persons would be subject to any sanctions risk. The applicant should also consider terminating the business relationship in the Sanctioned Countries that subject it to sanctions risk before listing where appropriate.
19. When determining whether the Applicants were suitable for listing, the Exchange took into account, among other things:
  - a. the Applicants’ projects/businesses in the Sanctioned Countries would be terminated or transferred before listing, and there would be no material adverse impact on the Applicants as a result of the termination or transfer of these projects/businesses;
  - b. the relevant advice given to or analysis made by listing applicants with respect to sanctions risk posed to the Applicants, its investors and shareholders, and the Relevant Persons was very low;
  - c. the Applicants had enhanced their internal control measures and provided undertakings to the Exchange to ring-fence their exposure to sanctions risk; and
  - d. the extent of the revenues derived from the Applicants’ projects/businesses in the Sanctioned Countries as a percentage of their total revenue during

the track record period may not necessarily be relevant if it is demonstrated that the Applicants would not be exposed to sanctions risk as a result of these projects/businesses. However, for projects/businesses that are subject to sanctions risk, the nature and size of these projects/businesses would be relevant in assessing the effectiveness of the measures that the Applicants have taken or will take to ring-fence/minimize sanctions risk, and the financial and operational impact of these measures on the Applicants' business operations and profitability.

20. Having considered the facts and circumstances of the above two cases, the Exchange considered that the Applicants' businesses in the Sanctioned Countries would not render them unsuitable for listing under Rule 8.04. The issue could be dealt with by disclosure under Rule 2.13(2). However, what constitutes sanctionable activities or contracts which might be subject to sanctions under applicable laws and regulations depends on the circumstances of each case. Care should be taken to analyse each case and address sanctions risk of each listing applicant in light of the facts and circumstances involved.
21. To enhance investors' understanding of the Applicants' exposure to sanctions risk, the Applicants have disclosed the following prominently in the listing document, including the "Summary", "Risk Factors" and "Business" sections:
  - a. details of the Applicants' projects/businesses in the Sanctioned Countries, including the nature and size of the contracts, revenue recognized during the track record period, status of the projects, background of counterparties, whether the Applicants and/or its counterparties were or would be deemed as sanctioned targets, whether the Applicants' projects/businesses may be deemed to be prohibited activities under the relevant sanctions laws and regulations, etc.;
  - b. the legal advisers' views, with basis, on whether there was any risk of sanctions violations (the legal opinions should cover sanctions in major countries or regions, including the U.S., EU, UN and Australia) as a result of the Applicants' projects/businesses in the Sanctioned Countries, and if so, the relevant impact and sanctions risk on the Applicants, their investors and shareholders, and the Relevant Persons;
  - c. the facts that the Applicants would terminate or transfer the existing projects/businesses in the Sanctioned Countries before listing, and details of financial and operational impact on the Applicants as a result of the termination/transfer;
  - d. details of legal consequences and maximum penalties (if any) for terminating or transferring to other parties these projects/businesses, particularly if the Applicants' act of terminating them or transferring them to other parties would be regarded as a breach of the terms of the relevant contracts;

- e. if the Applicants after listing intended to undertake any new businesses in the Sanctioned Countries which would not expose them to any sanctions risk, details of the Applicants' intention to embark on these new businesses, and the parameters or criteria that the Applicants would take into consideration when determining whether to embark on these business opportunities in the Sanctioned Countries;
- f. the Applicants' undertakings to the Exchange that (i) the IPO proceeds and any other funds raised through the Exchange would not be applied, directly or indirectly, to finance or facilitate any projects or businesses in the Sanctioned Countries or pay any damages for terminating or transferring the contracts in the Sanctioned Countries; (ii) the Applicants would not, directly or indirectly, perform any of the obligations under the relevant contracts under any circumstances, and details of the measures that the Applicants would put in place to ensure compliance with these undertakings; and (iii) the Applicants would disclose on the Exchange's and their own websites if they believed that the transactions they entered into in the Sanctioned Countries would put themselves or their investors and shareholders to risks of being sanctioned, and in the annual reports/interim reports their efforts on monitoring their business exposure to sanctions risk, the status of future business, if any, in the Sanctioned Countries and its business intention relating to the Sanctioned Countries;
- g. the risk of possible delisting of the Applicants' shares should the Applicants be in breach of its undertakings to the Exchange; and
- h. details of internal control measures to control and monitor the Applicants' exposure to sanctions risk, and the views of sponsor(s) and directors on the adequacy and effectiveness of these measures to protect the interests of the Applicants, their investors and shareholders, and the Relevant Persons.

## **THE DECISION**

- 22. Having considered the above facts and circumstances in totality, in particular that the Applicants have undertaken measures to minimize any risk of sanctions, including terminating or transferring the contracts in the Sanctioned Countries before listing, the Exchange determined that the Applicants' past business in the Sanctioned Countries would not render them unsuitable for listing, and the issue could be addressed by disclosure.
- 23. An applicant can use a different approach, which is not the same as that set out above, in addressing such issue but it should early consult the Exchange.