

## **HKEx LISTING DECISION**

**Cite as HKEx-LD34-3 (April 2003)**

**(Withdrawn in December 2013; Superseded by HKEx LD106-1)**

<b>Summary</b>	
Name of Party	Company A - a proposed applicant for new listing
Subject	No absolute control by Company A over its joint ventures - whether profits from joint ventures could be attributed to Company A to meet three-year trading record requirement
Listing Rules	Rule 8.05; Practice Note 3
Decision	Joint control sufficient

### **Summary of Facts**

Company A held several infrastructure projects, all of which were operated through co-operative joint ventures with PRC partners under the "build, operate, transfer" ("BOT") model.

The profits from the joint ventures would, if they could be treated as profits of Company A, enable it to meet the three-year trading record requirement. However, under the terms of the joint ventures, neither Company A nor its joint venture partners exercised absolute control over the activities of the joint ventures.

Company A enquired as to whether it was eligible for a separate listing on the Exchange, in particular whether it met the track record requirements.

### **Analysis**

Rule 8.05 requires a new applicant to have a three-year trading record "under substantially the same management". The Rule specifically provides that the specified minimum profit level must be met by the new applicant, or its group (excluding any associated companies and other entities whose results are recorded in the issuer's financial statements using the equity method of accounting). In this connection, the note to Practice Note 3 states that the applicant must satisfy the Exchange that the management of the new applicant, as head of the group, has exercised overall and effective control of the main businesses operated through its subsidiaries throughout the qualifying trading record period.

In its announcement in relation to infrastructure project companies of 31 January 1996, the Exchange set out certain guidelines as to when it would be prepared to waive the three-year trading record requirement in respect of newly-formed infrastructure companies. The announcement paved the way for the listing of infrastructure project companies operating under the BOT model. It recognised that the projects concerned might, in appropriate cases, be carried out through joint ventures even where the applicant company did not have absolute control over such projects. In the case of Company A, it was noted that, subject to recognition of the profits from its joint ventures

as being profits of members of its group under its control, no waiver of the three-year trading record requirement would be needed. The Exchange was of the view that, having established the principle that BOT joint ventures over which the applicant did not have absolute control might, in appropriate cases, be eligible for listing, it was of no relevance in Company A's case whether its projects were in the pre-construction or construction stage or whether they were already completed.

The Exchange was of the view that, as long as Company A could demonstrate that it jointly controlled the joint ventures (i.e. had the power of veto in certain key areas), the results from the business and operation under such joint control would be acceptable for the purpose of Rule 8.05.

The Exchange noted that, having accepted the listing of Company A on the basis of joint, rather than absolute, control, the trading results from the joint ventures should be treated as Company A's own trading results for the purpose of Rule 8.05 regardless of how they were accounted for in the applicant's own accounts.

The Exchange further noted that, depending on the facts and circumstances of each case, it might be necessary to impose additional requirements on a new applicant, which has been accepted for listing on the basis of joint control over its joint ventures, arising from the need to treat the joint venture companies as subsidiaries for certain purposes.

## **Decision**

Even though Company A did not exercise absolute control over its joint ventures, the profits from those joint ventures could, having regard to the specific facts and circumstances of this case, be attributed to Company A for the purpose of Rule 8.05.