

HKEx LISTING DECISION

Cite as HKEx-LD37-3 (Amended in January 2005, October 2019 (Rule amendments))

Summary	
Category	Listing Decisions Series 37-3 (LD37-3)
Name of Party	Company A – a listed company
Subject	<ol style="list-style-type: none">1. Submission of resumption proposal immediately prior to expiry of 3rd stage of delisting procedures2. Viability of resumption proposal
Listing Rules	Practice Note 17; Paragraph 38 of Listing Agreement [<i>now Rule 13.24</i>] and Rules 6.04; 6.10
Decision	<ol style="list-style-type: none">1. No extension of time for considering resumption proposal2. Exchange has broad discretion in determining whether resumption proposal viable

Summary of Facts

Company A was in the 3rd stage of the delisting procedures. Trading in its shares had been suspended for nearly 18 months and it was unable to meet the requirements of paragraph 38 of Listing Agreement [*now Rule 13.24*].

Company A submitted a resumption proposal just a few days before the scheduled expiry of the 3rd stage. The proposal would involve, among other things, a change in control and change of business for Company A.

Company A asked the Exchange to grant an extension of time for the proposal to be considered.

Analysis

Paragraph 38 of Listing Agreement [*now Rule 13.24*] requires that “[a]n issuer shall carry out, directly or indirectly, a sufficient level of operations or have tangible assets of sufficient value and/or intangible assets for which a sufficient potential value can be demonstrated to the Exchange to warrant the continued listing of the issuer’s securities”. Issuers that are unable to comply with paragraph 38 of Listing Agreement [*now Rule 13.24*] face suspension and resumption will only be permitted where they are able to demonstrate that they comply.

Rule 6.04 of the Listing Rules provides that “the continuation of a suspension for a prolonged period without the issuer taking adequate action to obtain restoration of listing may lead to the Exchange cancelling the listing.” Practice Note 17 of the Listing Rules clarifies the procedures the Exchange will adopt in allowing such issuers to present resumption proposals or, where no such proposals are received, the procedures that will be taken to cancel the listing of an issuer’s securities. Essentially, it provides a 4-stage procedure as follows:

- For the initial period of 6 months following the suspension, the Exchange will monitor developments.
- The 2nd stage involves the Exchange writing to the issuer drawing attention to its continued failure to meet paragraph 38 of Listing Agreement [*now Rule 13.24*] and advising that the issuer is required to submit resumption proposals within the next 6 months. At the end of the 6-month period, the Exchange will determine whether to proceed to the 3rd stage.
- Where the Exchange determines to proceed to the 3rd stage, it will publish an announcement naming the issuer, indicating that it does not have sufficient assets or operations for listing and imposing a deadline (generally 6 months) for the submission of resumption proposals.
- At the end of the 3rd stage, where no viable proposals have been received for resumption, the listing will be cancelled.

The Exchange requires sufficient time to vet a resumption proposal and determine whether it is viable. For this purpose, resumption proposals should be submitted at least 10 business days before the expiry of the 3rd stage. No extensions of the 3rd stage will be granted unless a proposal has been submitted before the 10-day deadline and the proposal is considered a viable one.

In determining whether a resumption proposal is viable, the Exchange will principally assess whether the issuer, upon implementation of the proposal, will be able to meet the requirements of paragraph 38 of Listing Agreement [*now Rule 13.24*]. The Exchange has a broad discretion in respect of fulfilment of these requirements, particularly where the resumption proposal involves a substantial change in the nature of the issuer’s business or assets.

Pursuant to Rule 6.10, “[w]here the Exchange considers that an issuer or its business is no longer suitable for listing it will publish an announcement naming the issuer and specifying the period within which the issuer must have remedied those matters which have rendered it unsuitable for listing Any proposals to remedy those matters will be treated as if they were an application for listing from a new applicant for all purposes”.

Decision

As Company A had missed the 10-day deadline, it would not in any event be granted an extension of time for its resumption proposal to be considered. Accordingly, it was to be immediately delisted.

It was noted that, even if Company A had met the 10-day deadline, the Exchange would have had a broad discretion in determining whether the resumption proposal was viable.

It was further noted that, even if Company A had met the 10-day deadline and its resumption proposal, after consideration by the Exchange, were ruled to be a viable one, the proposal would, based on the particular facts and circumstances of the case, have resulted in Company A being treated as a new listing applicant for all purposes.

Note: On 1 October 2019, Rule 13.24 was amended to require an issuer to carry out, directly or indirectly, a business with a sufficient level of operations and assets of sufficient value to support its operations to warrant the continued listing of the issuer’s securities. The Rule amendments would not change the analysis and conclusion in this case.