

~~HKE~~ HKEX LISTING DECISION

Cite as ~~HKE~~ HKEX-LD77-2 (October 2009) (Updated in August 2018)

Summary	
<b>Parties</b>	Company X – a PRC issuer whose H shares were listed on the Main Board  The Subsidiary – a subsidiary of Company X whose shares were listed on a PRC stock exchange
<b>Subject</b>	Whether the Exchange would exercise its power to direct resumption of trading in Company X’s H shares under Rule 6.07
<b>Listing Rules</b>	Main Board Listing Rules 6.07, 6.08
<b>Decision</b>	After being informed by the Exchange of its decision to direct resumption of trading in Company X’s H shares, Company X requested resumption of trading in its H shares and published an announcement

**SUMMARY OF FACTS**

1. At the request of Company X, trading of its H shares on the Exchange was suspended on Day 1 pending the publication of an announcement about a share reform proposal of the Subsidiary (the **Proposal**) which Company X considered to be price sensitive information.
2. Based on the information available from Company X:
  - Company X was then interested in approximately 70% of the Subsidiary’s issued share capital. Trading in the Subsidiary’s shares on the PRC stock exchange had also been suspended.
  - Company X’s board of directors had resolved to approve, in principle, the Proposal subject to Company X and the Subsidiary entering into a merger agreement (which would then determine the final terms and conditions of the Proposal).
  - The Proposal would involve the issue of A shares by Company X, at specific exchange ratios (the **Exchange Ratios**), to other shareholders of the Subsidiary as consideration for the cancellation of the Subsidiary’s shares held by them, with a cash alternative for those who did not wish to receive in

whole or in part the A Shares. The A Shares would be listed on a PRC stock exchange subject to the approval of relevant regulatory authorities. The Proposal's implementation would result in the merger of the Subsidiary with Company X.

3. Following the suspension of trading in its H shares, Company X published an announcement (the **Announcement**) about the Proposal. The Announcement contained the Proposal's salient features including the preliminary Exchange Ratios and cash alternative amounts and their effects.
4. The Announcement stated that trading in Company X's H shares would continue to be suspended pending the release of an announcement of the signing of the relevant merger agreement and the determination of the Exchange Ratios. Company X also made a submission to the Exchange requesting continued suspension of trading in its H shares because:
  - The Subsidiary had to comply with PRC law and regulations, including consulting its shareholders during a period of 10 days following the release of the announcement concerning the Proposal and trading in the Subsidiary's shares on the PRC stock exchange would remain suspended during this period. The Exchange Ratios and cash alternative amounts would be determined and fixed upon completion of the consultation. The Exchange Ratios and cash alternative amounts disclosed in the Announcement were preliminary proposals only and were subject to change.
  - Continued suspension of trading in the shares of the Subsidiary prior to completion of the consultation period complied with the relevant PRC laws and regulations in relation to share reforms. Company X was of the view that as the Proposal would involve the issue of A Shares by Company X, any fluctuation in the market price of its H shares prior to the resumption of trading of the Subsidiary's shares on the PRC stock exchange would affect the Exchange Ratios and cash alternative amounts, and in turn the chance of success of the Proposal.

## **ISSUE**

5. Whether the Exchange would direct resumption of trading of Company X's H shares under Rule 6.07.

## **APPLICABLE LISTING RULES OR PRINCIPLES**

6. Rule 6.01 provides that the Exchange may suspend dealings in any securities and impose such conditions as it thinks fit if it considers it necessary for the protection of investors or the maintenance of an orderly market.

7. Rule 6.05 provides that:

The duration of any suspension should be for the shortest possible period. It is the responsibility of the issuer of securities suspended from trading to ensure that trading in its securities resumes as soon as practicable following the publication of an appropriate announcement in accordance with Rule 2.07C or when the specific reasons given by the issuer in support of its request for a suspension of trading in its securities, pursuant to Rule 6.02, no longer apply.

*Note:(1) The Exchange is under an obligation to maintain a orderly and fair market for the trading of all Exchange listed securities and listed securities should be continuously traded save in exceptional circumstances*

*(2) The Exchange considers that the continuation of any suspension beyond such period as is absolutely necessary denies reasonable access to the market and prevents its proper functioning.*

8. Rule 6.06 provides that:

Where trading has been suspended the issuer of the relevant securities shall notify the Exchange of:

- (1) any change in circumstances affecting the reasons provided to the Exchange in support of the suspension pursuant to Rule 6.02; and
- (2) any additional reasons which the issuer wishes the Exchange to take into account in the Exchange's determination whether or not the suspension of dealing in the issuer's securities should be continued.

*Note: (1) It is the responsibility of the issuer of the suspended securities to provide the Exchange with all relevant information, which is within the knowledge of issuer, to enable the Exchange to take an informed decision whether or not the suspension of trading in that issuer's securities continues to be appropriate.*

9. Rule 6.07 provides that:

The Exchange shall have the power to direct the resumption of trading of suspended securities. In particular the Exchange may:

- (1) require a listed issuer to publish an announcement, in such terms and within such period as the Exchange shall in its discretion direct, notifying the resumption of trading in the issuer's suspended securities, following the publication of which the Exchange may direct resumption of trading; and/or
- (2) direct a resumption of trading following the publication of an announcement by the Exchange notifying the resumption of trading in the suspended securities.

10. Rule 6.08 provides that:

~~The power conferred upon the Exchange's power under by Rule 6.07 shall not be exercised without first giving the issuer of the suspended securities the opportunity of being heard in accordance with Rule 2B.07(6) be subject to the review process set out in rule 2B.06. At any hearing in connection with a direction pursuant to Rule 6.07, the burden shall be on the An issuer opposing the resumption of trading in its securities has the burden of satisfying the Exchange that a continued trading halt or suspension would be appropriate.~~

*Note :(1) The Exchange is under an obligation to maintain an orderly and fair market for the trading of all Exchange listed securities and listed securities should be continuously traded save in exceptional circumstances.*

*(2) The Exchange considers that the continuation of any trading halt or suspension beyond such period as is absolutely necessary denies reasonable access to the market and prevents its proper functioning.*

*(3) See Practice Note 11.*

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11. Paragraph 4 of Practice Note 11 of the Listing Rules provides that:

In the interests of a fair and continuous market, the Exchange requires a suspension period to be kept as short as is reasonably possible. This means that an issuer must publish an appropriate announcement as soon as possible after the suspension arises. Under normal circumstances, the Exchange will restore dealings as soon as possible following publication of an appropriate announcement, or after specific requirements have been met.

Failure by an issuer to make an announcement when required, may, if the Exchange feels it to be appropriate, result in the Exchange issuing its own announcement and a restoration of dealings without an announcement by the issuer.

The Exchange wishes to re-emphasize the importance of proper security within an issuer, and the responsibility of the directors to ensure a proper and timely disclosure of all information necessary to investors to establish a fair and realistic valuation of securities traded in the market.

## **ANALYSIS**

12. The Exchange is under an obligation to maintain an orderly and fair market for the trading of all listed securities, and listed securities should be continuously traded except in exceptional circumstances. Continuation of any suspension beyond such period as is absolutely necessary denies reasonable access to the market and prevents its proper functioning. The structure of the Listing Rules and the continuing obligation regime place the onus on issuers to avoid any suspension of trading.
13. Any request for suspension must be supported by specific reasons and the burden is on the issuer to satisfy the Exchange that a suspension would be appropriate. Where trading has been suspended, it is the issuer's responsibility to provide the Exchange with all relevant information to enable it to take an informed decision whether or not the suspension continues to be appropriate.
14. In this case, trading in Company X's H shares was suspended at its request pending an announcement relating to the Proposal which it considered to be price sensitive. In the facts and circumstances of the case, the reason for suspension no longer applied upon publication of the Announcement and suspension should be lifted as soon as possible after the Announcement was made.

15. The Exchange had considered Company X's request for a continued suspension of trading in its H shares, but was not satisfied that the additional reasons given by Company X warranted it. Suspension of trading in the H shares to facilitate discussions or determination of the Proposal's final terms was inappropriate as it denied investors reasonable access to the market and prevented its proper functioning.
16. The Exchange did not see any exceptional circumstances or compelling grounds for the continued suspension of trading of Company X's H shares after the publication of the Announcement.
17. The Exchange therefore informed Company X of its decision to direct resumption of trading. Company X was required to publish an announcement notifying the market of the resumption of trading, following the publication of which the Exchange would direct resumption. If Company X failed to make such announcement, the Exchange would direct the resumption of trading following the publication of an announcement by the Exchange.

#### **DECISION**

18. The Exchange informed Company X of its decision to direct resumption of trading of the suspended H shares of Company X. After being informed by the Exchange of its decision to direct resumption of trading in Company X's H shares, Company X requested resumption of trading in its H shares and published an announcement.