

HKEX LISTING DECISION

HKEX-LD97-2016 (published in March 2016) (updated in October 2019 (Rule amendments))

Party	Company A – a Main Board issuer Mr. B – a former controlling shareholder of Company A
Issue	Whether Company A would have sufficient operations or assets under Rule 13.24 after a major disposal
Listing Rules	Main Board Rule 13.24
Decision	Company A would not meet Rule 13.24 upon completion of the disposal

FACTS

1. Company A and its subsidiaries (**Group**) were engaged in the property construction and related business (**Construction Business**) since its listing on the Exchange. Since last year, the Group has diversified into property management business (**Property Business**) and trading of financial products (**Trading Business**).
2. Company A proposed to sell the Construction Business to Mr. B for cash (**Disposal**). Mr. B was a director of certain subsidiaries of Company A that carried on the Construction Business. He ceased to be Company A's controlling shareholder about three years ago when he sold his entire interest in Company A to the existing controlling shareholder.
3. Company A submitted that the Construction Business had been loss making in the last two years, and the Disposal would allow the Group to diversify into other businesses with growth potential. The sale proceed would be used by the Group as general working capital.
4. The Disposal would reduce the Group's revenue and assets by about 70%. It constituted a major transaction and was subject to shareholders' approval.
5. There was an issue whether Company A would have sufficient operations or assets under Rule 13.24 after the Disposal.
6. Company A was of the view that it would be able to meet Rule 13.24 upon completion of the Disposal because:

- a. The Group would continue to carry out the Property Business and the Trading Business (together, **Remaining Businesses**).
- b. The Property Business involved the provision of management services to a number of small-scale property developers in the PRC and would provide a stable source of income to the Group in the coming years. The Group recorded minimal revenue and a segment loss from the Property Business in the last financial year because it only acquired this business for a few months. Company A expected the Property Business to generate revenue of about HK\$20 million and a segment profit of over HK\$10 million in the current financial year.
- c. The Group commenced the Trading Business last year and recorded revenue and a segment profit of over HK\$500 million and HK\$1 million. This business was expected to double its revenue and segment profit in the current financial year.
- d. Company A also held a residential property overseas (**Property**) with a book value of about HK\$20 million. It planned to re-develop the Property for re-sale.

APPLICABLE LISTING RULES

7. Rule 13.24 states that-

“An 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.”

[\(Rule 13.24 was amended on 1 October 2019. See Note 1 below.\)](#)

8. Listing Decisions (LD35-2012 and LD88-2015) describe the purpose behind Rule 13.24 and provide guidance on the application of the Rule:

“Rule 13.24 is intended to maintain overall market quality. Issuers that fail to meet this Rule are "blue sky companies" where public investors have no information about their business plans and prospects. This leaves much room for the market to speculate on their possible acquisitions in the future. To allow these issuers' shares to continue to trade and list may have an adverse impact on investor confidence.

...

... if an issuer takes a corporate action, the Exchange is more likely to suspend the issuer's trading where the issuer fails to satisfy the

Exchange that it would have a viable and sustainable business to justify its continued listing after completion of the corporate action. In this case, shareholders would have the opportunity to decide whether to allow the corporate action to proceed, knowing that the Exchange would exercise the suspension power should the corporate action proceed. In that way shareholders' interests are safeguarded through the shareholders' approval process."

ANALYSIS

9. Rule 13.24 requires issuers to maintain a sufficient level of operations or assets of sufficient value to warrant the continued listing of their securities. Without quantitative criteria for sufficiency, this Rule is a qualitative test and is assessed case by case.
10. The Exchange considered that Company A would not have sufficient operations or assets to meet Rule 13.24 upon completion of the Disposal because:
 - a. Company A proposed to dispose of the Construction Business, which was its main business since its listing on the Exchange and accounted for 70% of Company A's revenue and assets. The Disposal would substantially reduce Company A's scale of operations and assets.
 - b. After the Disposal, the Group would be left with the Remaining Businesses that were acquired or established for less than one year. These businesses recorded a loss or minimal profit in the last financial year. Based on Company A's projections in the current year, the Property Business would record revenue of HK\$20 million and a segment profit of HK\$10 million only. This result had not yet taken into account Company A's corporate expenses. The segment profits from the Trading Business would also be minimal as the Group was only trading products on an indent basis with a very low profit margin. The Exchange considered that the scale of the Remaining Businesses was insufficient to justify a listing.
 - c. The Exchange also considered that the Group would not have sufficient assets to justify a listing after the Disposal:-
 - The assets of the Remaining Businesses were mainly cash and trade receivables. These assets were insufficient to meet Rule 13.24 because, as mentioned in (b) above, the operations of these assets could not generate sufficient revenue and profits to justify a listing.

- The Property was the only other asset of the Group and it had a value of only HK\$20 million. While Company A submitted its intention to re-develop the property, there was no detail about the re-development plan. Company A did not demonstrate how it could substantially improve the Group's operations and financial performance after the Disposal.

CONCLUSION

11. The Exchange considered that Company A would not comply with Rule 13.24 should it proceed with the Disposal.

Notes:

1. The amended Rule 13.24 states that:

“(1) An issuer shall 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.

Note: Rule 13.24(1) is a qualitative test. The Exchange may consider an issuer to have failed to comply with the rule in situations where, for example, the Exchange considers that the issuer does not have a business that has substance and/or that is viable and sustainable.

The Exchange will make an assessment based on specific facts and circumstances of individual issuers. For example, when assessing whether a money lending business of a particular issuer is a business of substance, the Exchange may consider, among other factors, the business model, operating scale and history, source of funding, size and diversity of customer base and loan portfolio and internal control systems of the money lending business of that particular issuer, taking into account the norms and standards of the relevant industry.

Where the Exchange raises concerns with an issuer about its compliance with the rule, the onus is on the issuer to provide information to address the Exchange’s concerns and demonstrate to the satisfaction of the Exchange its compliance with the rule.

(2) ...”

2. Rule 13.24(1) makes it clear that an issuer must carry out a business with a sufficient level of operations to warrant its continued listing. The issuer must also have sufficient assets to support its operations.

In this case, the Exchange's analysis and conclusion would remain unchanged, but an assessment of "sufficiency of assets to justify a listing" would not be required.