

HKEX LISTING DECISION

HKEX-LD98-2016 (published in March 2016) (updated in October 2019 (Rule amendments))

Party	Company A – a Main Board issuer Subsidiary B – a major subsidiary of Company A Company C – a third party proposing to acquire Subsidiary B from Company A
Issue	Whether Company A would have sufficient operations or assets under Rule 13.24 after the 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, through Subsidiary B, was principally engaged in event operation and entertainment business.
2. Company A proposed to (i) sell a 25% interest in Subsidiary B to Company C (**Disposal**); and (ii) grant a call option (**Call Option**) to Company C over the remaining 75% interest in Subsidiary B upon completion of the Disposal. The Call Option would be exercisable 24 months after the Disposal.
3. Company A intended to diversify into other businesses in the meantime.
4. The Disposal would be a discloseable transaction for Company A. It together with the grant of the Call Option would be a very substantial disposal with the revenue and asset ratios of nearly 100%.
5. There was an issue whether Company A would have sufficient operations or assets under Rule 13.24 upon completion of the proposal (i.e. the Disposal and the grant of the Call Option).
6. Company A was of the view that it would be able to meet Rule 13.24 upon completion of the proposal because:
 - a. Until and unless Company C exercised the Call Option, Company A would continue to control Subsidiary B and therefore its business operations and assets.

- b. The Call Option was not exercisable until 24 months after the Disposal. By the time it was exercised, Company A would have been expanded into other businesses.

APPLICABLE LISTING RULES

7. Rule 6.01 states that-

“Listing is always granted subject to the conditions where the Exchange considers it necessary for the protection of the investor or the maintenance of an orderly market, it may at any time direct a trading halt or suspend dealings in any securities or cancel the listing of any securities in such circumstances and subject to such conditions as it thinks fit, whether requested by the issuer or not. The Exchange may also do so where:-

(1) ...;

(2) ...;

(3) the Exchange considers that the issuer does not have a sufficient level of operations or sufficient assets to warrant the continued listing of the issuer’s securities (see rule 13.24);or

(4) the Exchange considers that the issuer or its business is no longer suitable for listing.”

8. 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.”

[\(Rules 6.01\(3\) and 13.24 were amended on 1 October 2019. See Note 1 below.\)](#)

ANALYSIS

9. Company A’s business operations and assets were primarily carried out and held through Subsidiary B.
10. It was Company A’s view that it would continue to have sufficient operations and assets to justify its listing before the exercise of the Call Option. The Exchange disagreed because:

- The exercise of the Call Option was entirely at Company C’s discretion. By granting the Call Option, Company A was prepared to lose its ownership and control over Subsidiary B. As Company A had no other material business operations or assets, it would no longer be suitable for listing upon completion of the proposal. Whether and when Company C would exercise the Call Option was irrelevant.
- Company A stated its intention to carry out other businesses, but it could not demonstrate that it would have a new business suitable for listing upon completion of the proposal.

CONCLUSION

11. The Exchange considered that upon completion of the proposal, Company A would fail to comply with Rule 13.24 and would become unsuitable for listing.

Notes:

1. The amended Rule 6.01 states that:

“Listing is always granted subject to the conditions where the Exchange considers it necessary for the protection of the investor or the maintenance of an orderly market, it may at any time direct a trading halt or suspend dealings in any securities or cancel the listing of any securities in such circumstances and subject to such conditions as it thinks fit, whether requested by the issuer or not. The Exchange may also do so where:-

...:

- (3) the Exchange considers that the issuer does not carry on a business as required under rule 13.24; or

...”

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.

The Rule amendments would not change the analysis and conclusion in this case.