

HKE_x LISTING DECISION
HKE_x-LD66-2013 (published in May 2013)

Summary	
Party	Company A – a Main Board listed issuer The Vendor – an independent third party
Issue	Whether the Exchange would waive the requirement for Company A’s circular to include a 3-year profit and loss statement for the property to be acquired from the Vendor
Listing Rules	Main Board Rule 14.67(6)(b)(i)
Decision	The Exchange waived the requirement

FACTS

1. Company A proposed to acquire from the Vendor a commercial building in Hong Kong (the **Property**) for investment purposes. The acquisition would be a major transaction for Company A.
2. Before the proposed transaction, the Vendor had leased the units in the Property to third parties for rental income. Under Rule 14.67(6)(b)(i), as the Property was a revenue-generating asset with an identifiable income stream, Company A’s circular for the acquisition would need to include a profit and loss statement for the Property’s identifiable net income stream for the 3 preceding financial years, and the statement would need to be reviewed by the auditors or reporting accountants.
3. Company A applied for a waiver from Rule 14.67(6)(b)(i) because:
 - (a) Despite Company A’s request, the Vendor refused to provide the underlying books and records of the Property to Company A, except the subsisting tenancy agreements for various units in the Property (the **Tenancy Agreements**) and some information on the expenses related to the Property. Company A was unable to properly compile the profit and loss statement for the Property’s net income stream in the last 3 years given the limited information available from the Vendor.
 - (b) Company A arrived at the consideration for the acquisition after arm’s length negotiation with the Vendor taking into account the market value of the Property and other nearby properties. The circular would include a valuation report on the Property prepared according to the Rule requirements.
 - (c) It would make alternative disclosures in the circular to enable shareholders to assess the transaction:

- (i) a summary of the Tenancy Agreements including the monthly rental income;
 - (ii) the gross rental income for the Property for the period from the commencement of the earliest Tenancy Agreement to the latest financial year end date; and
 - (iii) an estimate of the monthly expenses for the Property payable by the landlord based on the terms of the Tenancy Agreement and the experience of Company A's management in the property industry.
- (d) Its directors were of the view that omission of a profit and loss statement for the Property's net income stream in the past would not render the circular materially incomplete or misleading or deceptive.

APPLICABLE LISTING RULES

4. Rule 14.67 requires that:

“... a circular issued in relation to an acquisition constituting a major transaction must contain:

...

- (6)(b) on an acquisition of any revenue-generating assets (other than a business or company) with an identifiable income stream or assets valuation:
 - (i) a profit and loss statement and valuation (where available) for the 3 preceding financial years (or less, where the asset has been held by the vendor for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants to ensure that such information has been properly compiled and derived from the underlying books and records. The financial information on which the profit and loss statement is based must relate to a financial period ended 6 months or less before the circular is issued. The financial information on the assets being acquired as contained in the circular must be prepared using accounting policies which should be materially consistent with those of the listed issuer; ...”

ANALYSIS

5. Under the Listing Rules an issuer must ensure that the information in its circular for a notifiable transaction is accurate and complete in all material respects and not be misleading or deceptive. The circular must contain all information necessary to allow shareholders to make a properly informed decision on how to vote on a transaction.
6. In this case, Company A had no access to the accounting records and supporting documents to properly compile a profit and loss statement for the Property's net income stream as required. The Exchange considered that Company A had taken reasonable steps to provide alternative information to its shareholders for assessing the impact of the transaction on Company A, and the waiver would not result in an omission of material information in the circular.

CONCLUSION

7. The Exchange granted the waiver to Company A.