

HKEx REJECTION LETTER
Cite as HKEx-RL22-07 (July 2007)

Summary	
Listing Rule	Listing Rule 2.04
Reason for rejection and the subsequent disposal of the case on review	<p>The Listing Division rejected the listing application of the Company for the reason that the Company has not complied with the Listing Committee’s requirement of increasing the shareholders’ approval threshold for delisting and privatization through scheme of arrangement or capitalization to above the current minimum requirements.</p> <p>The Listing Committee decided to overturn the decision of the Listing Division, subject to certain specified conditions.</p>
Contents	<p><u>LETTER 1:</u> Extracts of the decision letter of the Head of Listing, The Stock Exchange of Hong Kong Limited</p> <p><u>LETTER 2:</u> Extracts of the decision letter of the Acting Secretary to the Listing Committee on hearing of the Company’s application to review the decision of the Listing Division</p>

LETTER 1

[Date]

[Name and Address of Sponsor]

Dear Sirs

Re: Application for new listing of a Main Board listing applicant
 (the “Company” together with its subsidiary, the “Group”)

We refer to your application Form A1 dated [**day*month*year*] made on behalf of the Company (the “Application”) and various submissions (the “Submissions”) in response to the letter of [**day*month*year*] issued by the Secretary to the Listing Committee (the “LC Letter”). Capitalised terms used herein shall have the same meanings as defined in the second hearing proof of the Company’s prospectus dated [**day*month*year*] (the “Prospectus”), unless the context otherwise stated.

Based on the information provided, the Listing Division is of the view that the Company has not complied with the requirement set out by the Listing Committee in the LC Letter. Therefore, the Listing Division has decided to reject the Application of the Company. The analysis and conclusion of the Listing Division have been set out below.

Relevant Facts

Requirements of the Listing Committee

The Application was considered by the Listing Committee on [**day*month*year*] (the “Hearing Meeting”). The Listing Committee had raised a number of concerns in relation to, among other things, the relationship between the Company and its controlling shareholder, Mr. X, and the businesses of Mr. X that competed with the Company in certain aspects.

The Listing Committee noted that [*two commercial projects*] of the Group had been held by another two companies controlled by Mr. X and his associates, [*Listco A*] and [*Listco B*]. [*Listco A*] and [*Listco B*] had both been listed on the Exchange and then privatized by Mr. X at a substantial discount in [*two years prior to the beginning of the Track Record Period and the third year of the Track Record Period*] respectively (the “Privatizations”). The then independent financial advisers were of the view at that time that the terms of the Privatizations were not fair and reasonable to investors. In the Hearing Meeting, the Listing Committee considered this to be a corporate governance issue and was not persuaded that full disclosure and enhanced corporate governance measures proposed to be adopted by the Company would be sufficient to address the issues arising from the Privatizations.

The Listing Committee set out in the LC Letter, among other comments and requirements, the requirement, subject to the compliance with the relevant rules and regulations (e.g. the Code on Takeovers and Mergers), of increasing the approval threshold for delisting and privatization through scheme of arrangement or capitalization to above the current minimum requirements of the Company’s articles of association (the “Articles”).

The Sponsor’s submissions in response

The Sponsor had made the Submissions in response to the Listing Committee’s concerns and requirements.

The Sponsor had provided a legal opinion issued by the Company’s Cayman Islands legal adviser opining that the approval thresholds set out in the relevant sections of the Cayman Islands Companies Law are statutory thresholds and, accordingly such sections would override any alternative provisions in respect of such matters contained in the Company’s Articles. The Sponsor had also provided another four legal opinions from counsels in Hong Kong, Bermuda, the United Kingdom and Australia to address the Listing Committee’s concerns. According to the conclusion of these legal opinions, it is more likely than not that an attempt to amend the Articles to increase the statutory

thresholds for delisting and privatization by way of scheme of arrangement would be held by the courts of each of the five jurisdictions to be invalid.

It is also stated in the Submission that the Sponsor had noted from the letter from the Securities and Futures Commission (the “SFC”) dated [**day*month*year*], a copy of which was sent to the Exchange by the SFC, that “*the Executive Director of the Securities and Futures Commission does not object to the Company including in its Articles provisions which increase the shareholder’s approval threshold for delisting and privatization through scheme of arrangement or capitalization*”. However, the Company was of the view that it is not in the interest of the Company to amend provisions in the Articles at this point to increase the shareholders’ approval threshold for delisting and privatization through scheme of arrangement or capitalization. As such, it had decided not to amend provisions in the Articles to increase the relevant shareholders’ approval threshold. Instead, Mr. X had agreed to undertake not to privatize the Company for ten years from the date of listing.

Issue

Whether the Listing Committee’s requirement set out in the LC Letter has been complied with.

Applicable Listing Rule

Listing Rule 2.04 provides that “... *the Exchange Listing Rules are not exhaustive and that the Exchange may impose additional requirements or make listing subject to special conditions whenever it considers it appropriate.*”

Our Analysis

The Listing Division considers that the requirement to vary the Company’s Articles set out in the LC Letter was duly established by the Listing Committee pursuant to Listing Rule 2.04.

In the letter from the SFC to the Sponsor of [**day*month*year*], the SFC stated its view that “[i]n the current matter the Executive does not see why, in principle, provisions which increase the shareholders’ approval threshold for delisting and privatization should necessarily conflict with the provisions of the Code”. It is also stated in the Submission that the Sponsor had noted that the Executive Director of the SFC did not object to the Company including in its Articles such provisions. Based on this information, the Listing Division considers it to be clear that under relevant requirements in Hong Kong it is possible for the Company to include in its Articles the relevant provisions to increase the shareholders’ approval threshold for delisting and privatization.

It is the established practice of the Exchange to use the standards of shareholder protection provided in Hong Kong as minimum standards that all listed companies are expected to meet. Given the standards duly established by the Listing Committee are

permissible in Hong Kong the Listing Division expects the Company to use reasonable endeavours to comply with the Listing Committee's requirement. While the Listing Division notes the legal opinion of the Company's Cayman Islands legal adviser, it considers it possible for the Company to re-domicile to Hong Kong and incorporate the relevant provision in its Articles in order to be in full compliance with the Listing Committee's requirement. The Listing Division, however, notes that the Company has not taken such steps to comply with the Listing Committee's requirement of increasing the approval threshold for delisting and privatization.

Our Conclusion

Based on the information contained in the Submissions and in light of the facts and circumstances of the case and our analysis set forth above, the Listing Division notes that the Company has not complied with the Listing Committee's requirement of increasing the shareholders' approval threshold for delisting and privatization through scheme of arrangement or capitalization to above the current minimum requirements. The Listing Division therefore has decided to reject the Application.

Way Forward

Pursuant to Listing Rule 2B.05(1), the Company has the right to have this decision reviewed by the Listing Committee.

[Portion of Letter Purposely Omitted]

Yours faithfully,
For and on behalf of
The Stock Exchange of Hong Kong Limited

[Signed]

Head of Listing

LETTER 2

[Date]

[Name and Address of Sponsor]

Dear Sirs,

Re: Review Hearing of the Listing Committee
(the “Review Hearing”) regarding the Company
Date of the Review Hearing: [* day* month * year]

On [*day*month*year], the Listing Committee of The Stock Exchange of Hong Kong Limited conducted a review hearing (the “Review Hearing”) to consider an application from the Company for a review of the decision of the Listing Division of [*day*month*year] and set out in the [LETTER 1] dated [* day*month* year] (the “First Decision”).

The Review Hearing was conducted before the Listing Committee comprising [names of members purposely omitted] (the “Committee”).

Note: Terms and expressions used and defined in the written submission of the Listing Division shall have the same meanings when used herein unless otherwise defined.

Decision

The Committee considered all the submissions (both written and oral) made by the Company and the Listing Division. The Committee decided to overturn the First Decision and allow the Company to proceed with its listing application in accordance with the Listing Rules, subject to: (a) the conditions laid out in the LC Letter, with the exception of Point [*] that required the Company to amend its Articles to increase the approval threshold for delisting and privatization through scheme of arrangement or capitalization to above the current minimum requirements, and (b) that prominent and detailed disclosure (as described below) should be made in the Company’s prospectus to the satisfaction of the Listing Division.

The Committee believed that requiring the Company to increase the approval threshold for delisting and privatization through scheme of arrangement of capitalization to above the minimum requirements of the Articles would likely be ineffectual or unenforceable. Instead, the Committee took the view that prospective public investors should be made fully aware of the risks associated with the controlling shareholder’s previous privatization of two predecessor companies, [Listco A] and [Listco B]. Given the possibility that both Privatizations were against the best interests of public shareholders, the Committee considered that such an outcome may pose a real risk for

the Company's public shareholders as well. As such, the Committee required disclosure above and beyond what was being proposed in the Prospectus.

Towards that end, the Company should provide, in a prominent area in the Summary section of the Prospectus, a detailed description of the history of the Privatizations of the predecessor companies, incorporating relevant information similar to that contained in [page*] (under Risk Factors "We may be privatized by our controlling shareholder(s) in the future") and [page*] (under History, Development and Group Structure) but also including the full set of facts [regarding the Privatizations].

In addition, the Committee wishes to note that the proposal by the Company, as presented in the written submission to the Committee dated [*day*month*year] (i.e. a date after the First Decision but before the Review Hearing), that the controlling shareholder, Mr. X, undertook not to initiate any proposal for privatization for a period of ten years does not address the Committee's concerns in this area - it is not the period of time that is the issue, but the manner in which any privatization scheme is conducted that is important, namely that it should be fair and transparent to the public shareholders. A blanket moratorium on privatizations may benefit neither the Company nor its public shareholders. For the sake of clarity, the Committee does accept the additional measures proposed by the Company [including (i) a provision in the Articles to the effect that the board would not approve a scheme meeting of shareholders to consider privatization by way of a scheme of arrangement unless the independent board committee has endorsed it as fair and reasonable; and (ii) Mr. X would undertake not to requisition any meeting of shareholders to vote on a privatization proposal which the independent board committee has not endorsed as fair and reasonable].

The Committee wishes to emphasise that this decision is specific to this particular instance and shall not serve to create a precedent for any other companies.

For the avoidance of doubt, should the Company decide to proceed with its application for new listing, such application will be treated strictly on its merits at the material time, and no representation is given, whether express or implied, as to the acceptability of such application if pursued. The new listing application of the Company in its entirety will be subject to the final approval of the Listing Committee.

Yours faithfully
For and on behalf of
The Stock Exchange of Hong Kong Limited

[Signed]

Acting Secretary to the Listing Committee