

Listing Decisions

Updated: 30/09/2009

Listing Decisions Series 2-1 - Rule 14.04 - Determining the size of a transaction for the purpose of Chapter 14 (May 1999)(Updated in September 2009 and withdrawn in January 2024)

[This listing decision is withdrawn.]

Summary	
Name of Party	Company A - a listed company
Subject	Determining the size of a transaction for the purpose of Chapter 14
Listing Rule	Rule 14.04 ¹
Decision	Total investment costs (including underlying liabilities and commitment) need to be taken into consideration for the purpose of calculating the "4 tests"

Summary of Facts

Company A entered into a sino-foreign equity joint venture agreement with two independent third parties (i.e. joint venture partners) to form an equity joint venture company. The joint venture company was to be formed for the purpose of re-developing a residential site situated on the PRC mainland and it would take approximately 3 years to complete and would commence as soon as registered capital had been contributed by the relevant joint venture parties.

According to the agreement, the joint venture partners agreed to form the joint venture company with a total investment of RMB 330 million, of which a total of RMB 110 million would be the registered capital. The registered capital of RMB 110 million would be funded as to 50% by the two joint venture partners and as to 50% by Company A. The registered capital would be contributed by each respective joint venture party within four months from the date of obtaining the business licence of the joint venture company. It was stated in the agreement that any excess funding requirement beyond the initial capital contribution up to the total investment amount of RMB 330 million would be funded from proceeds from the property development sale or by way of bank loans or by shareholders' loans.

Company A submitted that it was only obliged to contribute its respective share of the registered capital contribution to the joint venture company. Thus, Company A was of the view that its initial equity capital contribution of 50% of RMB 110 million should be used in the calculation of the "4 tests".

Analysis

The total underlying liability and commitment of Company A in relation to the particular joint venture arrangement should be used to determine the size of the transaction. Given that there was a total investment amount specified in the joint venture agreement and shareholders' loans were specified as one of the means of funding this total investment amount, it was apparent that Company A did have a commitment to further funding of the joint venture company should circumstances necessitate.

Decision

The total investment amount of RMB 330 million should be used as the basis for calculating the "4 tests".

Note:

1. This rule was amended in March 2004. The relevant rule after the rule amendment is Rule 14.15(2) which requires an issuer to refer to its total commitment when calculating the consideration ratio for establishment of a joint venture entity. (Added in September 2009)