

HKEx LISTING DECISION

Cite as HKEx-LD53-1 [April 2006] **(Withdrawn in January 2024)**

[This listing decision is withdrawn.]

Summary	
Name of Party	Company A - a Main Board listed company.
Subject	Whether the details published in an announcement concerning the appointment of an executive director had complied with all the requirements of Listing Rule 13.51(2) [all references to Listing Rule 13.51(2) in this Listing Decision are made to its form prior to 1 March 2006].
Listing Rule	Listing Rule 13.51(2)
Decision	The Exchange determined that Company A had failed to comply with all the requirements of Listing Rule 13.51(2) and must publish a further announcement to provide the details that had been omitted from the previous announcement.

SUMMARY OF FACTS

1. Company A published an announcement in February 2005 on the appointment of an executive director to its board (the "Appointee") in the newspapers.
2. The announcement provided the following details regarding the Appointee:
 - a. the age;
 - b. years of experience in the relevant fields;
 - c. that she was not connected to any members of the board, senior management or substantial or controlling shareholders;
 - d. that she had no interests in the shares of Company A within the meaning of Part XV of the Securities and Futures Ordinance;
 - e. that no service contract had been entered with Company A;
 - f. the appointment had not been made on a fixed term basis and she would be subject to retirement by rotation and re-election in accordance with the Articles of Association; and
 - g. emolument would be paid based on her experience and qualifications.
3. However, several other details concerning the Appointee as required by Listing Rule 13.51(2) to be stated in the announcement had been omitted.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether the details published in an announcement concerning the Appointee's appointment had complied with all the requirements of Listing Rule 13.51(2).

APPLICABLE LISTING RULE OR PRINCIPLE

5. The Note to Listing Rule 13.51(2) states as follows:

Note: Where a new director or supervisor is appointed or the resignation or redesignation of a director or supervisor takes effect, the Exchange must be informed immediately thereafter. The issuer must simultaneously make arrangements to ensure that an announcement of the appointment, resignation or re-designation of the director or supervisor is published in the newspapers as soon as practicable. The issuer shall include the following details of any newly appointed or re-designated director or supervisor in the announcement of his appointment or re-designation:—

- (a) the full name (which should normally be the same as that stated in the declaration and undertaking of the director or supervisor in the form set out in Form B, H or I in Appendix 5) and age;
- (b) positions held with the issuer and other members of the issuer's group;
- (c) previous experience including other directorships held in listed public companies in the last three years and other major appointments and qualifications;
- (d) length or proposed length of service with the issuer;
- (e) relationships with any directors, senior management or substantial or controlling shareholders of the issuer, or an appropriate negative statement;
- (f) his interests in shares of the issuer within the meaning of Part XV of the Securities and Futures Ordinance, or an appropriate negative statement;
- (g) amount of the director's or supervisor's emoluments specified in his service contract and the basis of determining the director's or supervisor's emoluments (including any bonus payments, whether fixed or discretionary in nature); and

- (h) any other matters that need to be brought to the attention of holders of securities of the issuer.

The issuer shall also disclose in the announcement of resignation of a director or supervisor the reasons given by the director or supervisor for his resignation (including, but not limited to, any information relating to his disagreement with the board and a statement as to whether or not there are any matters that need to be brought to the attention of holders of securities of the issuer). The Exchange must be informed of any important change in the holding of an executive office.

ANALYSIS

6. Company A had failed to state all the details in the announcement as required under the Note to Listing Rule 13.51(2). In particular, Company A had omitted the following items of information:
 - a. the Appointee's position (if any) held with Company A or other members of Company A's group;
 - b. the Appointee's previous experience including directorship held (if any) in public companies in the last three years and any other major appointment and qualification; and
 - c. the exact amount of the Appointee's emoluments and the basis for determining the appointee's emoluments (including any bonus payments, whether fixed or discretionary in nature).
7. Although, the Appointee had not entered into a service contract with Company A, the Exchange considered that the regulatory purpose of disclosure in the Note to Listing Rule 13.51(2) required that full particulars of a director's emoluments should be disclosed irrespective of whether a service contract had been entered into and how much of these emoluments were covered by a service contract.¹
8. Therefore, the Exchange determined that Company A must publish a further announcement to provide the details that had been omitted in the earlier announcement.

¹ Footnote: Subsequently, the Exchange amended Listing Rule 13.51(2) in order to convey this intent in clearer terms. Effective on 1 March 2006, the amended Listing Rule 13.51(2)(g) requires that details regarding the amount of a director's emoluments and the basis of determining the director's emoluments (including any bonus payments, whether fixed or discretionary in nature, irrespective of whether the director has or does not have a service contract) and how much of these emoluments are covered by a service contract must be disclosed in the announcement of a director's appointment or re-designation.

DECISION

9. The Exchange determined that Company A had failed to comply with all the requirements of Listing Rule 13.51(2) and must publish a further announcement to provide the details that had been omitted from the previous announcement.