

HKE_x LISTING DECISION
HKE_x-LD94-1 (June 2010) (Updated in April 2014)

Summary	
Parties	Company A – a Main Board listing applicant and its subsidiaries
Subject	Whether to grant a Rule 4.10 waiver to banking companies incorporated in Mainland China
Listing Rules	Rule 4.10 and Rule 2.13(2)
Decision	<p>The Exchange granted Company A a waiver from the disclosure requirements for banking companies under Rule 4.10.</p> <p>Nonetheless, Company A would continue to be required to comply with the bank disclosure requirement under Rule 4.10 to the extent such information was available to ensure that disclosure was made on a consistent basis by all banks listed on the Exchange. The ‘best practice’ requirements of Rule 4.10 and the general disclosure requirements under Rule 2.13(2) would continue to apply.</p>

SUMMARY OF FACTS

1. Company A was a bank incorporated in Mainland China seeking a primary listing in Hong Kong. Its accountants’ report was drawn up in conformity with International Financial Reporting Standards (**IFRS**).
2. Company A was principally supervised by the China Banking Regulatory Commission (the **CBRC**) and the People’s Bank of China (the **PBOC**).
3. Company A sought a waiver from Rule 4.10.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether to grant a Rule 4.10 waiver to banking companies incorporated in Mainland China?

APPLICABLE LISTING RULES OR PRINCIPLE

5. Rule 2.13(2) provides that:

The information contained in the document must be accurate and complete in all material respects and not be misleading or deceptive.

6. Rule 4.10 provides that:

The information to be disclosed in respect of rules 4.04 to 4.09 must be in accordance with best practice which is at least that required to be disclosed in respect of those specific matters in the accounts of a company under the Companies Ordinance¹ and HKFRS or IFRS and, in the case of banking companies, the Financial Disclosure by Locally Incorporated Authorized Institutions issued by the Hong Kong Monetary Authority (the “HKMA”).

THE ANALYSIS

Applicability of Rule 4.10

7. The purpose of Rule 4.10 is to ensure that listing applicants’ financial disclosures adhere to best practice under the HKMA standards. Since 1 January 2007, the Banking (Disclosure) Rules (Chapter 155M of the Laws of Hong Kong) have replaced the Financial Disclosure by Locally Incorporated Authorized Institutions as the applicable disclosure requirements. Since then, the Exchange has applied Rule 4.10 to reflect the replacement accordingly. This is to ensure that the disclosure standards for banks in Hong Kong are honoured by all banking applicants and reflected in their applications, prospectuses and other materials filed with the Exchange.
8. Rule 4.10 waivers have only been granted sparingly and, when granted, they were narrowly tailored to the needs of the applicant in question. However, where an overseas banking applicant is primarily regulated by a foreign regulator with functions similar to the HKMA and the Exchange is satisfied that the foreign regulator provides adequate supervision to the applicant, it may grant relief from Rule 4.10.
9. In considering whether to waive the requirements for banks in Rule 4.10, the Exchange normally takes into account:
- a. whether the omitted information is relevant and material to investors;

¹ Retitled as the Companies Ordinance (Cap. 622) with effect from March 2014 (*Updated in April 2014*).

- b. whether the applicant is required to maintain the information by the foreign regulator, such as the CBRC and PBOC; and
- c. whether the information is available to the applicant and, if not, what efforts are required to obtain the information.

Standards of Disclosure under Rules 2.13(2) and 4.10

- 10. When considering the ‘best practice’ financial disclosure standard for Mainland banking applicants, the Exchange will refer to all relevant facts and circumstances, including a review of the applicable accounting standards, the rules and regulations of other jurisdictions, and international and Hong Kong market practices.
- 11. The Exchange will not normally review the reasonableness of the Mainland regulatory requirements. However, where the Exchange considers that the disclosure practices both in Hong Kong and other jurisdictions indicate that greater details should be provided on particular requirements of the PBOC/ CBRC or the applicant’s interpretation of the applicable regulations, the Exchange may request additional disclosure.
- 12. The Exchange has identified four areas of financial disclosure to be material for compliance with Rule 2.13 and Rule 4.10:
 - a. capital adequacy;
 - b. loan quality (including non-performing loans, restructured loans and overdue loans);
 - c. loan provisioning; and
 - d. guarantees, contingencies and other commitments.
- 13. The Exchange will normally require Mainland bank applicants to demonstrate that:
 - a. the judgment underlying the presentation of a report made in conformity with the adopted accounting standards is reasonable and appropriate in light of established international market practice. Particular attention should be paid to areas where there may be a significant gap between international market practices and Mainland practices; and
 - b. the inclusion of side by side accounting and PRC regulatory disclosure is not materially misleading. Reasons for material differences and

similarities between the accounting and PRC regulatory disclosures should be disclosed in the prospectus.

14. When presenting statistical data in prospectuses, the Exchange will require applicants to raise investors' awareness:
 - a. where Mainland bank applicants and their reporting accountants and accountants in other jurisdictions may have substantially different interpretations on the same accounting standard; and
 - b. where amendments to or interpretations of the applicable accounting standards which relate to Mainland banks are under active consideration by accounting professionals.

Company A's Waiver Application

15. Company A requested relief from the bank disclosure requirements under Rule 4.10, principally based on the following reasons:
 - a. certain bank disclosure requirements under Rule 4.10 were based on fundamental concepts which did not exist under IFRS. It would be unduly burdensome to require Company A to include those disclosures in its accountants' report;
 - b. by complying with the PBOC/ CBRC standards and the IFRS standards, Company A's accountants' report would substantially meet the bank disclosure requirements under Rule 4.10. For those areas where Company A was not able to comply with bank disclosure requirements under Rule 4.10, it would be unnecessary, impracticable and unduly burdensome for Company A to provide the relevant disclosures; and
 - c. Company A, being a Mainland bank with no or with few business activities in Hong Kong, was not obliged by the HKMA to fulfil the bank disclosure requirements under Rule 4.10.
16. Company A provided the following information in its waiver application:
 - a. areas where there were major differences between the bank disclosure requirements under Rule 4.10 and IFRS, and Company A's comments and proposed alternative disclosure in respect of such differences;
 - b. areas where there were major differences between the bank disclosure requirements under Rule 4.10 and CBRC/ PBOC regulatory disclosure requirements, and Company A's comments and proposed alternative disclosure in respect of such differences; and

- c. information that was currently unavailable in compliance with the bank disclosure requirements under Rule 4.10; how Company A justified the departure and when and how Company A could commit to complying with such requirements in the future.

17. The Exchange specifically reviewed the disclosure in the proposed Company A's prospectus:-

Disclosure area	Details
(i) Capital adequacy	Company A's capital adequacy ratio was calculated according to CBRC regulations. The relevant regulations and how it calculated the ratio had been disclosed.
(ii) Loan quality	<p><u>Non-performing loans</u></p> <p>Company A classified loans using five-category loan classification system promulgated by the PBOC. The relevant quantitative and qualitative loan classification criteria had been disclosed.</p> <p><u>Restructured and overdue loans</u></p> <p>Company A's definition and treatment of restructured and overdue loans had been disclosed.</p>
(iii) Loan loss reserves	<p>There was no difference between the methodology and amount of allowance for impairment losses prepared under IFRS and PRC GAAP.</p> <p>The difference between the impairment loss calculated according to IFRS and PBOC guidelines was not material.</p> <p>Company A's objective criteria used in assessing the loan impairment had been disclosed.</p>
(iv) Guarantees, contingencies and other commitments	Details of the Company A's off-balance sheet items including guarantees, contingencies and other commitments, together with the credit-risk weighted amount, had been disclosed.

18. The Exchange noted that Company A had established a representative office in Hong Kong approved by the HKMA under the Banking Ordinance (Cap. 155), which meant that Company A was considered by the HKMA to be adequately supervised by the relevant banking supervisory authorities of its home jurisdiction (i.e. the CBRC and the PBOC) (see sections 46(1) and (3) of the Banking Ordinance).

19. The Exchange also noted that Company A had confirmed that by complying with the IFRS, the CBRC/ PBOC regulatory disclosure requirements and the bank

disclosure requirements under Rule 4.10 to the extent possible, and subjecting itself to the proposed alternative disclosure as mentioned in paragraph 16 above, the financial information disclosed in the prospectus was sufficient for potential investors to make a fully informed investment decision.

20. Having regard Company A's submissions and its commitment that the bank disclosure requirements under Rule 4.10 would be complied with in the next financial year to the extent possible, the Exchange considered the waiver application favourably.

THE DECISION

21. The Exchange granted Company A a waiver from strict compliance with the disclosure requirements for banking companies under Rule 4.10.
22. Nonetheless, Company A would continue to be required to comply with the bank disclosure requirements under Rule 4.10 to the extent such information was available to ensure that disclosure was made on a consistent basis by all banks listed on the Exchange. The 'best practice' requirements of Rule 4.10 and the general disclosure requirements under Rule 2.13(2) would continue to apply.