HKEx LISTING DECISION
HKEx-LD93-3 (Published in June 2010) (Updated in July 2014)

Parties	Company A - a PRC issuer listed on the Main Board The Purchaser – a company listed on a PRC exchange The Parent – the ultimate controlling shareholder of each of Company A and the Purchaser The Target – a subsidiary of Company A proposed to be sold to the Purchaser
Issue	Whether the Exchange would waive the profit forecast requirements under the Rules regarding a valuation report on the Target in Company A's announcement and circular
Listing Rules	Main Board Rules 14.62, 14.66(2), 14A.68(7), 14A.70(13), Paragraph 29(2) of Appendix 1B
Decision	The Exchange waived the requirements

FACTS

1. Company A proposed to sell the Target to the Purchaser in return for new A shares to be issued by the Purchaser (the **Transaction**). This was a major and connected transaction for Company A.

2. Since the Transaction involved a transfer of state-owned assets, the PRC regulations required the Purchaser to engage an appraiser to prepare a valuation report on the Target to determine the consideration. The valuation was partly based on the projections of the Target's earnings. A subsidiary of the Parent (but not Company A) would indemnify the Purchaser for any shortfall in the Target's profits compared to the forecasted profits in the valuation report.

3. Company A would disclose the Target's valuation prepared by the appraiser and the basis for determining the consideration in its announcement and circular for the Transaction.

4. As the valuation was based on projections of the Target's earnings, Company A would need to comply with the disclosure and reporting requirements on profit forecasts under the Rules. It requested the Exchange to waive these requirements because:
    a. It was the Purchaser, and not Company A, which was obliged to prepare the valuation report.

b. Company A was not involved in preparing the report, except for providing the Purchaser with historical financial information. The accounting principles and policies used by the appraiser differed from those used by Company A.

c. While the consideration was based on the valuation report under PRC regulations, Company A's board had considered other factors when assessing the Transaction, including the historical earnings and dividend distributions of the Target and Company A.

d. The Target would cease to be part of Company A after the Transaction so the profit forecast was irrelevant to its future financial position.

e. Therefore, it would be unduly burdensome for Company A to comply with the requirements.

APPLICABLE LISTING RULES

5. Rule 14.61 defines a "profit forecast" to mean:

> … any forecast of profits or losses, however worded, and includes any statement which explicitly or implicitly quantifies the anticipated level of future profits or losses, either expressly or by reference to previous profits or losses or any other benchmark or point of reference. It also includes any profit estimate, being any estimate of profits or losses for a financial period which has expired but for which the results have not yet been published. Any valuation of assets (other than land and buildings) or businesses acquired by a listed issuer based on discounted cash flows or projections of profits, earnings or cash flows will also be regarded as a profit forecast.

6. Rule 14.62 states that if an announcement contains a profit forecast for the issuer or a company which is or is proposed to become its subsidiary, the issuer must provide the Exchange with the following no later than the publication of the announcement:

> (1) details of the principal assumptions, including commercial assumptions, upon which the forecast is based;
>
> (2) a letter from the listed issuer's auditors or reporting accountants confirming that they have reviewed the accounting policies and calculations for the forecast and containing their report; and

(3) a report from the listed issuer's financial advisers confirming that they are satisfied that the forecast has been made by the directors after due and careful enquiry. If no financial advisers have been appointed in connection with the transaction, the listed issuer must provide a letter from the board of directors confirming they have made the forecast after due and careful enquiry.

7. Rules 14.66(2) and 14A.70(13) state that a circular relating to a major transaction/ connected transaction must contain information in paragraph 29(2) of Appendix 1B if there is a profit forecast.

8. Rule 14A.68(7) states that a connected transaction announcement must contain the information set out in rule 14.62 if the announcement contains a profit forecast of the listed issuer's group or a company which is, or will become, the listed issuer's subsidiary.

9. Paragraph 29(2) of Appendix 1B states that

> … Where a profit forecast appears in any listing document, it must be clear, unambiguous and presented in an explicit manner and the principal assumptions, including commercial assumptions, upon which it is based, must be stated. The accounting policies and calculations for the forecast must be examined and reported on by the reporting accountants or auditors, as appropriate, and their report must be set out. The financial adviser must report in addition that they have satisfied themselves that the forecast has been stated by the directors after due and careful enquiry, and such report must be set out. …

ANALYSIS

10. The reason for preparing the Target's valuation was to comply with the PRC regulations. Company A was not involved in preparing the valuation report. This was different from the circumstances contemplated under Rules 14.62 and 14A.68(7) which assume that the issuer's directors made the forecast. Company A had practical difficulty in complying with the requirements.

CONCLUSION

11. The Exchange waived the requirements.