

HKEx LISTING ENFORCEMENT GUIDANCE LETTER
Cite as HKEx-LEGL04-08 (November 2008)

Summary	
Listing Rule	Main Board Listing Rule 14.36
Subject	Guidance on compliance with the announcement requirement in the event of delay in the completion of an intended notifiable transaction
Contents	Extracts of a No Further Action (Guidance) letter from an authorised signatory of the Stock Exchange of Hong Kong

[*date]

[Name and Address of Listed Issuer]

Dear Sirs,

[Name of Listed Issuer] (the “Company”)

Rule 14.36 of the Listing Rules

No Further Action: Guidance

We refer to earlier correspondence concerning the captioned matter resting with the Company’s letter dated [*day *month *year].

Materials Reviewed

The Listing Division (the “**Division**”) refers to the following materials which have been reviewed:-

1. the Company’s announcement dated [*day *month *year] (the “**Announcement**”); and
2. the Company’s submissions dated [*day *month *year].

Thank you for the information and materials provided which enables the Division to have a clearer understanding of the matter.

Facts

1. On [*day *month *year], the Company and [*name of company] (collectively the “**Purchasers**”) entered into sale and purchase agreements with [*name of company] and [*name of company] (collectively the “**Vendors**”) in respect of an intended acquisition of an aggregate of a [*%] interest in [*name of target company] (the “**Intended Acquisition**”). The sale and purchase agreements referred to above were supplemented by agreements dated [*day *month *year]. The agreements signed on [*day *month] and [*day *month *year] are collectively referred to in this letter as the “**Sale and Purchase Agreements**”.

2. The Intended Acquisition constituted a major transaction of the Company for the purposes of the Listing Rules. Pursuant to the terms of the Sale and Purchase Agreements, the long-stop date for the Intended Acquisition (the “**Completion Date**”) was [**day *month *year (initial intended date for completion)*].
3. On [**day *month *year*], supplemental agreements were entered into between the Purchasers and the Vendors to extend the Completion Date for [**number*] days to [**month *year (first extended date for completion)*] (the “**First Supplemental Agreements**”). This information was disclosed by the Company in its announcement dated [**day *month *year*].
4. On [**day *month *year*], the Purchasers and the Vendors entered into further supplemental agreements to further extend the Completion Date to [**day *month *year (second extended date for completion)*] (the “**Second Supplemental Agreements**”). No disclosure to shareholders and the market was made at that time.
5. The Company published the Announcement on [**day *month *year*] (about [**number*] months later) to disclose the signing of the Second Supplemental Agreements and the further delay in the completion of the Intended Acquisition (the “**Completion**”).
6. The Intended Acquisition did not however proceed to completion and the Sale and Purchase Agreements lapsed on [**day *month *year*]. Disclosure of this event was made by the Company on [**day *month *year*].
7. The submissions received from the Company indicate that no independent or professional advice was sought by the Company at the material time regarding the Company’s obligations under the Listing Rules in connection with the signing of the Second Supplemental Agreements or the further delay in Completion.

Comment

1. Rule 14.36 of the Listing Rules provides that “*Where a transaction previously announced pursuant to this Chapter is terminated or there is any material variation to its terms or material delay in the completion of the agreement, the listed issuer must as soon as practicable announce this fact by means of an announcement.....*”.
2. The Company has denied any breach of Rule 14.36 of the Listing Rules in connection with the timing of the disclosure of the further extension of the Completion Date.
3. Having considered the submissions and materials available, the Division is of the preliminary view that there may have been a breach of Rule 14.36 in respect of the Company’s failure to timely disclose the signing of the Second Supplemental Agreements and the further extension of the Completion Date for [**number*] months (from [**month *year (first extended date for completion)*] to [**month *year (second extended date for completion)*] as provided for under the First Supplemental Agreements and the Second Supplemental Agreements respectively).
4. We note that the Company submitted that it had been reassured by [**name of target company*] that the only outstanding condition [*portion of letter purposely omitted*] would be fulfilled shortly after the signing of the Second Supplemental Agreements. The Company might have genuinely believed that the outstanding condition to the

Sale and Purchase Agreements could be fulfilled shortly after [**month *year (date of signing of the Second Supplemental Agreements)*] and that there would not be any material delay in Completion at the time. For the avoidance of doubt, the Division does not challenge this assertion for the purposes of this letter and no conclusion has been drawn by the Division as to the Company's assertions on this point.

5. However, the Division is of the view that the fact that Completion had still not taken place for over [**number*] months after the signing of the Second Supplemental Agreements rendered the further delay a material one giving rise to the obligation to make an announcement under Rule 14.36 as soon as practicable after [**day *month *year (date of signing of the Second Supplemental Agreements)*]. This is particularly so when the market was already aware of the delay in Completion following the signing of the First Supplemental Agreements, which was disclosed on [**day *month *year*]. Given the public information already then in the market, there was in our view a legitimate expectation on the part of shareholders and the market that Completion would take place the latest by [**month *year (first extended date for completion)*]. The further extension of the Completion Date meant that the expectation was no longer realistic, and the Company was therefore under an obligation to update shareholders and the investing public with the new information regarding a possible further delay in the Completion.

However, after considering all of the material available as described above and taking into account the following factors, the Division does not intend to take any further action on this matter:-

- (a) the clean compliance history of the Company since its securities were first listed on the Exchange in [**month *year*];
- (b) the conduct referred to in this letter appears to be a one-off incident. The Division notes that there were [**number*] further extensions of the Completion Date following the signing of the Second Supplemental Agreements in [**month *year (date of signing of the Second Supplemental Agreements)*] and the relevant subsequent supplemental agreements were promptly disclosed by the Company in compliance with Rule 14.36 on each occasion by announcements dated [**day *month *year*], [**day *month *year*] and [**day *month *year*]; and
- (c) remedial measures taken by the Company since these events, such as the training organised for the senior management of the Company in [**month *year*] and the circulation of a compliance manual in [**month *year*].

However, the Division is of the view that the following guidance may be useful to improve the Company's corporate governance in the future.

Guidance

1. In this case, the obligation to comply with the announcement requirement under Rule 14.36 arises as soon as there is any material variation of the terms or material delay in the completion of a transaction which is required to be announced pursuant to Chapter 14. Any delay in making the necessary announcement would not serve the purpose of Rule 14.36 which is to safeguard the timely disclosure by listed issuers to shareholders and investors, which in turn contributes towards an open, transparent and orderly market.

2. We accept that an assessment of materiality will depend on the facts of a given case. However where issues of materiality arise, in connection with the application of Rule 14.36 and other rules, the Division considers management should and would urge management to seek independent and professional advice to ensure that the Company's Listing Rule obligations are complied with in a timely manner. This is particularly so in the circumstances of this case, when the Company's shareholders and the investing public were already in possession of information relating to the delay in Completion which was disclosed in the Company's announcement dated [**day *month *year*].
3. In the absence of any sound and cogent reasons to the contrary, the best practice for issuers should be to make further and timely disclosure of information to shareholders and the market.
4. The Division would stress the need for the Company to have in place an effective internal control system to embed its disclosure and other compliance obligations under the Listing Rules and to provide appropriate guidance for senior management as to how such obligations could properly be fulfilled. We note that the Company has taken steps in this direction with the preparation and circulation of a written compliance manual in [**month *year*].
5. Directors of the Company should be aware of their responsibilities towards the Company's shareholders and the market in procuring the Company's due and timely compliance with its Listing Rule obligations. In this regard, the Division would urge the Directors of the Company to undergo training on compliance and corporate governance matters, so as to increase and refresh their knowledge on these matters. Again the Division notes the action taken by the Directors on this point in [**month *year*]. However, compliance and corporate governance best practices are being constantly revised to reflect changing market expectations, and in consequence it is vital that management engage in a regular programme of continuing education as to their duties and responsibilities.

Invitation

We invite the board of Directors of the Company to comment on this letter if they wish. Your submission, together with this letter, will be placed on the Company's compliance file. No further action will be taken in respect of this matter which is now considered closed.

Publicity

We wish to inform you that at an appropriate time, the Division may, in the discharge of its regulatory function, publicise the facts and guidance given in this letter. This would be done on an anonymous and redacted basis, to explain our views on the issues raised by this case for the benefit of the market as a whole. If such disclosure is made it may be published on our website and in our quarterly publication "Exchange".

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

[Signed]
[Authorised Signatory]