

HKE_x LISTING DECISION

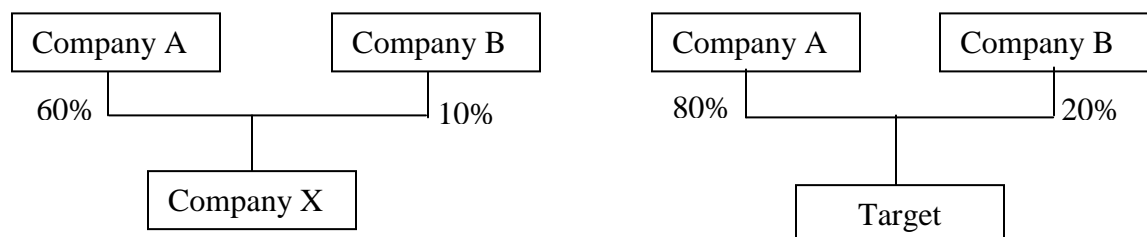
Cite as HKE_x-LD81-1 (**Published in** December 2009) (**Updated in July 2014**)

Summary	
Parties	Company X – a Main Board listed company Company A – a private company holding a 60% interest in Company X and an 80% interest in the Target Company B – a private company holding a 10% interest in Company X and a 20% interest in the Target The Target – a private company in which Company X proposed to acquire an 80% interest from Company A
Subject	Whether Company B had a material interest in Company X's proposed acquisition of Company A's 80% interest in the Target
Listing Rules	Main Board Listing Rules 2.15, 14A. <u>3654</u>
Decision	Company B did not have a material interest in the acquisition

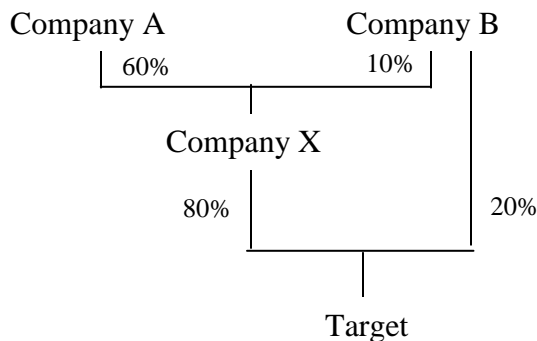
SUMMARY OF FACTS

1. Company X proposed to acquire Company A's 80% interest in the Target to facilitate its business expansion in overseas markets. The Target was engaged in a similar line of business to Company X. It had been Company A's intention to inject its interest in the Target into Company X to increase the group's business synergies and overall competitiveness.
2. The simplified shareholding structures before and after the acquisition are set out below:

Before the acquisition



After the acquisition



3. As Company A was the controlling shareholder of Company X, the acquisition was a connected transaction for Company X and was subject to approval by its independent shareholders. Company A would abstain from voting on the resolution to approve the acquisition.
4. Company B was a substantial shareholder of Company X. Company X submitted that it should not be required to abstain from voting because:
 - a. Company B was not a party to the acquisition.
 - b. Company B was not an associate of Company A. Company A and Company B were independent of each other.
 - c. Company X was a subsidiary of Company A. The Target's shareholder agreement between Company A and Company B already provided that Company A's transfer of its interest in the Target to Company X was permitted and no consent from Company B was required.
 - d. Company B's rights and obligations as a shareholder of the Target remained unchanged before and after the acquisition.
 - e. Despite Company B's interest in both the Target and Company X, any benefit that might accrue to Company X as a result of the acquisition would only be relevant to Company B as a shareholder of Company X. Company B's position did not differ from the position of Company X's other shareholders.

ISSUE

5. Whether Company B had a material interest in Company X's proposed acquisition of Company A's 80% interest in the Target.

APPLICABLE LISTING RULES OR PRINCIPLES

6. Rule 2.15 provides that:

Where a transaction or arrangement of an issuer is subject to shareholders' approval under the provisions of the Exchange Listing Rules, any shareholder that has a material interest in the transaction or arrangement shall abstain from voting on the resolution(s) approving the transaction or arrangement at the general meeting.

Note: For the avoidance of doubt, any provision in the Exchange Listing Rules requiring any other person to abstain from voting on a transaction or arrangement of an issuer which is subject to shareholders' approval shall be construed as being in addition to the requirement set out in rule 2.15.

7. Rule 2.16 provides that:

For the purpose of determining whether a shareholder has a material interest, relevant factors include:

- (1) whether the shareholder is a party to the transaction or arrangement or a close associate ~~(as defined in rule 1.01)~~ of such a party; and
- (2) whether the transaction or arrangement confers upon the shareholder or his close associate a benefit (whether economic or otherwise) not available to the other shareholders of the issuer.

There is no benchmark for materiality of an interest nor may it necessarily be defined in monetary or financial terms. The materiality of an interest is to be determined on a case by case basis, having regard to all the particular circumstances of the transaction concerned.

Note: The references to "close associate" shall be changed to "associate" where the transaction or arrangement is a connected transaction under Chapter 14A.

8. Rule ~~14A.3614A.54~~ provides that:

~~The Exchange will require any connected person with a material interest in a proposed transaction, and any shareholder with a material interest in such transaction and its associate(s), to abstain from voting at the relevant general meeting on the relevant resolution(s). The connected transaction must be conditional on shareholders' approval at a general meeting held by the listed issuer. Any shareholder who has a material interest in the transaction must abstain from voting on the resolution.~~

ANALYSIS

9. In this case, the acquisition was a connected transaction for Company X because of the connectedness of Company A but not Company B. It involved Company A transferring an interest in the Target to its subsidiary (i.e. Company X), and Company B's interest in the Target would remain unchanged. The Exchange accepted that as a substantial shareholder of Company X, Company B's interest in the acquisition aligned with the interest of Company X's minority shareholders.

DECISION

10. Company B did not have a material interest in Company X's proposed acquisition of Company A's 80% interest in the Target.