

**HKE<sub>x</sub> LISTING DECISION**  
**HKE<sub>x</sub>-LD45-2013 (Published in January 2013)**

<b>Party</b>	Company A – a Main Board issuer  The Target – a company listed on the Australian Stock Exchange
<b>Issue</b>	Whether the Exchange would grant a waiver such that Company A could defer the publication of the competent person’s report ( <b>CPR</b> ), valuation report ( <b>VR</b> ) and other disclosures as required under Rules 18.09(2), (3) and (4)
<b>Listing Rules</b>	Main Board Rules 18.09(2), 18.09(3) and 18.09(4)
<b>Decision</b>	The Exchange agreed to grant the waiver

**FACTS**

1. The Target was an iron ore development company and its principal assets were some iron mines in Australia.
2. Company A proposed to make a conditional offer to acquire all interests in the Target not already held by it (the **Offer**). The Offer price was determined with reference to the Target’s share price. The Offer was conditional on Company A acquiring at least a 50.1% interest in the Target.
3. The Offer was a major transaction for Company A. Company A submitted that it would defer complying with the financial and other disclosure requirements in accordance with Rule 14.67A as it could meet the conditions set out in the Rule:
  - (i) the Offer was not invited by the Target’s board. Company A did not have access to the Target’s non-public information and records necessary for complying the disclosure requirements under the Rules;
  - (ii) ASX is a regulated, regularly operating and open stock exchange recognized by the Exchange; and
  - (iii) the Target would become a subsidiary of Company A.
4. According to Rule 14.67A, Company A would publish an initial circular to seek shareholders’ approval for the Offer. It would publish a supplemental circular to include the outstanding information within 45 days of the earlier of it being able to (i) gain access to the Target’s books and records; and (ii) exercise control over the Target.

5. As the Offer was a Relevant Notifiable Transaction under Chapter 18, Company A's initial circular for the Offer should also contain a CPR and a VR on the Target's natural resources and other disclosures required under Rules 18.09(2), (3) and (4). For the same reasons set out in paragraph 3, Company A would have practical difficulty in obtaining the Target's non-public information for making the disclosures in the initial circular.
6. Company A therefore sought a waiver from Rules 18.09(2), (3) and (4) so that it could defer the disclosure of information to the supplemental circular for the Offer. It submitted that it would summarise and reproduce the public statements and reports on the Target's mineral assets and other material information published by the Target in the initial circular to enable shareholders to make an informed voting decision on the Offer.

## **APPLICABLE LISTING RULES**

7. Rule 18.05(2) to (6) provides that "*a Mineral Company must include in its listing document:—*  
  
...
  - (2) *a statement that no material changes have occurred since the effective date of the Competent Person's Report. Where there are material changes, these must be prominently disclosed;*
  - (3) *the nature and extent of its prospecting, exploration, exploitation, land use and mining rights and a description of the properties to which those rights attach, ... . Details of material rights to be obtained must also be disclosed;*
  - (4) *a statement of any legal claims or proceedings that may have an influence on its rights to explore or mine;*
  - (5) *disclosure of specific risks and general risks. Companies should have regard to Guidance Note 7 on suggested risk analysis; and*
  - (6) *if relevant and material to the Mineral Company's business operations, information on the following:—*
    - (a) *project risks arising from environmental, social, and health and safety issues;*
    - (b) *any non-governmental organisation impact on sustainability of mineral and/or exploration projects;*
    - (c) *compliance with host country laws, regulations and permits, and payments made to host country governments in respect of tax,*

*royalties and other significant payments on a country by country basis;*

- (d) sufficient funding plans for remediation, rehabilitation and, closure and removal of facilities in a sustainable manner;*
- (e) environmental liabilities of its projects or properties;*
- (f) its historical experience of dealing with host country laws and practices, including management of differences between national and local practice;*
- (g) its historical experience of dealing with concerns of local governments and communities on the sites of its mines, exploration properties, and relevant management arrangements; and*
- (h) any claims that may exist over the land on which exploration or mining activity is being carried out, including any ancestral or native claims.”*

8. Rule 18.09 requires that “A mineral company proposing to acquire or dispose of assets which are solely or mainly Mineral or Petroleum Assets as part of a Relevant Notifiable Transaction must:-

- (1) comply with Chapter 14 and Chapter 14A, if relevant;*
- (2) produce a Competent Person’s Report, which must form part of the relevant circular, on the Resources and/or Reserves being acquired or dispose of as part of the Relevant Notifiable Transaction;*
- ...*
- (3) in the case of a major (or above) acquisition, produce a Valuation Report, which must form part of the relevant circular, on the Mineral or Petroleum Assets being acquired as part of the Relevant Notifiable Transaction; and...*
- (4) comply with the requirements of rules 18.05(2) to 18.05(6) in respect of the assets being acquired.”*

9. Rule 18.10 states that “a listed issuer proposing to acquire assets which are solely or mainly Mineral or Petroleum Assets as part of a Relevant Notifiable Transaction must comply with rule 18.09”.

## **ANALYSIS**

10. Under the Listing Rules, an issuer must ensure that the information in its circular for a notifiable transaction is accurate and complete in all material respects and not misleading or deceptive. The circular must contain all information necessary to allow the issuer's shareholders to make a properly informed decision on how to vote on the transaction.
11. Rule 14.67A addresses issuers' practical difficulties in disclosing non-public financial and other information of the target companies in hostile takeover situations. The Exchange considers that the same principle may also apply to the disclosure requirements under Chapter 18 based on the circumstances of each case.
12. Here the Exchange agreed to grant the waiver because:
  - The Offer could meet the conditions set out in Rule 14.67A.
  - The Target was listed on an overseas stock exchange, and had been providing regular updates on its mineral assets. The disclosures were subject to supervision by regulatory authorities. Company A would include material public information of the Target in the initial circular to enable shareholders to make an informed voting decision.

## **CONCLUSION**

13. Company A was granted a waiver to defer the CPR, the VR and other disclosures as required under Rules 18.09(2), (3) and (4) to the supplement circular.