

HKEx LISTING DECISION

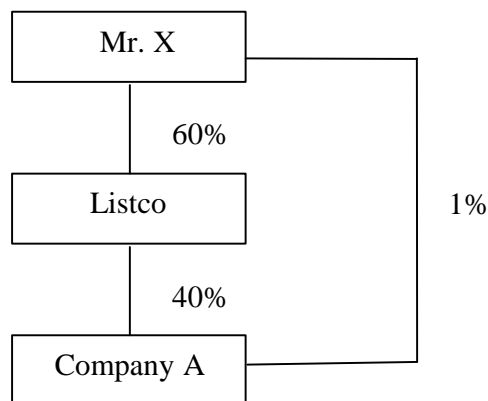
Cite as HKEx-LD100-1 (July 2010) (Withdrawn in July 2014)

[See Main Board Rule 14A.14]

Parties	Listco – a Main Board issuer Mr. X – a director and controlling shareholder of Listco Company A – a company in which both Listco and Mr. X were shareholders
Issue	Whether Company A is a connected person of Listco
Listing Rules	Main Board Rules 1.01 and 14A.11(4)
Decision	The exemption under Note 1 to Rule 14A.11(4) applies. Company A is not regarded as a connected person of Listco.

FACTS

1. Mr. X holds a 60% interest in Listco.
2. Company A is 40% owned by Listco and 1% by Mr. X. The remaining interests in Company A are held by independent third parties.
3. The simplified shareholding structure of Listco and Company A is set out below:



4. Mr. X is a connected person of Listco. He controls the exercise of 41% of the voting power of Company A at general meetings through his direct and indirect interests in Company A. Company A is an associate of Mr. X.

5. Mr. X's interest in Company A is mainly held through Listco. Listco enquired whether Company A may be exempt from being treated as a connected person under Note 1 to Rule 14A.11(4).

APPLICABLE LISTING RULES

6. Rule 1.01 defines the term "associate" as follows:
 - (a) in relation to an individual means:
...
 - (v) any company in the equity capital which he,..., [is] directly or indirectly interested as to exercise or control the exercise of 30% ... or more of the voting power at general meetings, or to control the composition of a majority of the board of directors...
7. Rule 14A.11 states that for the purposes of Chapter 14A, the definition of "connected person" includes:
 - (1) a director, chief executive or substantial shareholder of the listed issuer;
...
 - (4) any associate of a person referred to in rules 14A.11(1)... . In this Chapter, an "associate" of a person referred to in rules 14A.11(1) ... includes the following additional persons: -
...
8. Note 1 to Rule 14A.11 states that:

A company which is an "associate" of a person referred to in rules 14A.11(1), (2) or (3) only because that person has an indirect interest in the company through its shareholding in the listed issuer is not a connected person.

ANALYSIS

9. The connected transaction rules seek to safeguard against connected persons taking advantage of their positions to the detriment of the issuer's minority shareholders.

10. Note 1 to Rule 14A.11(4) exempts entities which are owned by the listed issuer from being treated as the issuer's connected person, if their association with the connected person is only through the connected person's interest in the listed issuer. This is because the connected person's interest in the entity is the same as other shareholders of the issuer. There is no concern about the connected person taking advantage of his position to obtain a benefit through this entity to the detriment of other shareholders of the issuer.
11. However, if the connected person has a direct interest in the entity in addition to the indirect interest held through the issuer, the Exchange will consider the materiality of his direct interest to determine whether the exemption under Note 1 to Rule 14A.11(4) will apply.
12. In this case, the Exchange accepted that Mr. X's direct interest in Company A of 1% was not material compared to the 40% interest held through Listco. It was unlikely that Mr. X would influence the terms of a transaction between Listco and Company A to benefit Company A simply because of his direct interest in Company A. The exemption under Note 1 to Rule 14A.11(4) applies.

CONCLUSION

13. Company A is not regarded as a connected person of Listco.