

HKE_x LISTING DECISION

Cite as HKE_x-LD76-3 (**Published in** October 2009) (**Updated in July 2014**)

Summary	
Name of Party	Company X – a Main Board listed company Mr A – a director of Company X Company A – a company wholly owned by Mr A Mr B – a director of Company X, and the son of Mr A Company B – a company wholly owned by Mr B
Subject	Whether Company X would be required to aggregate the transactions with Company A and Company B and treat them as if they were one transaction under Rule 14A.81 <u>14A.25</u>
Listing Rules	Main Board Rules 14A.81, 14A.82 and 14A.83 <u>14A.25, 14A.26, 14A.27</u>
Decision	The transactions would not be aggregated under Rule 14A.81 <u>14A.25</u>

SUMMARY OF FACTS

1. The principal activities of Company X included property development and investment.
2. Company X proposed to enter into a licence agreement with Company B to license to it certain car park spaces in a commercial building (the **Building**) for three years (the **Licence**). Company X submitted that the car park spaces were licensed to Company B mainly for business use and might be sub-licensed to third parties.
3. In the previous 12 months, Company X had entered into an agreement to lease two shops in the Building to Company A for two years (the **Lease**). Company X submitted that these shops had been leased to Company A for a few years and the Lease was a renewal of previous leases. The shops were leased for the lessee's own use and could not be sublet.

4. As Company A and Company B were connected persons of Company X, the Lease and the Licence (together the **Transactions**) constituted connected transactions under Chapter 14A.
5. Based on the percentage ratio calculations, each of the Lease and the Licence fell within the de minimis provision of Rule ~~14A.76(1)~~~~14A.31(2)~~ and was fully exempt from the connected transaction requirements. If the Transactions were aggregated, they would be subject to disclosure under Rule ~~14A.76(2)~~~~14A.33(3)~~.

THE ISSUE RAISED

6. Whether Company X would be required to aggregate the Transactions and treat them as if they were one transaction under Rule ~~14A.81~~~~14A.25~~.

APPLICABLE LISTING RULES

7. Rule ~~14A.81~~~~14A.25~~ provides that:

The Exchange will aggregate a series of connected transactions and treat them as if they were one transaction if they are all completed within a 12-month period or are otherwise related. ~~In such cases,~~ ~~†~~The listed issuer must comply with the applicable connected transaction requirements ~~based on~~ ~~for~~ the ~~relevant~~ classification of the connected transactions when aggregated. ...

8. Rule ~~14A.82~~~~14A.26~~ provides that:

Factors ~~that which~~ the Exchange will consider for aggregation take into account in determining whether of a series of connected transactions ~~will be aggregated~~ include whether ~~the transactions~~:

- (1) they are entered into by the listed issuer's group with the same party, or ~~with~~ parties who are connected ~~or otherwise associated~~ with one another;
- ~~(2) involve the acquisition or disposal of securities or an interest in one particular company or group of companies;~~
- ~~(23)~~ they involve the acquisition or disposal of parts of one asset, or securities or interests in a company or group of companies; or
- ~~(34)~~ they together lead to substantial involvement by the listed issuer's group in a new business activity ~~which did not~~

~~previously form a part of the listed issuer's principal business activities.~~

9. Rule ~~14A.8314A.27~~ provides that:

The Exchange may ~~aggregate consider aggregating~~ all continuing connected transactions with a ~~single~~ connected person ~~to determine in which category the aggregated transaction falls.~~

ANALYSIS

10. The connected transaction rules seek to ensure that an issuer takes account of the interests of shareholders as a whole when it enters into transactions with connected persons, in particular to safeguard against connected persons (such as the issuer's directors, chief executives or substantial shareholders, or their associates) taking advantage of their positions to the detriment of minority shareholders. This is achieved by the general requirement for connected transactions to be disclosed and subject to independent shareholders' approval.
11. The purpose of aggregation is to prevent an issuer from "splitting" an otherwise large transaction into smaller transactions so that, when size tests are applied to each smaller transaction, it does not reach the thresholds for requiring disclosure and/or shareholders' approval under Chapter 14A. Under Rule ~~14A.8114A.25~~, the Exchange may require an issuer to aggregate a series of transaction if they are all completed within a 12 month period or are otherwise related.
12. Rule ~~14A.8214A.26~~ sets out a non-exhaustive list of factors which the Exchange will take into account in applying the aggregation rule. The rule intends to provide guidance on the circumstances where the Exchange may require aggregation. When determining whether aggregation is required in a particular case, the Exchange will consider all relevant facts and circumstances.
13. The aggregation rules apply both to one-off connected transactions and to continuing connected transactions that generally involve provision of goods and/or services. When determining whether a series of continuing connected transactions should be aggregated, the Exchange will consider whether they are of a similar nature as this may indicate "splitting" of a transaction. Rule ~~14A.8314A.27~~ provides that the Exchange may consider aggregating all continuing connected transactions with a single connected person.
14. In this case, the Lease and the Licence were to be carried out on a continuing basis over a period of time. Given the relationship between Mr A and Mr B, Company A and Company B were "*parties who are connected ~~or otherwise~~*"

associated with each other” and the Transactions fell within the circumstances in Rule ~~14A.82(1)14A.26(1)~~.

15. The Exchange took into account the following factors suggesting that the Transactions were not connected or related in substance and that “splitting” of a transaction into smaller transactions was not a concern:
 - The Transactions were not made under any master agreement between Company X and any connected persons.
 - While the properties subject to the Lease and the Licence were located in the same building, the nature and use of the properties were different.
 - The Transactions were in line with the principal business of Company A and the circumstances described in Rule ~~14A.82(3)14A.26(4)~~ did not exist.
16. The Exchange accepted that it was not appropriate to conclude that aggregation was required solely on the basis of the factor in Rule ~~14A.82(1)14A.26(1)~~ applying.

DECISION

17. The Transactions would not be aggregated under Rule ~~14A.8114A.25~~.