

HKE_x LISTING DECISION

HKE_x-LD63-2013 (published in April 2013) (Updated in July 2014)

Summary	
Parties	Company A – a Main Board listed issuer Mr. X – an independent non-executive director of Company A Company B – a company indirectly owned as to 30% by Mr. X
Issue	Whether the Exchange would waive the annual review and reporting requirements for a continuing connected transaction between Company A and Company B
Listing Rules	Main Board Rule 14A.103+14A.42(1)
Decision	The Exchange waived the requirements

FACTS

1. Company A proposed to enter into an agreement with Company B to supply certain goods to Company B for a three-year period (the **Transaction**). As Company B was an associate of Mr. X, the Transaction was a continuing connected transaction for Company A and subject to the announcement and annual review and reporting requirements.
2. Company A applied for a waiver from the annual review and reporting requirements for the Transaction under Rule ~~14A.103+14A.42(1)~~ because:
 - the Transaction was connected only because of Mr. X's interests in Company B;
 - Mr. X was only an independent non-executive director of Company A. He did not control Company A and his principal business interests were not related to Company A;
 - the Transaction would be conducted on normal commercial terms and in the ordinary and usual course of business of both Company A and Company B;
 - the size of the Transaction was not significant to Company A with the highest percentage ratio slightly over 0.1%. It would be unduly burdensome to require the independent non-executive directors and the auditors to review the immaterial Transaction annually.

3. It would disclose the Transaction and the waiver, if granted, by way of an announcement.

APPLICABLE LISTING RULE

4. Rule ~~14A.103~~14A.42 states that:

~~“The Exchange may waive consider granting waivers from all or some any of the connected transaction requirements for a connected transaction with a non-executive director of the listed issuer or its subsidiaries if of this Chapter. In particular, the Exchange will consider granting waivers for the following transactions:~~

- (1) a transaction ~~which~~ is connected only because of the interest of a non-executive director ~~of the listed issuer where the Exchange is satisfied that;~~ and

- (2) the director does not control the listed issuer’s group, and his principal business interest is not the listed issuer’s group.

~~(a) such director does not control the listed issuer; and~~

~~(b) his principal business interest is not the listed issuer.~~

Where a waiver is ~~granted from given from the requirement to obtain independent the~~ shareholders’ approval pursuant to this rule 14A.42(1), the Exchange may require ~~a letter from the listed issuer’s auditor or an acceptable financial adviser acceptable to the Exchange stating that in their to give the opinion that the transaction is fair and reasonable to so far as the shareholders as a whole of the listed issuer are concerned.~~ ” The Exchange will normally also require that:

~~(i) — an announcement containing brief details of the transaction be published in accordance with rule 2.07C as soon as possible thereafter; and~~

~~(ii) — details of the transaction be included in the listed issuer’s next published annual report and accounts; ...”~~

ANALYSIS

5. The connected transaction Rules seek to safeguard against connected persons taking advantage of their positions to the detriment of the issuer’s minority shareholders.

6. To reduce issuers' compliance burden, exemptions and waivers from all or some of the connected transaction requirements are available for transactions that are immaterial or specific circumstances where the risk of abuse by connected persons is low.
7. Here Mr. X was only an independent non-executive director and the Transaction met all waiver conditions set out in Rule ~~14A.103~~~~14A.42(1)~~. It was unlikely that Mr. X could exert undue influence over Company A to obtain a benefit through the Transaction. In light of the remote relationship and the immaterial size of the Transaction, the Exchange agreed to waive the annual review and reporting requirements.

CONCLUSION

8. The Exchange granted the waiver to Company A.