

## HKE<sub>x</sub> LISTING DECISION

Cite as HKE<sub>x</sub>-LD63-3 (**Published in** November 2008) (**Updated in July 2014**)

Summary	
<b>Name of Party</b>	Company A – a Main Board listed company  Mr. X – the Chairman and controlling shareholder of Company A  The Purchaser – an independent third party
<b>Subject</b>	Whether the Purchaser would be regarded as a connected person of Company A in respect of Transaction A
<b>Listing Rules</b>	Main Board Listing Rules <u>14A.19</u> and <u>14A.20</u> <del>14A.06</del> , <del>14A.11(4)(a)</del>
<b>Decision</b>	The Exchange determined that the Purchaser should be deemed as a connected person of Company A in respect of Transaction A under Main Board Listing Rule <u>14A.20</u> <del>14A.11(4)(a)</del> . Accordingly, Transaction A constituted a connected transaction of Company A under Main Board Listing Rule <u>14A.25</u> <del>14A.13(1)(a)</del> .

### SUMMARY OF FACTS

1. Company A was the beneficial owner of the whole block of Building Z, except for the ground floor which was beneficially owned by Mr. X.
2. The Purchaser entered into two agreements (the “**Agreements**”) with Company A and Mr. X separately for the acquisitions of their respective interests in Building Z ( “**Transaction A**” and “**Transaction X**” respectively) on the same day with the intention to redevelop Building Z.
3. Company A submitted that the Purchaser was introduced by a real estate agent to Company A and Mr. X separately. At the request of the Purchaser, the Agreements were inter-conditional and were scheduled to complete simultaneously.
4. Mr. X was not personally involved in the negotiation process for the agreement between Company A and the Purchaser (the “**Company Agreement**”). Other members of Company A’s management team represented Company A during the negotiation process and, thereafter, presented a draft of the Company Agreement to the board of Company A for consideration and approval. Mr. X attended the relevant board meeting at which the Company Agreement was approved. Before the board voted for the resolution approving the Company Agreement, Mr. X had

declared his interest in Transaction X and that he had no material interest in the Company Agreement.

5. In respect of Transaction X, Company A submitted that Mr. X entered into the relevant agreement after his negotiation with the real estate agent and the Purchaser without involving any other members of the board or management team of Company A.

## THE ISSUE RAISED FOR CONSIDERATION

6. Whether the Exchange would deem the Purchaser as a connected person of Company A in respect of the Transaction under Rule 14A.20-14A.11(4)(a).

## APPLICABLE LISTING RULE OR PRINCIPLE

- ~~7. Main Board Listing Rule 14A.11 provides 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:-~~

~~(a) any person or entity with whom a person referred to in rules 14A.11(1), ... has entered, or proposes to enter, into any agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied, with respect to the transaction which is such that, in the opinion of the Exchange, that person or entity should be considered a connected person; ...~~

7. Main Board Listing Rule 14A.20 provides that:

A deemed connected person includes a person:

(1) who has entered, or proposes to enter, into:

(a) a transaction with the listed issuer's group; and

(b) an agreement, arrangement, understanding or undertaking (whether formal or informal and whether express or implied) with a connected person described in rule 14A.07(1), (2) or (3) with respect to the transaction; and

(2) who, in the Exchange's opinion, should be considered as a connected person.

8. Main Board Listing Rule ~~14A.25~~ ~~14A.13(1)(a)~~ provides that:

~~a connected transaction is any transaction between a listed issuer and a connected person.~~

Any transaction between a listed issuer's group and a connected person is a connected transaction.

## ANALYSIS

9. The connected transaction rules seek to ensure that the interests of shareholders as a whole are taken into account by a listed issuer when it enters into transactions with connected persons, in particular to safeguard against connected persons (such as the listed issuer's directors, chief executives or substantial shareholders or their associates) taking advantage of their positions to the detriment of minority shareholders of an issuer.
10. Rule ~~14A.19~~ ~~14A.06~~ provides that the Exchange has the specific power to deem a person to be connected. The power is usually exercised by the Exchange in respect of a particular transaction. In making the determination, the Exchange will consider all relevant facts and circumstances surrounding the transaction and whether the interests of shareholders as a whole are taken into account by the listed issuer when it enters into the transaction. Particular regard would be given to the substance rather than the form of the transaction and any arrangements that are designed to circumvent the spirit and intent of the connected transaction rules.
11. Rules ~~14A.20~~ ~~and~~ ~~14A.21~~ ~~14A.11(4)(a)~~ ~~and~~ ~~(e)~~ set out certain specific circumstances where the Exchange may exercise its power to deem a person to be connected. Rule ~~14A.20~~ ~~14A.11(4)(a)~~ is intended to cover situations where the connected person may be in a position to exercise significant influence in a transaction between the listed issuer and a third party and/or where the connected person stands to benefit from the transaction because the connected person has entered, or proposes to enter, into any arrangement with that third party with respect to that transaction.

12. The Exchange decided to exercise its power to deem the Purchaser as a connected person in respect of Transaction A under Rule ~~14A.2014A.11(4)(a)~~. In making the determination, the Exchange had taken into accounts the following factors:
- The case involved Company A and Mr. X (being a connected person) entering into agreements with the same person for disposing of their respective interests in the same building. Transaction A and Transaction X were related to each other and fell under the circumstances described in Rule ~~14A.2014A.11(4)(a)~~. In particular, the inter-conditionality of the Agreements represented an arrangement between the Purchaser and Mr. X described in Rule ~~14A.2014A.11(4)(a)~~.
  - Mr. X took part in Company A's decision making process of, and approved, the Company Agreement. Mr. X also negotiated with, and entered into Transaction X with the Purchaser. The Company Agreement and the agreement in respect of Transaction X could not be viewed separately and the circumstances suggested that it was possible for Mr. X to influence the terms of Transaction A in a way to obtain an advantage in Transaction X.
13. Company A submitted that (i) there were commercial reasons for the Purchaser to enter into transactions with both Company A and Mr. X and require the Agreements to be inter-conditional; (ii) Transaction A and Transaction X were negotiated separately; (iii) Mr. X was not involved in the negotiation between Company A and the Purchaser/estate agent in respect of Transaction A; (iv) Mr. X had declared his interest at the relevant board meeting before the board voted for the resolution to approve Transaction A; and (v) the consideration receivable by Company A under Transaction A was higher than the market value of its interests in Building Z as valued by an independent valuer. However, the Exchange did not consider these mitigating factors be sufficient to warrant the Exchange to reach a different conclusion.

## DECISION

14. Based on the above analysis, the Exchange determined that the Purchaser should be deemed as a connected person of Company A in respect of Transaction A under Rule ~~14A.2014A.11(4)(a)~~. Accordingly, Transaction A constituted a connected transaction of Company A under Rule ~~14A.2514A.13(1)(a)~~.