

**HKE<sub>x</sub> LISTING DECISION**  
**HKE<sub>x</sub>-LD6-2011 (Updated in March 2019)**

<b>Parties</b>	Company A and Company B – each a Main Board issuer
<b>Issue</b>	Whether the Exchange would accept a prior mandate in lieu of a shareholders’ approval on the terms of the agreement for the following transactions:  (1) Company A’s proposed acquisition of a piece of land through public tender  (2) Company B’s proposed disposal of a property
<b>Listing Rules</b>	Main Board Rule 14.40
<b>Decision</b>	The Exchange accepted a prior mandate for Company A’s proposed acquisition.  It did not accept a prior mandate for Company B’s proposed disposal.

**FACTS**

Company A

1. Company A was engaged in manufacturing. It intended to bid for a piece of land in the Mainland from a government authority under a public tender. The land would be used to construct new production facilities. The proposed acquisition would be a possible major transaction for Company A and the terms of the agreement would be subject to shareholders’ approval.
2. The government authority had issued the tender notice (掛牌出讓公告) for the land which provided details of the land and other major terms of the tender, including the initial asking price for the bid (掛牌起始價).
3. Company A proposed to seek a mandate from its shareholders for the acquisition before submitting a bid for the land because the government authority would not accept a bid conditional on shareholders’ approval. Except the consideration, all major terms of the transaction had been fixed and disclosed in the tender notice. If Company A won the bid, it would be obliged to acquire the land under these terms. It would be impractical for Company A to seek shareholders’ approval for the acquisition after the bid was accepted.

4. Under the proposed mandate, Company A's bid would not exceed a maximum price fixed by it. The maximum price was determined taking into account the location and potential value of the land and a recent valuation of the land by a professional valuer appointed by Company A.

#### Company B

5. Company B's principal businesses included property investment.
6. Company B intended to sell its entire interest in an investment property located in Hong Kong. The proposed disposal would be a possible major transaction for Company B and the terms of agreement would be subject to shareholders' approval.
7. It proposed to seek a prior mandate from its shareholders to sell the property. Under the proposed mandate:
  - The property would be sold to independent purchaser(s) within a fixed period.
  - The consideration would be above a minimum price fixed by Company B. The minimum price was determined taking into account the then market conditions and a recent valuation of the property by a professional valuer appointed by Company B.
8. Company B considered that it would be unduly burdensome to make an agreement for the disposal conditional on shareholders' approval because of the uncertainty and additional time required to complete the transaction, which might affect the selling price of the property. The proposed mandate, if approved by shareholders, would enable it to seize every opportunity to realise its investment in the property quickly in light of the changing market conditions.

#### **APPLICABLE LISTING RULES**

9. Rule 14.34 states that:

As soon as possible after the terms of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover have been finalised, the listed issuer must in each case:—

~~(1) inform the Exchange; and~~

...

(2) publish an announcement in accordance with rule 2.07C as soon as possible. See also rule 14.37.

10. Rule 14.40 states that:

a major transaction must be made conditional on approval by shareholders.
11. Rule 14.63(2)(a) states that if voting or shareholder approval is required, a notifiable transaction circular must:

contain all information necessary to allow the holders of the securities to make a properly informed decision.

## **ANALYSIS**

12. Chapter 14 governs an issuer's transactions, principally acquisitions and disposals having material impacts on its financial position. Depending on the size of the transaction, the Rules require the issuer to disclose the terms of the transaction and/or obtain shareholder approval. Shareholders would vote on the agreement having considered its terms.
13. In these cases, there was no transaction and the requirements of Chapter 14 were not triggered. If an agreement for the acquisition/disposal were signed, it would be subject to shareholders' approval under Rule 14.40. The company's shareholders would vote on the agreement based on its terms.
14. There was a question whether the Exchange would accept a prior mandate in lieu of a shareholders' approval on the terms of the agreement for the acquisition/disposal under Chapter 14.

### Company A

15. When considering whether to accept a prior mandate in Company A's case, the Exchange noted the following:
  - Company A could acquire the land from the government authority only through the public tender. It would be impossible to seek shareholders' approval except by a prior mandate.
  - The government authority had fixed and disclosed the timing and major terms (except the consideration) for the tender, and Company A would set out the maximum consideration for the land in its circular to shareholders. There was sufficient safeguard in the proposed mandate and shareholders would be able to make an informed assessment of the acquisition.

## Company B

16. The Exchange considered the reason provided by Company B for the proposed mandate for the disposal of the property and whether in the circumstances, it would accept a prior mandate from shareholders in lieu of shareholders' approval of the sale and purchase agreement. However, it did not consider it unduly burdensome or impractical for Company B to make the disposal conditional on shareholders' approval.

## **CONCLUSION**

17. The Exchange accepted a prior mandate for Company A's proposed transaction but not Company B's proposed disposal.