

**Listing Decisions Series 7-2 - Rules 14.23(1) and 14.26 - Connected transactions - acceptability by written shareholders' certificate in lieu of shareholders' meeting (October 1999) (Updated in September 2009) (Withdrawn in July 2014)**

*[See Main Board Rules 14A.37 and 14A.101.]*

| Summary         |  |
|-----------------|--|
| Name of Parties | Company A - a listed company<br>Company B - a private company  |
| Subject         | Connected transactions - acceptability of written shareholders' certificate in lieu of shareholders' meeting   |
| Listing Rules   | Rules 14.23(1) and 14.26 <sup>1</sup>  |
| Decision        | Written shareholders' certificate was acceptable since nobody needed to abstain from voting and the independent financial adviser was of the view that the connected transactions were fair and reasonable |

### **Summary of Facts**

Company A formed a joint venture company with Company B held as to 51% by Company A and as to 49% by Company B. The principal business of the joint venture company was to construct, operate and manage a toll road in the People's Republic of China.

The joint venture company was to enter into a construction contract with Company B for the construction of the toll road. At the same time, Company A would arrange for a loan to be provided by a financial institution to Company B to finance a shareholder's loan to be contributed by Company B to the joint venture company. Company B's loan would be used to finance the construction costs of the toll road.

### **Analysis**

Company B was a connected person as it was a substantial shareholder of the joint venture company, which was a subsidiary of Company A, and the entering into of the construction contract between the joint venture company and Party B and Company A's arrangement for the provision of a loan to Company B constituted connected transactions for Company A requiring approval from the independent shareholders of Company A.

Company A requested a waiver from the requirement to convene a shareholders' meeting to seek shareholders' approval on the basis that a "closely-allied group" of shareholders together holding more than 50% in nominal value of the shares of Company A giving the right to attend and vote at such meeting had given a written certificate approving the transactions.

No connected person holding shares in Company A was interested in the transactions and accordingly nobody needed to abstain from voting at the shareholders' meeting. Furthermore, the opinion of the independent financial adviser contained in the circular to be dispatched to Company A's shareholders was that the terms of the transactions were fair and reasonable as far as the shareholders were concerned.

### **Decision**

The written shareholders' certificate approving the connected transactions was acceptable in lieu of a physical shareholders' meeting and a waiver was granted to Company A to that effect.

Company A was still required to issue a press announcement<sup>2</sup>, to dispatch a circular to its shareholders containing the opinion from an independent financial adviser and to disclose details of the transactions in its next and subsequent published annual report until the completion of the construction contract and maturity or settlement of the loan.

*Notes:*

*1. These rules were amended in March 2004. The relevant rule after the rule amendment is Rule 14A.43 which sets out the waiver conditions for acceptance of written shareholders' approval in lieu of holding a general meeting to approve a connected transaction. (Added in September 2009)*

*2. The requirement for publication of paid announcements in newspapers was abolished on 25 June 2007. After the rule amendment, issuers must publish their announcements required under the rules on the Exchange's website and their own website. (Added in September 2009)*