

## HKEx LISTING DECISION

Cite as HKEx-LD76-2 (**Published in** October 2009) (**Updated in July 2014**)

| Summary              |  |
|----------------------|--|
| <b>Parties</b>       | Company A – a Main Board listed company<br><br>Shareholder X – the substantial shareholder of Company A<br><br>The Body of Owners – an unincorporated entity which comprised all owners of the undivided shares in the Complex<br><br>Company Y – one of the owners of the undivided shares in the Complex, and a company controlled by Shareholder X<br><br>The Management Company – the building manager of the Complex, and a company controlled by Shareholder X |
| <b>Subject</b>       | Whether entering into a management contract for part of the Complex with the Management Company constituted a connected transaction for Company A  |
| <b>Listing Rules</b> | Main Board Listing Rules 1.01, <a href="#">14A.07</a> , <a href="#">14A.13</a> , <a href="#">14A.25</a> , <a href="#">14A.13(1)(a)</a>   |
| <b>Decision</b>      | The Transaction constituted a connected transaction for Company A  |

### SUMMARY OF FACTS

1. The principal activities of Company A and its subsidiaries (the **Group**) included providing hotel and clubhouse management services.
2. The Body of Owners was an unincorporated entity which comprised all owners of the undivided shares in a residential complex (the **Complex**). It was organised to manage the common areas of the Complex and consider matters of common interest to the owners, and it did not carry on a trade or business.
3. The Management Company was a building management company appointed under the Deed of Mutual Covenants (the **DMC**) of the Complex to act as agent for the Body of Owners.
4. Company Y was one of the owners of the Complex, and was interested in approximately 60% of the undivided shares in the Complex.

5. Company A submitted that the Group was awarded a contract for management of the Complex clubhouse by tender. The Group would enter into the management contract with the Management Company (as an agent for the Body of Owners) for the provision of management services to the clubhouse of the Complex at a fixed monthly fees for two years (the **Transaction**).
6. While the Management Company and Company Y were associates of Shareholder X and therefore connected persons of Company A, Company A argued that the Transaction did not constitute a connected transaction for Company A because:
  - The Management Company only acted as an agent of the Body of Owners in respect of the Transaction.
  - The case involved a transaction between the Group and the Body of Owners. Notwithstanding Company Y's 60% interest in the undivided shares in the Complex, the Body of Owners was not an "associate" of Shareholder X because it was neither a "company" nor a "subsidiary" under the definition of associates in the Listing Rules.
  - Further, an owners' committee had been established to represent the Body of Owners under the DMC. In respect of the Management Contract, the Management Company had provided the tenders from various service providers to the owners' committee for consideration, and the owners' committee resolved to award the Management Contract to the Group. At the relevant time, members representing Company Y did not form a majority of the members of the owners' committee, and Company Y did not control the decision of the owners' committee.
7. It was also noted from the information provided by Company A that the management of the Complex was mainly carried out by the owners' committee (the members of which were elected by the owners of the Complex) or the Management Company (as the building manager appointed under the DMC) according to the relevant statutory requirements and the DMC. Important matters were considered and resolved at general meetings of the Body of Owners. At the general meetings, each owner had one vote in respect of each undivided share that he owned, and resolutions were passed by a majority of votes.

## **ISSUE**

8. Whether the Transaction constituted a connected transaction for Company A

## APPLICABLE LISTING RULES OR PRINCIPLES

9. Rule 14A.13 provides that an “associate” of a connected person which is a company includes 1.01 defines “associate” in relation to a company to mean:

(1) ...

...

(3) a 30%-controlled company held, directly or indirectly, by the company...

~~any other company which is ... one in the equity of which it ... [is] directly or indirectly interested so as to exercise or control the exercise of 30% ... or more of the voting power at general meeting ...~~

10. Rule 14A.06(1) defines “30%-controlled company” to mean:

a company held by a person who can:

(a) exercise or control the exercise of 30% ...or more of the voting power at general meetings; or...

~~10.11.~~ Rule 1.01 defines “company” to mean:

a body corporate wherever incorporated or otherwise established.

~~11.12.~~ Rule 14A.07~~1.01~~ defines “connected person” to mean:

(1a) ~~in relation to a company ... .., a director, chief executive or substantial shareholder of such company or any of its subsidiaries or an associate of any of them; ...a director, chief executive or substantial shareholder of the listed issuer or any of its subsidiaries;~~

...

(4) an associate of any of the above persons;...

~~12.13.~~ 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

~~13.14.~~ 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 directors, chief executives or substantial shareholders or their associates) taking advantage of their positions to the detriment of the minority shareholders.

| 14.15. In this case, Shareholder X was a substantial shareholder of Company A and a transaction between the Group and Shareholder X or any of his associates constituted a connected transaction for Company A under the Listing Rules.

| 15.16. The Exchange noted Company A's view that the Body of Owners would not fall under the definition of associates in Rule ~~14A.131.01~~ as it was not a "company" had taken a narrow and strict legalistic approach to the application of the Listing Rules.

| 16.17. Under Rule ~~14A.131.01~~, associates of Shareholder X would include any *company* in the equity capital of which Shareholder X was directly or indirectly interested so as to exercise or control the exercise of 30% or more of the voting power at general meetings, or to control the composition of a majority of the board of directors. The Exchange noted that while the Body of Owners, being an unincorporated entity, was not a company, Shareholder X (through his interest in Company Y which held 60% of the undivided shares in the Complex) was able to control the exercise of 60% of the voting power at the general meetings of the Body of Owners as well as the composition of a majority of the owners' committee of the Complex. The Transaction was analogous to a transaction between the Group and a company controlled by Shareholder X where the connected person was in a position to take advantage to the detriment of the minority shareholders. The Exchange considered it appropriate to take a purposive approach in this case to ensure that the spirit and intent of the Listing Rules were adhered to. Accordingly, the Body of Owners was treated as an associate of Shareholder X in respect of the Transaction.

| 17.18. Given that the Management Contract was entered into between the Group and the Management Company (as an agent for the Body of Owners), and both the Body of Owners and the Management Company were associates of Shareholder X and therefore connected persons of Company A, the Transaction constituted a connected transaction for Company A.

## **DECISION**

| 18.19. The Transaction constituted a connected transaction for Company A.