

Listing Decisions Series 8-3 - Major transaction - whether two shareholders of Company A, who had been partners in a project, could be viewed as a "closely allied group of shareholders" for the purpose of providing a written certificate in lieu of a resolution passed at a shareholders' meeting (Published in November 1999) (Updated in September 2009 and April 2015)

| Summary | |
|---------------|---|
| Name of party | Company A - a listed company |
| Subject | Major transaction - whether two shareholders of Company A, who had been partners in a project, could be viewed as a "closely allied group of shareholders" for the purpose of providing a written certificate in lieu of a resolution passed at a shareholders' meeting |
| Listing Rule | Rule 14.10 ⁺ <u>Rules 14.44 and 14.45</u> |
| Decision | The two shareholders did not constitute "a closely allied group of shareholders" |

Summary of Facts

Company A entered into a transaction which constituted a major transaction under ~~Rule 14.09~~ ~~now~~ Rule 14.06(3) of the Listing Rules requiring shareholders' approval.

Rule ~~14.10~~⁺ ~~14.44 of the Listing Rules~~ provides that such shareholders' approval may be obtained either by convening a general meeting of the issuer or by means of the written approval of the transaction by a shareholder ~~who holds~~ or a closely allied group of shareholders who together hold more than 50% ~~of the voting rights in nominal value of the securities giving the right to attend and vote~~ at such general meeting. Rule 14.45 sets out the factors which the Exchange will consider in determining whether or not a group of persons is a "closely allied group of shareholders".

~~The note to Rule 14.10⁺ provides that, where the Exchange permits a written certificate of shareholders' approval to be given in lieu of a resolution passed at a shareholders' meeting, the certificate must be signed by a single shareholder or a "closely allied group of shareholders".~~

Company A obtained a written certificate from each of two shareholders together holding over 50% in nominal value of Company A's issued share capital approving the transaction.

The two shareholders had been partners in a project.

Analysis

The two shareholders had no established trading/business relationship other than as partners in one project in the past. Furthermore, one of the shareholders had no prior history of voting at any of Company A's shareholders' meetings.

Decision

The two shareholders did not constitute "a closely allied group of shareholders" and, accordingly, a written certificate from them was not acceptable to the Exchange in lieu of a resolution passed at a shareholders' meeting.

Note:

~~1. This rule was amended in March 2004. The relevant rules after the rule amendment are Rules 14.44 and 14.45, which set out the conditions for acceptance of written shareholders' approval in lieu of holding a general meeting to approve a major transaction, and also the factors which the Exchange will consider in determining whether or not a group of persons is a "closely allied group of shareholders". (Added in September 2009)~~