

## HKEx LISTING DECISION

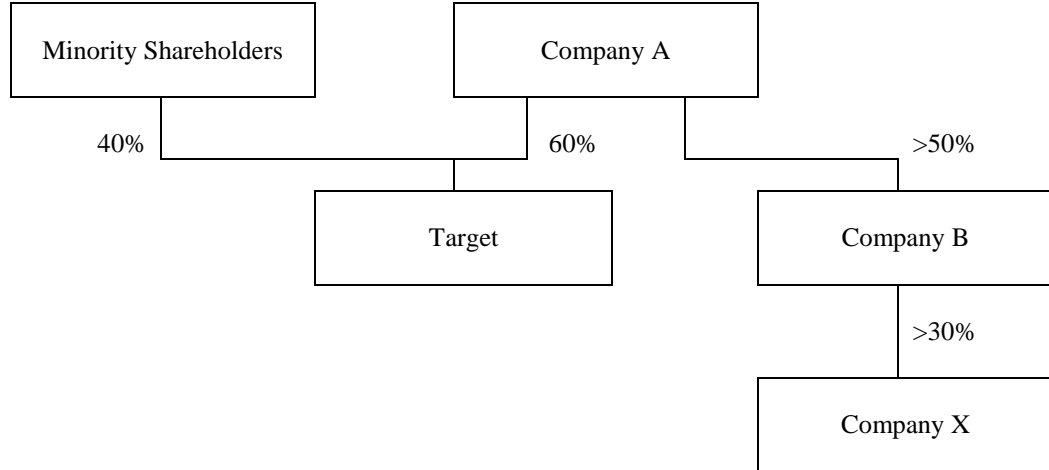
Cite as HKEx-LD81-2 (**Published in** December 2009) (**Updated in July 2014**)

Summary	
<b>Parties</b>	<p>Company X – a Main Board listed company</p> <p>The Target – a private company which Company X proposed to acquire</p> <p>Company A – a private company holding a 60% interest in the Target</p> <p>Minority Shareholders – two independent third parties holding a 40% interest in the Target</p> <p>Company B – a company listed on the Exchange. It was also Company X's controlling shareholder and Company A's subsidiary</p>
<b>Subject</b>	Whether Company B had a material interest in Company X's proposed acquisitions of the Target from Company A and the Minority Shareholders
<b>Listing Rules</b>	Main Board Listing Rules 2.15, <del>14A.36</del> <b>14A.54</b>
<b>Decision</b>	Company B had a material interest in the proposed acquisitions

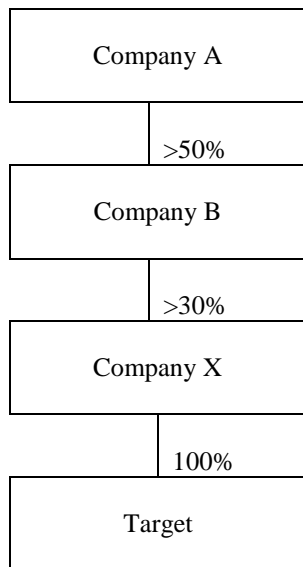
### SUMMARY OF FACTS

1. Company X proposed to acquire the entire interest in the Target, 60% from Company A and 40% from the Minority Shareholders (the **1<sup>st</sup> Acquisition** and **2<sup>nd</sup> Acquisition** respectively).
2. The simplified shareholding structures showing the relationship among these parties before and after the acquisitions is below:

*Before the acquisitions*



*After the acquisitions*



3. The acquisitions would be agreed separately and independently; they would not be inter-conditional on each other.
4. Company B was Company X's controlling shareholder. As Company A was the holding company of Company B and therefore a connected person of Company X, the 1<sup>st</sup> Acquisition was a connected transaction for Company X under Rule [14A.2514A.13\(1\)\(a\)](#).
5. While the Minority Shareholders were not connected persons, the 2<sup>nd</sup> Acquisition was a connected transaction for Company X under Rule [14A.2814A.13\(1\)\(b\)\(i\)](#) because Company A was a substantial shareholder of the Target.

6. Company X submitted that Company B should not be required to abstain from voting on the resolution to approve each of the acquisitions because:

The 1<sup>st</sup> Acquisition

- Company B did not have any interest in the Target. It was not a party to the acquisition.
- Company B was a listed company. Despite being a subsidiary of Company A, Company B's voting decision at Company X's general meeting should not automatically be deemed to be that of Company A. The common directors of Company A and Company B would abstain from voting on Company B's board resolutions regarding the vote to be cast on the resolution to approve the 1<sup>st</sup> Acquisition at Company X's general meeting.

The 2<sup>nd</sup> Acquisition

- Company A and Company B had no control over any of the Minority Shareholders and was unable to exert influence on any of them with respect to the acquisition.
- The 1st and 2nd Acquisitions were not inter-conditional on each other. Neither Company A nor Company B would derive any benefit from the 2nd Acquisition.

**ISSUE**

7. Whether Company B had a material interest in the proposed acquisitions.

**APPLICABLE LISTING RULES OR PRINCIPLES**

8. Rule 2.15 provides that:

Where a transaction or arrangement of an issuer is subject to shareholders' approval under the provisions of the Exchange Listing Rules, any shareholder that has a material interest in the transaction or arrangement shall abstain from voting on the resolution(s) approving the transaction or arrangement at the general meeting.

*Note: For the avoidance of doubt, any provision in the Exchange Listing Rules requiring any other person to abstain from voting on a transaction or arrangement of an issuer which is subject to*

*shareholders' approval shall be construed as being in addition to the requirement set out in rule 2.15.*

9. Rule 2.16 provides that:

For the purpose of determining whether a shareholder has a material interest, relevant factors include:

- (1) whether the shareholder is a party to the transaction or arrangement or an close associate ~~(as defined in rule 1.01)~~ of such a party; and
- (2) whether the transaction or arrangement confers upon the shareholder or his close associate a benefit (whether economic or otherwise) not available to the other shareholders of the issuer.

There is no benchmark for materiality of an interest nor may it necessarily be defined in monetary or financial terms. The materiality of an interest is to be determined on a case by case basis, having regard to all the particular circumstances of the transaction concerned.

*Note: The references to "close associate" shall be changed to "associate" where the transaction or arrangement is a connected transaction under Chapter 14A.*

~~10. Rule 14A.10(3) provides that:~~

~~A "controller" means a director, chief executive or controlling shareholder of the listed issuer.~~

~~11. Rule 14A.13 provides that:~~

~~A connected transaction is:~~

- ~~(1) (a) any transaction between a listed issuer and a connected person; or~~
- ~~(b) (i) any transaction between a listed issuer and a person who is not a connected person and the transaction involves the listed issuer acquiring or disposing of an interest in a company where a substantial shareholder of that company is, or is proposed to be, a controller or is (or will~~

~~become as a result of the transaction) an associate of a controller. ...~~

10. Rule 14A.25 provides that:

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

11. Rule 14A.28 provides that:

A listed issuer's group acquiring an interest in a company (the "target company") from a person who is not a connected person is a connected transaction if the target company's substantial shareholder:

(1) is, or is proposed to be, a controller. A "controller" is a director, chief executive or controlling shareholder of the listed issuer; or

(2) is, or will, as a result of the transaction, become, an associate of a controller or proposed controller.

12. Rule ~~14A.3614A.54~~ provides that:

~~The Exchange will require any connected person with a material interest in a proposed transaction, and any shareholder with a material interest in such transaction and its associate(s), to abstain from voting at the relevant general meeting on the relevant resolution(s). The connected transaction must be conditional on shareholders' approval at a general meeting held by the listed issuer. Any shareholder who has a material interest in the transaction must abstain from voting on the resolution.~~

## ANALYSIS

13. Rule 2.16 provides a non-exhaustive list of factors to determine whether a shareholder has a material interest for the purposes of the Listing Rules. It also states that there is no benchmark for materiality of an interest nor may it necessarily be defined in monetary or financial terms.

### The 1<sup>st</sup> Acquisition

14. The 1<sup>st</sup> Acquisition involved Company B's associate (i.e. Company A) disposing of its interest in the Target to Company X for a consideration. It fell within the

circumstances described in Rule 2.16 and the Exchange considered Company B to have a material interest in the acquisition. Company X's submission was not sufficient to address the potential abuse of connected persons taking advantage of their positions in the acquisition.

#### The 2<sup>nd</sup> Acquisition

- | 15. Rule ~~14A.2814A.13(b)(i)~~ expands the definition of connected transaction to include an acquisition of interests in a target company from independent parties where a substantial shareholder (not the vendor) of the target company is a controlling shareholder or its associate (i.e. the connected person). Under these circumstances, it is possible for the connected person to indirectly benefit from and/or influence the transaction. The 2nd Acquisition is a connected transaction because Company A is the substantial shareholder of Target and it is its association with Company B that results in the transaction being classified as a connected transaction under the Rule. Company B has a material interest in the acquisition which may not be expressed in monetary or financial terms.

#### **DECISION**

- | 16. Company B had a material interest in the proposed acquisitions.