

Whether a listed issuer was required to seek reapproval from its shareholders for changing the terms of a very substantial acquisition after it had been approved by shareholders

Parties

- **Company A** – a Main Board issuer
- **Vendor** – the vendor of the Target
- **Target** – Company A's acquisition target

Facts

1. Company A was in the gaming business.
2. It agreed with the Vendor to acquire the Target (**Agreement**). The Target's main asset was a profit stream from acting as a gaming promoter. Under the Agreement, the Vendor would provide Company A with profit guarantees.
3. The acquisition was a very substantial acquisition for Company A and had been approved by its shareholders.
4. After obtaining shareholder approval but before completing the Agreement, Company A's directors became aware of the adverse effect of the global financial crisis on the Target's profitability. This effect was not considered when the Agreement was signed or when it was approved by the shareholders. The directors and the Vendor agreed to reduce the consideration and the profit guarantees substantially, and to extend the long stop date. Based on these amendments, the acquisition would remain a very substantial acquisition for Company A.
5. Company A considered that no shareholder approval of the amended Agreement was required because:
 - a. The amendments would not change the subject matter of the acquisition (i.e. the Target and its profit stream) or the projected yield in percentage terms.
 - b. No reasonable shareholder would object to the amendments which would reduce Company A's investment costs.
 - c. Company A would remain contractually obliged to complete the acquisition based on the original Agreement even if the shareholders did not approve the amendments.

Relevant Listing Rules

6. Rule 14.40 states that:

A major transaction must be made conditional on approval by shareholders.

7. Rule 14.49 states that:

... a very substantial transaction must be made conditional on approval by shareholders in general meeting ... ▸

Analysis

8. For an agreement approved by an issuer's shareholders, the issuer may be required to seek prior shareholder approval of an amendment to the agreement, depending on the nature and materiality of the amendment (see [Frequently Asked Questions on Rule Requirements relating to Notifiable Transactions, Connected Transactions and Issues of Securities by Listed Issuers \(Series 7\), No.16FAQ11.4 – No.1](#)).

9. Company A renegotiated material terms of the Agreement. The Exchange considered the proposed amendments to be material changes to the Agreement and, in substance, a new transaction. The shareholders should be given an opportunity to consider whether, in light of the change in the circumstances (i.e. the financial crisis), the amended Agreement was in the interest of the company as a whole and to vote on it.

Conclusion

10. Company A should seek shareholder approval of the amended Agreement.