

HKE_x LISTING DECISION

HKE_x-LD13-2011 (Published in June 2011) (Updated in July 2014)

Parties	Company A – a Main Board issuer Company B – a substantial shareholder of a subsidiary of Company A Company C and Company D – each an associate of Company B
Issue	Whether the Exchange required aggregation of Company A's construction contracts with each of Companies C and D
Listing Rules	Main Board Rules 14A.25, 14A.26, 14A.27 <u>14A.81, 14A.82 and 14A.83</u>
Decision	The connected transactions should be aggregated.

FACTS

1. Company A's principal activities included operating railway systems.
2. It would construct a new railway line. The project involved a number of construction contracts with contractors for different parts of the railway line. Each contract was subject to a separate tender process.
3. Among these construction contracts, Company A intended to award one contract ("Contract 1") to Company C and another contract ("Contract 2") to Company D.
4. Companies C and D were both associates of Company B and therefore connected persons. Company A enquired whether Contracts 1 and 2 should be aggregated under Chapter 14A. It submitted that:
 - The contracts were awarded to Companies C and D through separate tender processes. Each contract related to a different and distinct aspect of the railway line.
 - Company A decided to construct the new railway line under a number of separate construction contracts (including Contracts 1 and 2) to minimise the programme risk to the project, taking into account various factors including the nature of the civil works and its strategy and experience in the construction of other railway projects in the past. It did not "split" the construction works with a view to circumventing the Listing Rules.

APPLICABLE LISTING RULES

5. Rule ~~14A.81~~14A.25 states that:

The Exchange will aggregate a series of connected transactions and treat them as if they were one transaction if they are all completed within a 12-month period or are otherwise related. ~~In such cases, t~~The listed issuer must comply with the applicable connected transaction requirements based on ~~for~~ the ~~relevant~~ classification of the connected transactions when aggregated. ...

6. Rule ~~14A.82~~14A.26 states that:

Factors ~~that which~~ the Exchange will consider ~~take into account in determining whether for aggregation of a series of~~ connected transactions ~~will be aggregated~~ include whether ~~the transactions~~:

- (1) they are entered into by the listed issuer's group with the same party, or ~~with~~ parties who are connected ~~or otherwise associated~~ with one another;
- ~~(2) — involve the acquisition or disposal of securities or an interest in one particular company or group of companies;~~
- ~~(23)~~ they involve the acquisition or disposal of parts of one asset, or securities or interests in a company or group of companies; or
- ~~(34)~~ they together lead to substantial involvement by the listed issuer's group in a new business activity ~~which did not previously form a part of the listed issuer's principal business activities.~~

7. Rule ~~14A.83~~14A.27 states that:

The Exchange may aggregate ~~consider aggregating~~ all continuing connected transactions with a single connected person ~~to determine in which category the aggregated transaction falls.~~

ANALYSIS

8. Under Rule ~~14A.81~~14A.25, the Exchange may require an issuer to aggregate a series of transaction if they are completed within a 12 month period or are otherwise related.

9. Rule ~~14A.8214A.26~~ sets out a non-exhaustive list of factors which the Exchange will consider in applying the aggregation rule. The Rule is intended to provide guidance on the circumstances where aggregation may be required. When determining whether aggregation is required in a particular case, the Exchange will consider all relevant facts and circumstances.
10. The Exchange considered Contracts 1 and 2 were related and should be aggregated because:
 - they were parts of the new railway project of Company A; and
 - they were entered into by Company A with Companies C and D who were parties connected with one another.
11. Contracts 1 and 2 would be treated as one connected transaction and classified based their total contract sum.

CONCLUSION

12. The connected transactions should be aggregated under Rule ~~14A.8114A.25~~.