

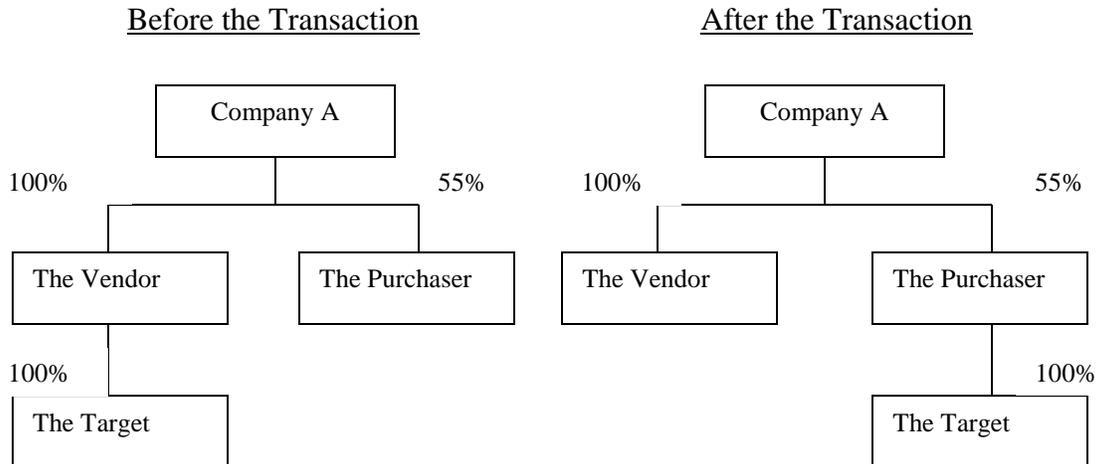
HKEx LISTING DECISION

Cite as HKEx-LD62-2 (November 2008) (updated in October 2019 (Rule amendments))

Summary	
Name of Party	Company A - a Main Board listed company The Vendor – a wholly-owned subsidiary of Company A The Target – a wholly-owned subsidiary of the Vendor The Purchaser – a Main Board listed company and a non wholly-owned subsidiary of Company A
Subject	Whether the Exchange would disregard the calculation of percentage ratios in respect of the Transaction upon Company A’s request and accept the alternative size tests submitted by Company A under Main Board Listing Rule 14.20
Listing Rules	Main Board Listing Rule 14.20
Decision	The Exchange decided to disregard the calculation of percentage ratios in respect of the Transaction and accept the alternative size tests submitted by Company A under Main Board Listing Rule 14.20.

SUMMARY OF FACTS

1. Company A proposed to undergo a reorganization in its group that the Vendor would sell its entire interest in the Target to the Purchaser (the “**Transaction**”), the consideration for which would be paid partially in cash and partially by the Purchaser’s issue of bonds.
2. As a result of the proposed Transaction, the Target would become a wholly owned subsidiary of the Purchaser and would remain as a subsidiary of Company A.
3. Set out below is the group structure before and after the proposed Transaction:



- Company A submitted that the Transaction would involve a transfer of assets between its subsidiaries and there would be in effect a decrease in its interest in the Target by 45% only. Company A submitted alternative size tests in place of the percentage ratios to the Exchange for consideration, which were calculated on the basis of a net disposal of 45% interest in the Target by Company A.

THE ISSUE RAISED FOR CONSIDERATION

- Whether the Exchange would disregard the calculation of percentage ratios in respect of the Transaction as requested by Company A and accept the alternative size tests submitted by Company A under Rule 14.20.

APPLICABLE LISTING RULE OR PRINCIPLE

- Main Board Listing Rule 14.15(1) provides that when calculating the consideration ratio:

the value of the consideration shall be the fair value of the consideration determined at the date of the agreement of the transaction Normally, the fair value of the consideration should be the same as the fair value of the asset which is the subject of the transaction.

- Main Board Listing Rule 14.20 provides that:

the Exchange may, where any of the calculations of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, disregard the calculation and substitute other relevant

indicators of size, including industry specific tests. The listed issuer must provide alternative tests which it considers appropriate to the Exchange for consideration.

8. Main Board Listing Rule 14.25 provides that:

in circumstances where acquisitions or disposals of equity capital are made by a listed issuer, the provisions set out in rules 14.26 to 14.28 shall be applied in determining the classification of the transaction for the purposes of rule 14.06.

9. Main Board Listing Rule 14.26 provides that:

in an acquisition or disposal of equity capital, the numerators for the purposes of the (a) assets ratio, (b) profits ratio and (c) revenue ratio are to be calculated by reference to the value of the total assets, the profits attributable to such capital and the revenue attributable to such capital respectively.

10. Main Board Listing Rule 14.27 provides that:

for the purpose of rule 14.26:

(1) the value of an entity's total assets is the higher of:

(a) the book value of the entity's total assets attributable to the entity's capital as disclosed in its accounts; and

(b) the book value referred to in rule 14.27(1)(a) adjusted for the latest published valuation of the entity's assets if such valuation is published after the issue of its accounts; and

Note: This will normally apply to a valuation of assets such as properties, vessels and aircraft.

(2) the value of an entity's profits and revenue is the profits and revenue attributable to the entity's capital as disclosed in its accounts.

11. Main Board Listing Rule 14.28 provides that:

the value of the entity's total assets, profits and revenue, calculated in accordance with rule 14.27, is to be multiplied by the percentage of the equity interest being acquired or disposed of by the listed issuer. However, 100% of the entity's total assets, profits and revenue will be taken as the value of the total assets, profits and revenue, irrespective of the size of the interest being acquired or disposed of, if:

- (1) the acquisition will result in consolidation of the assets of the entity in the accounts of the listed issuer; or
- (2) the disposal will result in the assets of the entity no longer being consolidated in the accounts of the listed issuer.

ANALYSIS

12. For the purposes of Chapter 14 of the Main Board Rules, the term "listed issuer" is defined under Rule 14.04(6) to include the listed company itself and its subsidiaries, unless the context otherwise requires. The requirements under this chapter apply to transactions undertaken by the listed company as well as any of its subsidiaries.
13. Rule 14.07 sets out five percentage ratios for assessing the impact of a transaction on the listed issuer. The percentage ratio calculation forms the basis of classifying the transaction which determines whether the transaction is subject to any disclosure, reporting and/or shareholders' approval requirements under Chapter 14.
14. In the present case, the proposed Transaction would involve a disposal of the entire interest in the Target by one subsidiary of Company A and an acquisition of the same by another subsidiary. However, from the perspective of Company A, the Transaction was in substance a group reorganisation which would result in an effective net disposal of a 45% interest in the Target to the minority shareholders of the Purchaser. Upon completion of the Transaction, the Target would remain as a subsidiary of Company A and would continue to be consolidated in Company A's accounts.
15. Having considered the substance of the Transaction and its impact on the consolidated financial position of Company A, the Exchange accepted that calculation of the percentage ratios on the basis of either (i) a disposal of the entire interest in the Target by the Vendor or (ii) an acquisition of the entire

interest in the Target by the Purchaser would produce an anomalous result in respect of Company A.

16. Company A submitted alternative size tests for the Transaction by treating the Transaction as a net disposal of 45% interest in the Target by Company A. As the Transaction would not result in a de-consolidation of the Target from Company A's accounts, the Exchange accepted that the alternative size tests taking into account the net effect of the Transaction on the consolidated financial position of Company A were reasonable and appropriate for assessing the impact of the Transaction on Company A.

DECISION

17. The Exchange decided to disregard the calculation of percentage ratios in respect of the Transaction and accept the alternative size tests submitted by Company A under Rule 14.20.

Note: On 1 October 2019, Rule 14.20 was amended to clarify that if any calculation of the percentage ratio produces an anomalous results or is inappropriate to the sphere of activities of the issuer, the Exchange (or the issuer) may apply an alternative size test that it considers appropriate to assess the materiality of a transaction under Chapter 14.

The Rule amendments would not change the analysis and conclusion in this case.