

HKEx LISTING DECISION

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Summary	
Parties	<p>Company A - a Main Board listed company</p> <p>The Vendor - a company listed on an overseas stock exchange</p> <p>The Target Company – a company in which Company A proposed to acquire an interest from the Vendor</p> <p>Mr X – a director and substantial shareholder of Company A, and a director and chief executive officer of the Vendor. He held approximately 2 per cent of the issued shares of the Vendor and 0.5 per cent of the issued shares of the Target Company</p> <p>Mr Y – a director and substantial shareholder of Company A, and a director of the Vendor. He held approximately 0.2 per cent of the issued shares of the Vendor</p>
Subject	<p>Whether Mr X and Mr Y each had a material interest in the Proposed Acquisition and was required to abstain from voting on the resolution to approve the Proposed Acquisition at the general meeting of Company A under Rules 2.15 and 14.49</p>
Listing Rules	<p>Main Board Listing Rules 2.15, 14.49</p>
Decision	<p>Mr X and Mr Y each had a material interest in the Proposed Acquisition and must abstain from voting on the resolution to approve the Proposed Transaction at the general meeting of Company A.</p>

SUMMARY OF FACTS

1. Company A proposed to acquire about a 60 per cent equity interest in the Target Company from the Vendor (the Proposed Acquisition). The Proposed Acquisition would constitute a very substantial acquisition for Company A and was subject to shareholders’ approval under the Listing Rules.
2. Mr X and Mr Y were directors and substantial shareholders of Company A. At the relevant time, it was also submitted that:

- Both Mr X and Mr Y were directors of the Vendor. Mr X was also the chief executive officer of the Vendor.
 - Mr X and Mr Y held approximately 2 per cent and 0.2 per cent of the issued shares of the Vendor respectively.
 - Mr X also held approximately 0.5 per cent of the issued shares of the Target Company. (Mr Y did not hold any shares of the Target Company.)
3. Company A submitted that neither Mr X nor Mr Y had a material interest in the Proposed Acquisition because:
- Neither of them was a party to the Proposed Acquisition, or an associate of either the Vendor or the Target Company.
 - The equity interest held by each of Mr X and Mr Y in the Vendor was minimal (ie approximately 2 per cent and 0.2 per cent respectively).
 - The consideration for the Proposed Acquisition (representing less than 5 per cent of the Vendor's annual revenue or 1 per cent of the Vendor's market capitalisation) was so insignificant from the Vendor's perspective that neither Mr X nor Mr Y nor their respective associate(s) could derive any material benefit (monetary or otherwise) from the Proposed Acquisition by reason of their minimal shareholding and/or directorship in the Vendor.
 - Mr X only held a 0.5 per cent equity interest in the Target Company, which did not form part of the equity interest in the Target Company to be acquired by Company A under the Proposed Acquisition.
 - Both Mr X and Mr Y had made full disclosure of their interest in the Proposed Acquisition to the board of directors of Company A (the Board), and had abstained and would continue to abstain from voting on the relevant resolutions in their capacity as directors of Company A.
 - The Board had appointed an executive committee to manage the Proposed Acquisition. Mr X and Mr Y were members of the committee but they did not have any voting rights.
 - Neither Mr X nor Mr Y participated in any deliberations or decision of the board of directors of the Vendor, or voted in his capacity as director of the Vendor, in connection with the Proposed Acquisition.

ISSUE

4. Whether Mr X and Mr Y each had a material interest in the Proposed Acquisition and was required to abstain from voting on the resolution to approve the Proposed Acquisition at the general meeting of Company A under Rules 2.15 and 14.49.

APPLICABLE LISTING RULES OR PRINCIPLES

5. 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.

6. 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 a 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.

7. Rule 14.49 provides that:

... a very substantial acquisition must be conditional on approval by shareholders in general meeting. ... The Exchange will require any shareholder and his close associates to abstain from voting at the relevant general meeting on the relevant resolution(s) if such shareholder has a material interest in the transaction.

ANALYSIS

8. 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. The Rule also states that there is no benchmark for materiality of an interest nor may it necessarily be defined in monetary or financial terms.
9. When determining the materiality of the interests of Mr X and Mr Y in the Proposed Acquisition, the Exchange considered not only their equity interests in the Vendor and the Target Company but also other circumstances of the Proposed Acquisition.
10. In this case, Mr X and Mr Y were not close associates of the Vendor (the counterparty in the Proposed Acquisition). Nevertheless, Mr X and Mr Y had a conflict of interest in the Proposed Acquisition as a result of their position as directors of both Company A and the Vendor. Mr X was also the chief executive officer of the Vendor.
11. The Exchange did not consider that Company X’s submission had satisfactorily addressed the conflict of interest issue. Although Mr X and Mr Y had abstained, and would continue to abstain, from voting on the relevant resolutions in their capacity as directors of Company A, they were appointed by the Board as members of an executive committee which managed the Proposed Acquisition. Although Mr X and Mr Y had no voting rights in the committee, they were in a position to exercise influence over the terms of the Proposed Acquisition. Further, the fact that Mr X and Mr Y had abstained from voting on the relevant Board resolutions suggested that their interest in the Proposed Acquisition was considered to be material.
12. In view of the conflict of interest, Mr X and Mr Y each had an interest in the Proposed Acquisition. The Exchange considered that the interest was material

and therefore Mr X and Mr Y were required to abstain from voting on the resolution to approve the Proposed Acquisition at the general meeting of Company A under Rules 2.15 and 14.49.

DECISION

13. Mr X and Mr Y each had a material interest in the Proposed Acquisition and must abstain from voting on the resolution to approve the Proposed Acquisition at the general meeting of Company A under Rules 2.15 and 14.49.