

Whether the Exchange would waive the requirement for disclosing the consideration for certain technology and patent to be acquired by the listed issuer under a discloseable transaction

Parties

- **Company A** – a Main Board listed company
- **Company B** – a third party independent of and not connected with Company A or any of its connected persons

Facts

1. Company A was principally engaged in providing semiconductor fabrication services and solutions to customers.
2. In addition to its internal research and development team to develop new process technologies, Company A also relied on other technology partners to advance its portfolio of process technologies. In the past, it had entered into agreements with third parties to acquire technology, patents and licences to enable it to manufacture advanced wafers for customers.
3. Company B's principal activity was to supply hardware, software and information technology services and to develop and implement e-business solutions.
4. Company A and Company B proposed to enter into a technology licensing agreement under which Company B agreed to license certain specific semiconductor technology (**Technology**) to Company A for its wafer foundry service.
5. The total consideration for the Technology (**Consideration**) under the Agreement would be funded by Company A's internal resources. The Technology would be recorded as an acquired intangible asset in Company A's accounts.
6. The Transaction constituted a discloseable transaction for Company A.

7. Under Rule 14.58(4), the issuer must disclose the consideration for the transaction in its announcement. Company A applied for a waiver from disclosing the Consideration in the announcement for the following reasons:
- It was a normal business practice in the semiconductor wafer foundry industry not to disclose the consideration for technology licensing arrangements.
 - The Technology was one of the most advanced technologies of its kind globally. Based on Company A's information, Company B was the only source of such advanced technology available for commercial production and licensing to Company A. Company B had explicitly required that the Consideration, being an extremely commercially sensitive piece of information for Company B, must not be disclosed.
 - Disclosure of the Consideration would result in the loss of significant potential licensing opportunities for Company A and hence would have a significant adverse impact on its future business development and would not be in the interests of Company A and its shareholders as a whole.
 - The Consideration was arrived at after arm's length negotiation between Company A and Company B, and the agreement was negotiated and entered into by the parties in accordance with customary business practice. Company A had considered a number of factors, including the type and degree of development of the Technology, the supply of and market demand for it, whether the Consideration would achieve competitive pricing of wafers produced using the Technology and the overall long term profitability for Company A as a result of using it. Company A's directors, including independent non-executive directors, were of the opinion that the terms of the Agreement were fair and reasonable and were in the interests of its shareholders as a whole.
8. Company A proposed to include the following alternative disclosure in the announcement instead of the value of the Consideration:
- The unaudited net change in the gross value of Company A's acquired intangible assets in the relevant financial year which indicated the aggregate value of intangible assets (including the Technology) acquired by it in that year.
 - The Transaction constituted a discloseable transaction (i.e. a transaction where any percentage ratio under Rule 14.07 was 5% or more, but less than 25%). Company A would disclose its latest published consolidated total assets and its total market capitalisation as at the date of the Agreement. The information would give an indication of the range of values for the Consideration by reference to the asset ratio and the consideration ratio.

Relevant Listing Rules

9. Rule 14.58 provides that:

The announcement for a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover must contain at least the following information:

- (1) ...
- (4) the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms of any arrangements for payment on a deferred basis. If the consideration includes securities for which listing will be sought, the listed issuer must also include the amounts and details of the securities being issued;
- (5) ...
- ...

(Rule 14.58 was amended on 1 October 2019 and 11 June 2024 respectively. See Note below.)

Analysis

- 10. Rules 14.58 to 14.60 set out the minimum disclosure requirements for announcements of different types of notifiable transactions. Notwithstanding this, an issuer must observe the general principle under Rule 2.13 that the information contained in its announcement must be accurate and complete in all material respects and not be misleading or deceptive.
- 11. Issuers are expected to exercise all reasonable care to ensure full compliance with the Listing Rules. The Exchange will not grant waivers to issuers, except where the Listing Rules already contemplate granting waivers under certain circumstances or where the Exchange is satisfied that there are exceptional circumstances warranting a waiver. The “Guide on Applications for Waivers and Modifications of the Listing Rules” available on the HKEx website sets out a non-exhaustive list of factors that the Exchange will generally consider when assessing the merits of a waiver application.
- 12. When deciding whether to grant a waiver, the Exchange will take into account the circumstances and reasons outlined in the waiver/modification request and all other relevant information supplied by the listed issuer.
- 13. Company A applied for specific disclosure relief in respect of the value of the Consideration due to the commercial sensitivity of the information in the semiconductor wafer foundry industry.

14. The Exchange considered that concerns about commercial sensitivity of the terms of a transaction should not override the disclosure obligations of the issuer where the information was material to investors. When assessing Company A's waiver application, the Exchange also took into account:
- Company A's submission that there was a limited number of suppliers for the technologies in the specialised industry, and Company B was the only source of the Technology available for commercial production and licensing to Company A.
 - The Transaction constituted a discloseable transaction only and was not significant to Company A. The unaudited gross value of intangible assets acquired by Company A in the relevant financial year, which included the Technology, represented less than 5% of the latest published consolidated total assets of Company A.
 - The alternative disclosure included: (i) the aggregate value of the Technology and other similar intangible assets acquired by Company A during the year; and (ii) information indicating the range of values of the Consideration. This information would facilitate investors' assessment of the impact of the transaction on Company A's financial position.

The specific circumstances suggested that strict compliance with the disclosure requirements might be impractical and prejudicial to the interests of Company A. Having regard to the materiality of the Transaction and the alternative disclosure, the Exchange accepted that non-disclosure of the value of the Consideration in the announcement was not likely to mislead investors or influence their assessment of Company A's position.

Conclusion

15. The Exchange granted Company A a waiver from disclosing the Consideration in the announcement.

Note: With effect from 1 October 2019, Rule 14.58 also applies to the announcement for an extreme transaction. With effect from 11 June 2024, Rule 14.58(4) also requires the announcement of a notifiable transaction to disclose the amounts and details of treasury shares to be transferred if the consideration for the transaction includes treasury shares.