

HKEx LISTING DECISION

Cite as HKEx-LD76-4 (October 2009) (Withdrawn in July 2014)

[See Main Board 14A.91]

Summary	
Party	Company A – a Main Board listed company
Subject	Whether the granting of Indemnities by Company A or any of its subsidiaries in favour of the Directors against any claims that might arise in the course of the proper discharge of their duties would be regarded as forming part of their service contracts and therefore exempt from the connected transaction requirements under Rule 14A.31(6)
Listing Rule	Main Board Listing Rule 14A.31(6)
Decision	The Indemnities were regarded as forming part of the Directors' service contracts and exempt from the connected transaction requirements under Rule 14A.31(6)

SUMMARY OF FACTS

1. Company A proposed to grant indemnities in favour of certain directors (the **Directors**) and employees of its overseas subsidiaries against any claims that might arise from the proper discharge of their duties (the **Indemnities**).
2. Company A submitted that it was not unusual in some jurisdictions for legal actions to be taken against a company as well as its officers, and certain officers of its overseas subsidiaries had requested the Indemnities.

ISSUE

3. Company A enquired whether the granting of the Indemnities by Company A or any of its subsidiaries, which would not cover matters resulting from gross negligence or wilful misconduct of the Directors, would be regarded as forming part of their respective service contracts and therefore be exempt from the connected transaction requirements under Rule 14A.31(6).

APPLICABLE LISTING RULES OR PRINCIPLES

4. Main Board Listing Rule 14A.13(3) provides that a connected transaction is:
 - a listed issuer granting an indemnity ... to and/or for the benefit of a connected person
5. Main Board Listing Rule 14A.31(6) provides that entering into a service contract by a director with the listed issuer will be exempt from all the reporting, announcement and independent shareholders' approval requirements contained in Chapter 14A.

ANALYSIS

6. Granting an indemnity by an issuer for the benefit of a director constitutes a connected transaction under Rule 14A.13(3) and is subject to the connected transaction requirements. The mere fact that the indemnity forms part of the director's service contract will not automatically result in the indemnity falling within the exemption in Rule 14A.31(6). The Exchange considers that there must be a reasonable basis for the indemnity to enjoy the benefit of Rule 14A.31(6).
7. The Directors were connected persons of Company A. The Indemnities proposed to be granted by Company A or any of its subsidiaries for their benefit would constitute connected transactions for Company A.
8. The Exchange noted that the Indemnities had the following features:
 - the indemnification was in respect of legal actions that might arise from the proper discharge of the Directors' duties; and
 - the Indemnities would not cover matters resulting from the Directors' gross negligence or wilful misconduct, nor otherwise be in a form prohibited under the laws of the jurisdictions where Company A and any relevant subsidiaries were incorporated.

Given this, the Exchange accepted that there was a reasonable basis to regard the Indemnities as forming part of the individual Directors' service contracts and accordingly to exempt the Indemnities from connected transaction requirements under Rule 14A.31(6).

DECISION

9. The Indemnities were regarded as forming part of the Directors' service contracts and were exempt from the connected transaction requirements under Rule 14A.31(6).