

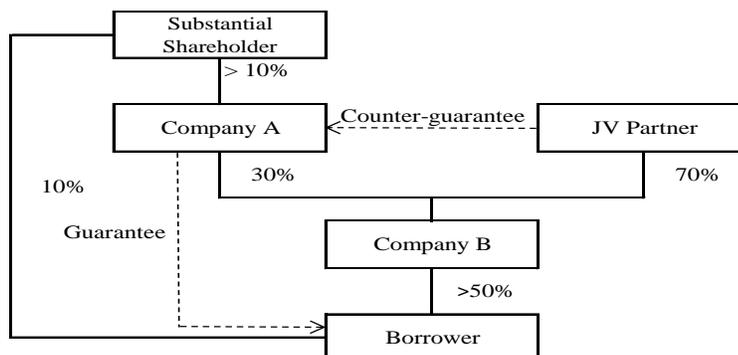
HKE_x LISTING DECISION

HKE_x-LD78-2014 (~~p~~Published in January 2014) (Updated in July 2014)

Parties	Company A – a Main Board issuer Company B – a 30%-owned associated company of Company A The Borrower – a non-wholly subsidiary of Company B The Substantial Shareholder – a substantial shareholder of each of Company A and the Borrower JV Partner – an independent third party holding a 70% interest in Company B
Issue	Whether the guarantee provided by Company A for a loan facility granted to the Borrower was subject to the connected transaction requirements
Listing Rules	Main Board Rules <u>14A.19, 14A.26 and 14A.27</u> 14A.13(2)(a)(ii) and 14A.06
Decision	The guarantee was subject to the connected transaction requirements

FACTS

1. Company A proposed to provide a guarantee in favour of a bank for a loan facility to be granted to the Borrower (the **Proposed Guarantee**). The JV Partner would provide a counter-guarantee in favour of Company A against all its liabilities arising out of the Proposed Guarantee.
2. The simplified shareholding structure is set out below:



3. Company B and the Borrower were associated companies of Company A. Company B was an investment holding company and did not have any operating subsidiaries other than the Borrower.
4. Company A enquired whether the Proposed Guarantee would be subject to the connected transaction requirements under Chapter 14A. It submitted that:
 - the Borrower was not a connected person of Company A; and
 - the Borrower was not a “commonly held entity” falling under Rule ~~14A.27~~~~14A.13(2)(a)(ii)~~. While the Substantial Shareholder owned 10% interest in the Borrower, neither Company A nor any of its subsidiaries was a shareholder of the Borrower. Company A only had an indirect interest in the Borrower through Company B.

APPLICABLE LISTING RULES

5. Rule ~~14A.19~~~~14A.06~~ states that :

“The Exchange has the ~~specific~~ power to deem any person to be a connected person.~~(see rule 14A.11(4)) ...”~~”

- ~~6. Rule 14A.13 states that:~~

~~“A connected transaction is:~~

~~(1) ...~~

~~(2) the provision of financial assistance:~~

~~(a) by a listed issuer to:~~

~~(i) a connected person; or~~

~~(ii) a company in which both the listed issuer and a connected person are shareholders and where any connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 14A.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such company.~~

~~...”~~

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

~~“Financial assistance provided by a listed issuer’s group to, or received by a listed issuer’s group from, a commonly held entity is a connected transaction.”~~

7. Rule 14A.27 states that:

“A “commonly held entity” is a company whose shareholders include:

- (1) a member of the listed issuer’s group; and
- (2) any connected person(s) at the issuer level who, individually or together, can exercise or control the exercise of 10% or more of the voting power at the company’s general meeting. This 10% excludes any indirect interest held by the person(s) through the listed issuer.”

~~7.8.~~ Rule 14A.8914A.65 states that:

“Financial assistance provided by a listed issuer’s group to a connected person or commonly held entity is fully exempt if it is conducted:

- (1) on normal commercial terms or better; and
- (2) in proportion to the equity interest directly held by the listed issuer or its subsidiary in the connected person or the commonly held entity. Any guarantee given by the listed issuer’s group must be on a several (and not a joint and several) basis.

~~“The following connected transactions are exempt from the reporting, announcement and independent shareholders’ approval requirements of this Chapter:-~~

~~(1) ...~~

~~...~~

- ~~(3) financial assistance provided by a listed issuer for the benefit of a connected person in which the listed issuer is a shareholder, or any company falling under rule 14A.13(2)(a)(ii), not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer), provided that the assistance being provided is in proportion to the listed issuer’s equity interest in the connected person or the company falling under rule 14A.13(2)(a)(ii). In addition, any guarantees given by the listed issuer must be on a several (and not a joint and several) basis; or~~

~~...”~~

ANALYSIS

~~8.9.~~ The connected transaction Rules seek to safeguard against connected persons taking advantage of their positions to the detriment of the issuer’s minority shareholders. Under the Rules, the Exchange may deem a person to be connected in respect of a

particular transaction. When applying the deeming provision, the Exchange considers all relevant facts and circumstances surrounding the transaction and has particular regard to the substance and not the form of the transaction and any arrangements designed to circumvent the spirit and intent of the connected transaction Rules.

| 9.10. In this case, the Exchange considered that the Proposed Guarantee should be subject to the connected transaction requirements because:

- An issuer providing financial assistance to a commonly held entity is a connected transaction. A commonly held entity is a company whose shareholders include (i) the issuer or any of its subsidiaries; and (ii) any connected person(s) at the issuer level who can, individually or together, control the exercise of 10% or more of the voting power at the company's general meeting.
- The Borrower was held as to 10% by the Substantial Shareholder and over 50% by Company A and the JV Partner through Company B. As Company B was mainly a vehicle for holding shares in the Borrower, the Exchange considered it necessary to "see through" the structure of Company B and deem the Borrower as a commonly held entity.
- Company A would guarantee the entire loan facility to be granted to the Borrower. This would confer a benefit on the Substantial Shareholder through its substantial interest in the Borrower.

CONCLUSION

| 10.11. The Proposed Guarantee was subject to the connected transaction requirements under Chapter 14A.