

HKE_x LISTING DECISION**HKE_x-LD93-6 (Published in June 2010) (Withdrawn in July 2014)**

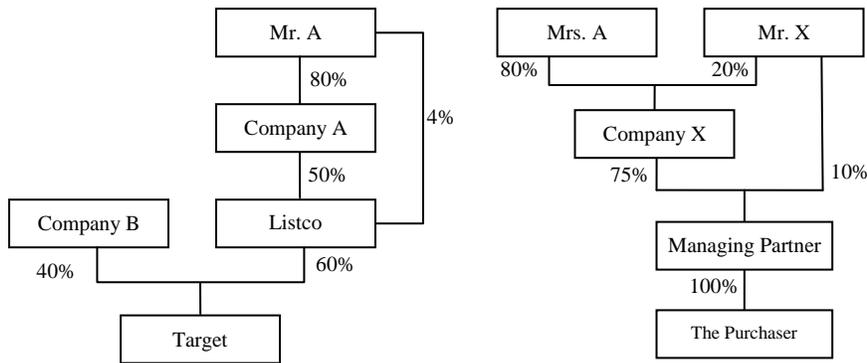
[Effective 1 July 2014, the Proposed Disposal would not be a connected transaction under Rule 14A.28.]

Parties	<p>Listco – a Main Board issuer</p> <p>Company A – Listco’s controlling shareholder</p> <p>Company B – an independent third party, having a 40% interest in the Target</p> <p>The Target – a company owned as to 60% and 40% by Listco and Company B respectively</p> <p>The Purchaser – a company proposing to acquire the Target from Listco and Company B</p> <p>The Managing Partner – owner of the Purchaser</p> <p>Company X – a company 80% owned by Mrs A and 20% owned by Mr X, and having a 75% interest in the Managing Partner</p> <p>Mr A – a director and substantial shareholder of Listco, a director of Company X, and Mrs A’s spouse</p> <p>Mrs A – Mr A’s spouse, having an 80% interest in Company X</p> <p>Mr X – a director of Company X, having a 20% interest in it</p>
Issue	Whether Company A must abstain from voting at Listco’s general meeting on the disposal of the Target
Listing Rules	Main Board Rules 14A.06, 14A.11(4)(a)
Decision	Company A must abstain from voting at Listco’s general meeting

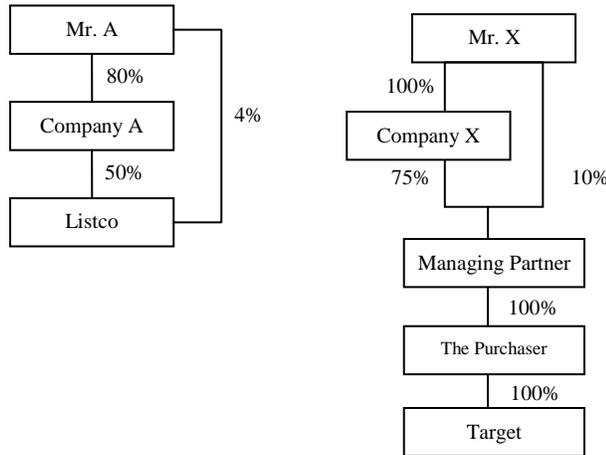
FACTS

1. Listco and Company B proposed to dispose of the Target to the Purchaser (the **Proposed Disposal**).
2. Mr A was responsible for negotiating the Proposed Disposal on Listco's behalf.
3. Before the Proposed Disposal, Mrs A would transfer her entire interest in Company X to Mr X at a nominal consideration (the **Proposed Transfer**). In return, Mr X's undertook to pay to Listco 80% of any distribution (in terms of dividend or otherwise) paid by Company X to him net of (i) the shareholder's loan due from Company X to him and (ii) reasonable expenses incurred by him. Mr A would resign as Company X's director on completion of the Proposed Transfer (**Mr A's resignation**).
4. The simplified shareholding structures of the relevant companies before and after completion of the Proposed Disposal and Proposed Transfer are set out below:

Before Completion of the Proposed Transfer and Proposed Disposal



After completion of the Proposed Transfer and Proposed Disposal



5. The Proposed Disposal would be a connected transaction under Rule 14.13(1)(b) as Company B was a controller of the Target.
6. Listco sought the Exchange's confirmation that Company A had no material interest in the Proposed Disposal and would not be required to abstain from voting at Listco's general meeting on the resolution to approve it. Listco submitted that:
 - a. Company A was not Company B's associate or a party to the Proposed Disposal. Neither Company A nor its associates could obtain any benefit, whether economic or otherwise, not available to Listco's other shareholders.
 - b. The Managing Partner ran the Purchaser's daily business. Mr and Mrs A were not board members of the Managing Partner. They were not involved in the negotiation or decision making of the Purchaser's acquisition of the Target on the Purchaser's behalf.
 - c. The Proposed Transfer and Mr A's resignation would effectively prevent Mr and/or Mrs A from obtaining any direct or indirect interest from the Target through the Purchaser.

APPLICABLE LISTING RULES

7. Rule 1.01 states that an associate of a director includes:
 - (a) his spouse;
 - (b) any company in the equity capital of which he and/or his spouse (individually or taken together) is/are directly or

indirectly interested so as to exercise or control the exercise of 30% or more of the voting power at general meetings or to control the composition of a majority of the board of directors; and

(c) a subsidiary of the company mentioned in paragraph (b).

8. Rule 14A.06 states that:

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

9. Rule 14A.11 states that for the purposes of Chapter 14A, the definition of “connected person” includes:

(1) a director, chief executive or substantial shareholder ... of the listed issuer;

...

(4) any associate of a person referred to in rules 14A.11(1), (2) or (3). The definitions of “associate” ... are contained in rules 1.01 and 19A.04, respectively. In this Chapter, an “associate” of a person referred to in rules 14A.11(1), (2) or (3) includes the following additional persons:

(a) any person or entity with whom a person referred to in rules 14A.11(1), (2) or (3) has entered, or proposes to enter, into any agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied, with respect to the transaction which is such that, in the opinion of the Exchange, that person or entity should be considered a connected person;

...

10. Rule 14A.54 states that:

The Exchange will require any connected person with a material interest in a proposed transaction, and any shareholder with a material interest in such transaction and its associate(s), to abstain from voting at the relevant general meeting on the relevant resolution(s).

ANALYSIS

11. The connected transaction rules seek to safeguard against connected persons taking advantage of their positions to the detriment of the issuer's minority shareholders.
12. Rule 14A.06 empowers the Exchange to deem a person to be connected. This power is usually exercised in respect of a particular transaction. When applying Rule 14A.06, 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.
13. Before the Proposed Transfer, (i) Mr and Mrs A together controlled Company X, and (ii) the Purchaser was owned by the Managing Partner, a subsidiary of Company X. Company X, the Managing Partner and the Purchaser were regarded as Mr A's associates and the Proposed Disposal a connected transaction of Listco on which Mr A and his associates should abstain from voting.
14. Although the Proposed Transfer would be completed before the Proposed Disposal, the Exchange considered that Mr A still had a material interest in the Proposed Disposal, and would deem Mr X and the Purchaser as connected persons for the Proposed Disposal. This is because:
 - a. The Proposed Disposal and Proposed Transfer were related to each other and should not be viewed separately. The Proposed Transfer, which was negotiated in contemplation of the Proposed Disposal, and Mr A's resignation were specific arrangements between Listco's connected persons and Mr X with respect to the Proposed Disposal and fell under Rule 14A.11(4)(a).
 - b. Both Mr and Mrs A were parties to the specific arrangements under the Proposed Transfer. Mr A, representing Listco's board, was also responsible for negotiating the Proposed Disposal. It was possible for the connected persons to take advantage of their position and influence these transactions to obtain a benefit (whether economic or otherwise), which may not necessarily be defined in financial or monetary terms.

CONCLUSION

15. Mr A and his associates (including Company A) should abstain from voting at Listco's general meeting on the resolution to approve the Proposed Disposal.