

HKE_x LISTING DECISION

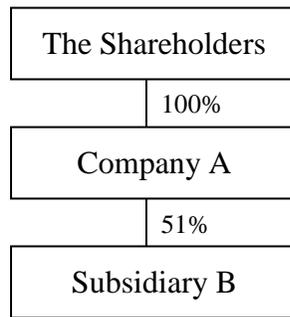
HKE_x-LD93-4 (Published in June 2010) (Updated in July 2014, October 2019 (Rule amendments))

Parties	Company A – a Main Board issuer Subsidiary B – Company A’s non-wholly owned subsidiary, incorporated and listed overseas Shareholders – Company A’s shareholders
Issue	Whether the Exchange would impose additional requirements under Rule 2.04 on Company A’s proposed distribution in specie of Subsidiary B’s shares
Listing Rules	Main Board Rules 2.03, 2.04, 14. 04(1) , <u>14A.2494</u>
Decision	The Exchange did not impose additional requirements under Rule 2.04 on the proposed distribution

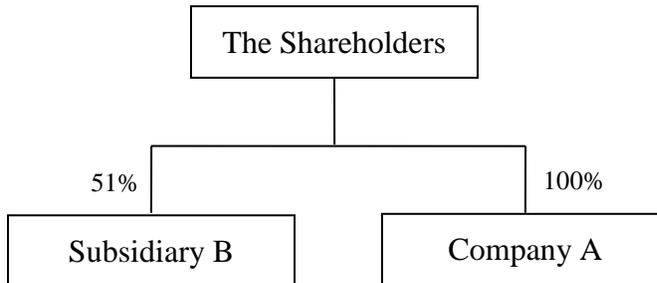
FACTS

1. Company A was engaged in a number of businesses including (i) retail services through department stores; and (ii) information technology services through Subsidiary B.
2. To streamline its business activities and develop a more focused line of business, Company A proposed a group reorganisation through distribution in specie of all its equity interest in Subsidiary B (the **Shares**) to its Shareholders. After the distribution, Company A would cease to have any interest in Subsidiary B. The simplified shareholding structures before and after the distribution are below:

Before the distribution



After the distribution



3. The distribution required shareholder approval under Company A's articles of association and applicable laws. Company A submitted that the distribution would be in the Shareholders' interest and that all the Shareholders would be treated fairly and equally because:
 - a. The Shares would be distributed to the Shareholders pro rata to their respective shareholding in Company A. Therefore the distribution would not dilute their interest in Subsidiary B.
 - b. There was an adequate market in the Shares, which were listed on a stock exchange in Subsidiary B's place of incorporation. As supported by a legal opinion, the Shares could be freely owned and transferred by the Shareholders as foreigners and their transferability would not be unreasonably restricted. Any transfer of the Shares and/or dividend payment would be subject to reasonable tax.
 - c. Company A would bear all the costs and duties payable by the Shareholders upon the transfer of the Shares to them, and would arrange for brokers to provide each Shareholder with custodian services free of account opening and

monthly holding charges for two years or until all his Shares were disposed of, whichever was earlier.

APPLICABLE LISTING RULES

4. Rule 2.03 states that:

The Exchange Listing Rules reflect currently acceptable standards in the market place and are designed to ensure that investors have and can maintain confidence in the market and in particular that:

...

- (4) all holders of listed securities are treated fairly and equally;
- (5) directors of a listed issuer act in the interests of its shareholders as a whole – particularly where the public represents only a minority of the shareholders; ...

5. Rule 2.04 states that

... the Exchange Listing Rules are not exhaustive and that the Exchange may impose additional requirements or make listing subject to special conditions whenever it considers it appropriate. ...

6. Rules 14.04(1) and 14A.24 provide guidance on the scope of “transactions” subject to the notifiable transaction rules and connected transaction rules.

ANALYSIS

7. The Exchange will normally consider a dividend distribution to shareholders as falling outside Chapters 14 and 14A. However, in the case of a distribution in specie, the Exchange may be concerned about whether the distribution is fair to all shareholders, particularly where unlisted assets are being distributed and there will be no liquid market for minority shareholders to realise a value from the distribution. The Exchange may impose additional requirements under Rule 2.04 to ensure compliance with Rule 2.03. ~~(see Listing Decision LD75-4)~~
8. Here, the Shares were not listed on the Exchange and the proposal did not provide a cash alternative to the Shareholders. Nevertheless, the Exchange considered the following factors:

- a. The Shares were listed on an overseas exchange and could be freely owned and transferred by the Shareholders and there would be a liquid market for the Shareholders to realise a value from the distribution.
- b. Company A had made appropriate arrangements to facilitate the Shareholders' owning and holding of the Shares.
- c. The distribution was subject to shareholder approval.

CONCLUSION

9. The Exchange did not impose additional requirements under Rule 2.04 on the proposed distribution.

Note: With effect from 1 October 2019, Rule 14.94 applies to a distribution in specie of assets (other than securities listed on the Exchange) by a listed issuer where the size of the assets would amount to a very substantial disposal based on the percentage ratio calculations. The issuer must comply with the requirements:

(1) The issuer must obtain prior approval of the distribution by independent shareholders in a general meeting. The issuer's controlling shareholders (or if there is no controlling shareholder, the directors (other than the independent non-executive directors) and chief executive of the issuer) and their respective associates must abstain from voting in favour of the resolution. Further, the shareholders' approval for the distribution must be given by at least 75% of the votes attaching to any class of listed securities held by holders of voting either in person or by proxy at the meeting, and the number of votes cast against the resolution is not more than 10% of the votes attaching to any class of listed securities held by holders permitted to vote in person or by proxy at the meeting.

(2) The issuer's shareholders (other than the directors (excluding independent non-executive directors), chief executive and controlling shareholders) should be offered a reasonable cash alternative or other reasonable alternative for the distributed assets.

Where the assets proposed to be distributed are securities listed in other jurisdictions, the Exchange may waive the requirements in set out in (2) above if the issuer can demonstrate that there is a liquid market for the securities, the shareholders may readily dispose of those securities, and where appropriate, the issuer will make arrangements to facilitate the shareholders to hold or dispose of those securities.