

HKEx LISTING DECISION

Cite as HKEx-LD64-3 (Published in November 2008) (Updated in July 2014)

Summary	
Name of Party	Company A - a Main Board listed company Company Z – a substantial shareholder of Company A Company X and Company Y - non-wholly owned subsidiaries of Company Z
Subject	Whether Company A would be required to aggregate the Transactions and treat them as if they were one transaction under Main Board Listing Rule 14A.81
Listing Rules	Main Board Listing Rules 14A.81, 14A.82 and 14A.83
Decision	The Exchange determined that the Transactions should be aggregated under Main Board Listing Rule 14A.81

SUMMARY OF FACTS

1. Company A and its subsidiaries (the “**Group**”) were principally engaged in the business of retailing and wholesaling optical products.
2. In March 2007, the Group entered into two purchase agreements with Company X in respect of the Group’s purchases of certain branded optical frames and sunglasses from Company X for a period of three years (the “**First Transaction**”). Company X was the exclusive wholesale distributor and licensee of these products in various territories.
3. In May 2008, the Group proposed to enter into a manufacturing and supply agreement with Company Y under which Company Y would manufacture and supply optical frames and sunglasses under the Group’s house-brands for a period of three years (the “**Second Transaction**”).
4. Both Company X and Company Y were non-wholly owned subsidiaries of Company Z which was a substantial shareholder of Company A. Therefore, Company X and Company Y were associates of Company Z and connected persons of Company A. The First Transaction and the Second Transaction (together the “**Transactions**”) constituted continuing connected transactions of Company A under Chapter 14A of the Main Board Listing Rules.

5. Company A submitted the following to support not aggregating the Transactions:
- The nature of the Transactions was different from each other in that the First Transaction was a trading transaction involving purchases of certain branded optical products, whereas the Second Transaction was a manufacturing transaction involving the Group commissioning Company Y to manufacture optical products bearing brand-names owned by the Group.
 - In respect of the First Transaction, Company A had no choice of supplier as Company X was the exclusive distributor of the branded optical products, whereas in respect of the Second Transaction, Company Y was a manufacturer selected by Company A from a group of possible suppliers by reference to objective criteria without any element of favourism.
 - In terms of Company A's procurement timetable, the First Transaction was regarded as a downstream transaction whereas the Second Transaction was an upstream transaction.
 - The procurement of branded optical products and products under the Group's own brand names was handled by different teams in the Group.

THE ISSUE RAISED FOR CONSIDERATION

6. Whether Company A would be required to aggregate the Transactions and treat them as if they were one transaction under Rule 14A.81.

APPLICABLE LISTING RULE OR PRINCIPLE

7. Main Board Listing Rule 14A.81 provides that:

The Exchange will aggregate a series of connected transactions and treat them as if they were one transaction if they were all completed within a 12-month period or are otherwise related. ...

8. Main Board Listing Rule 14A.82 provides that:

Factors that the Exchange will consider for aggregation of a series of connected transactions include whether:

- (1) they are entered into by the listed issuer's group with the same party, or parties who are connected with one another;

- (2) they involve the acquisition or disposal of parts of one asset, or securities or interests in a company or group of companies; or
- (3) they together lead to substantial involvement by the listed issuer's group in a new business activity.

9. Main Board Listing Rule 14A.83 provides that:

The Exchange may aggregate all continuing connected transactions with a connected person.

ANALYSIS

10. The connected transaction rules seek to ensure that the interests of shareholders as a whole are taken into account by a listed issuer when it enters into transactions with connected persons, in particular to safeguard against connected persons (such as the listed issuer's directors, chief executives or substantial shareholders or their associates) taking advantage of their positions to the detriment of minority shareholders of an issuer. This is achieved by the general requirement for connected transactions to be disclosed and subject to independent shareholders' approval.
11. The purpose of aggregation is to prevent a listed issuer from "splitting" an otherwise large transaction into two or more smaller transactions so that, when size tests are applied to each smaller transaction, it does not reach the relevant thresholds for requiring disclosure and/or shareholders' approval under Chapter 14A. Pursuant to Rule 14A.81, the Exchange may require a listed issuer to aggregate a series of transaction if they are all completed within a 12 month period or are otherwise related.
12. Rule 14A.82 sets out a non-exhaustive list of factors which the Exchange will take into account in applying the aggregation rule. The rule intends to provide guidance on the circumstances where the Exchange may require aggregation of transactions of a listed issuer. When determining whether aggregation of transactions is required in a particular case, the Exchange will consider all relevant facts and circumstances of the case.
13. The aggregation rules apply to both one-off connected transactions and continuing connected transactions that generally involve provision of goods and/or services. When determining whether a series of continuing connected transactions should be aggregated, the Exchange will also consider whether they are of a similar nature as this may indicate "splitting" of a transaction. Rule 14A.83 provides that the Exchange may consider aggregating all continuing connected transactions with a single connected person.

14. In the present case, the First Transaction and the Second Transaction were to be carried out on a continuing basis over a period of time. The Transactions fell within the circumstances described in Rule 14A.82(1) as they were entered into by the Group with subsidiaries of Company Z which, the Exchange considered, were “*parties who are connected with each other*” under Rule 14A.82(1).
15. The Exchange considered that the Transactions were of the same nature as they all involved purchases of optical frames and sunglasses by the Group. The Exchange did not accept Company A’s submission that the nature of the First Transaction and the Second Transaction were different on the basis of distinctions in terms of brands, the process and timing for procurement of the products.
16. Having considered all relevant factors, the Exchange was of the view that the First Transaction and the Second Transaction were related and there was a concern on splitting of a transaction into smaller transactions.

DECISION

17. The Exchange determined that the Transactions should be aggregated under Rule 14A.81.