

HKE_x LISTING DECISION
HKE_x-LD55-2013

Parties	Company A – a Main Board issuer Company B – another Main Board issuer independent from Company A
Issue	Whether Company A was required to classify its subscription for convertible notes issued by Company B as if the notes were fully converted at the time of entering into the subscription agreement
Listing Rules	Main Board Rule 14.04(1)
Decision	The subscription of the notes would be classified as a transaction for Company A based on the percentage ratio calculations for providing financial assistance to Company B. It would not be classified as if the notes were fully converted given that the conversion of the notes was at Company A’s discretion.

FACTS

1. Company A proposed to subscribe for certain convertible notes to be issued by Company B (the **Subscription**). Under the terms of the notes, Company A had the right to convert the notes into new shares of Company B any time during the conversion period. Any outstanding amount would be redeemed by Company B at the maturity date of the bonds.
2. The Subscription was a transaction for Company A under Chapter 14 as it involved provision of financial assistance to Company B. There was an issue whether Company A would also need to classify the Subscription as if the notes were fully converted.
3. Company A submitted that it had the sole discretion on the conversion of the notes, and it had yet to decide whether and when to exercise its conversion rights. If it proposed to convert the notes, it would comply with the notifiable transaction requirements for acquiring an interest in Company B.

APPLICABLE LISTING RULES

4. Rule 14.04(1) provides that:

“any reference to a “transaction” by a listed issuer:

- (a) includes the acquisition or disposal of assets, ...;
- (b) includes any transaction involving a listed issuer writing, accepting, transferring, exercising or terminating (in the manner described in rule 14.73) an option (as defined in rule 14.72) to acquire or dispose of assets or to subscribe for securities;
- (c) ...;
- (d) ...;
- (e) includes granting an indemnity or a guarantee or providing financial assistance by a listed issuer, ...

...”

5. Rule 14.12 states that:

“Where the transaction involves granting an indemnity or guarantee or providing financial assistance by a listed issuer, the asset ratio will be modified such that the total value of the indemnity, guarantee or financial assistance plus in each case any monetary advantage accruing to the entity benefiting from the transaction shall form the numerator of the assets ratio. The “monetary advantage” includes the difference between the actual value of consideration paid by the entity benefiting from the transaction and the fair value of consideration that would be paid by the entity if the indemnity, guarantee or financial assistance were provided by entities other than the listed issuer.”

6. Rule 14.26 states that:

“In an acquisition or disposal of equity capital, the numerators for the purposes of the (a) assets ratio, (b) profits ratio and (c) revenue ratio are to be calculated by reference to the value of the total assets, the profits attributable to such capital and the revenue attributable to such capital respectively.”

7. Rule 14.74 states that:

“The following apply to an option involving a listed issuer, the exercise of which is not at the listed issuer’s discretion:—

- (1) on the grant of the option, the transaction will be classified as if the option had been exercised. For the purpose of the percentage ratios, the consideration includes the premium and the exercise price of the option; and
- (2) on the exercise or transfer of such option, such exercise or transfer must be announced by the listed issuer by means of an announcement published in accordance with rule 2.07C as soon as reasonably practicable if the grant of the option has previously been announced pursuant to the requirements of this Chapter.”

8. Rule 14.75 states that:

“The following apply to an option involving a listed issuer, the exercise of which is at the listed issuer’s discretion:—

- (1) on the acquisition by, or grant of the option to, the listed issuer, only the premium will be taken into consideration for the purpose of classification of notifiable transactions. Where the premium represents 10% or more of the sum of the premium and the exercise price, the value of the underlying assets, the profits and revenue attributable to such assets, and the sum of the premium and the exercise price will be used for the purpose of the percentage ratios; and
- (2) on the exercise of such option by the listed issuer, the exercise price, the value of the underlying assets and the profits and revenue attributable to such assets, will be used for the purpose of the percentage ratios. Where an option is exercised in stages, the Exchange may at any stage as the Exchange may consider appropriate require the listed issuer to aggregate each partial exercise of the option and treat them as if they were one transaction (see rules 14.22 and 14.23).

ANALYSIS

9. The Subscription would be a transaction for Company A that involved provision of financial assistance to Company B and accepting an option to convert the notes into Company B’s shares. The Exchange agreed that when Company A entered into the subscription agreement:

- it should classify the Subscription by calculating the percentage ratios for the provision of financial assistance to Company B; and
- it was not necessary to classify the Subscription as if the notes were fully converted given that the conversion was at Company A's discretion. If Company A subsequently proposed to exercise the conversion rights, it would be required to classify the conversion as a transaction at that time taking into account the conversion price and Company B's total assets, revenue and profits. This was in line with the approach applicable to transactions involving options under Chapter 14.

CONCLUSION

10. The Subscription would be classified as a transaction of Company A based on the percentage ratio calculations for providing financial assistance to Company B.