

HKE_x LISTING DECISION

HKE_x-LD68-2013 (published in May 2013) (updated in October 2019 (Rule amendments))

Summary	
Parties	Company A – a Main Board listed issuer Vendors – third parties independent from Company A
Issue	Whether the Exchange would waive certain specific disclosure requirements for the announcement of a discloseable transaction
Listing Rules	Main Board Rules 14.58(2), 14.60(1) and 14.60(2)
Decision	The Exchange waived the requirements

FACTS

1. Company A was principally engaged in hotel investment and operation. It intended to acquire a building situated in Hong Kong (the **Target Property**) for redevelopment into a hotel property. The Target Property comprised a number of residential and commercial units owned by various Vendors.
2. Company A submitted that it had entered into provisional sale and purchase agreements with some of the Vendors for acquiring their units in the Target Property (the **Acquisitions**), which in aggregate constituted a discloseable transaction.
3. Rules 14.58(2), 14.60(1) and 14.60(2) requires an announcement for a notifiable transaction to contain, among other things, a description of the principal business activities of the counterparty if it is a company or entity, the general nature of the transaction, and brief details of the assets being acquired including the name of any company or business or the actual assets or properties where relevant.
4. Company A applied for a waiver from the above Rules so that it would not be required to disclose the following information (the **Relevant Information**) in its announcement for the Acquisitions:
 - the principal business activities of the Vendors which are companies;
 - the name and address of the Target Property and the units subject to the Acquisitions;
 - the conditions precedents for completion of the Acquisitions.

5. It proposed to make the following alternative disclosure in the announcement:
 - the Vendors are individuals and companies which are independent of Company A and its connected persons;
 - the district where the Target Property is located and the gross area of the units it proposed to acquire; and
 - a statement that completion of the Acquisitions are subject to the satisfaction of a number of conditions.
6. Company A submitted that the terms of each Acquisition were determined after arm's length negotiation between Company A and the Vendor. As it was uncertain whether the Acquisitions could proceed to completion and Company A was still negotiating with other Vendors for acquiring the remaining units in the Target Property, the Relevant Information was commercially sensitive. Disclosure of the information at this stage would be prejudicial to the interests of Company A and would affect the on-going negotiations with other Vendors.
7. Company A considered that with the alternative disclosure, the announcement would provide sufficient information for investors to appraise the Acquisitions. It would also publish a further announcement to disclose the Relevant Information upon completion of the Acquisitions.

APPLICABLE LISTING RULES

8. Rule 14.58 provides that:

“The announcement for a share transaction, discloseable transaction... must contain at least the following information:

 - (1) ...
 - (2) a description of the principal business activities carried on by the listed issuer and a general description of the principal business activities of the counterparty, if the counterparty is a company or entity; ...”
9. Rule 14.60 provides that:

“In addition to the information set out in rule 14.58, the announcement for a discloseable transaction... must contain at least brief details of the following:

 - (1) the general nature of the transaction ...

- (2) brief details of the asset(s) being acquired or disposed of, including the name of any company or business or the actual assets or properties where relevant ...”

ANALYSIS

10. Chapter 14 governs an issuer’s transactions, principally acquisitions and disposals having material impacts on its financial position. Depending on the size of the transaction, the Rules require the issuer to disclose the terms of the transaction and/or obtain shareholder approval.
11. When deciding whether to grant a waiver, the Exchange will take into account the circumstances and reasons outlined in the waiver application and all other relevant information supplied by the issuer.
12. The Exchange considered that concerns about commercial sensitivity of the details of a transaction should not override the disclosure obligations of the issuer where the information was material to investors. When assessing Company A’s waiver application, the Exchange took into account the following factors:
 - a. The Acquisitions constituted a discloseable transaction only and was not significant to Company A.
 - b. The alternative disclosure would allow investors to understand the nature of the Acquisitions. The waiver would not result in an omission of material information in the initial announcement for the Acquisitions.
 - c. Disclosure of the Relevant Information at this stage might be prejudicial to the interests of Company A.

CONCLUSION

13. The Exchange granted the waiver to Company A.

Note: With effect from 1 October 2019, Rule 14.58(2) also requires the announcement of a notifiable transaction to disclose the identity of the counterparty.