

HKE_x LISTING DECISION
HKE_x-LD69-2013 (published in May 2013)

Parties	Company A – a Main Board issuer Company B – another Main Board issuer and a non-wholly owned subsidiary of Company A
Issue	Whether the Exchange would waive the circular requirement for a major transaction of Company A
Listing Rules	Main Board Rule 14.38A
Decision	The Exchange waived the requirement

FACTS

1. Company A recently announced a disposal of its interests in Company B (the **Disposal**). The Disposal did not require shareholders' approval, and would be completed when the parties obtained the necessary regulatory approvals. Upon completion, Company B would cease to be a subsidiary of Company A.
2. Company B now proposed to acquire a target company (the **Acquisition**) from certain independent third parties, which would be a very substantial acquisition for Company B. It would also be a major transaction for Company A as Company B was still a subsidiary of Company A.
3. Company A submitted that the Disposal and the Acquisition were separate transactions. Completion of the Disposal was expected to take place before Company B issued its circular and the notice of general meeting for the approval of the Acquisition.
4. Company A requested a waiver from the circular requirement for the Acquisition because:
 - Company B would no longer be Company A's subsidiary upon completion of the Disposal. Information about the Acquisition and the target company would be irrelevant to Company A and its shareholders.
 - Company A would not convene a general meeting for the approval of the Acquisition as its parent company would provide a written approval of the transaction according to Rule 14.44. The circular, if required, would be issued to Company A's shareholders for information only.

APPLICABLE LISTING RULE

5. Rule 14.38A requires that:-

“... a listed issuer which has entered into a major transaction must send a circular to its shareholders and the Exchange and arrange for its publication in accordance with the provisions of Chapter 2 of the Exchange Listing Rules.”

ANALYSIS

6. Under Chapter 14, an issuer proposing a material transaction must issue a circular containing all information that is necessary for its shareholders to make an informed assessment of the assets to be acquired or disposed of and the impact of the transaction on the issuer.
7. Having considered the circumstances of this case, the Exchange agreed that it would be unduly burdensome to require Company A to issue a circular for the Acquisition as required under the Rules if at that time Company B was no longer a subsidiary of Company A.

CONCLUSION

8. The Exchange agreed to grant the waiver to Company A on the basis that the Disposal would be completed before Company B issued its circular for the Acquisition.