

HKEx LISTING DECISION

Cite as HKEx-LD20 -2011 (updated in October 2019 (Rule amendments))

Summary	
Parties	Company A – a Main Board issuer Target – a company listed on an overseas stock exchange Offeror – a third party who made a general offer to acquire all the shares in the Target
Issue	Whether the Exchange would disregard the consideration ratio for Company A’s disposal of interest in the Target under the offer and classify it as a major transaction instead of a very substantial disposal
Listing Rules	Main Board Listing Rule 14.20
Decision	The disposal was classified as a major transaction.

FACTS

1. The Offeror made a cash offer to acquire the Target’s shares from its existing shareholders.
2. Company A held 15 per cent interests in the Target as an investment and was considering whether to accept the offer. It had a very short timeframe to make an acceptance. Its majority shareholder would approve the disposal by a written shareholder’s approval.
3. The disposal would be a very substantial disposal as the consideration ratio exceeded 75 per cent. However, other percentage ratios indicated that the disposal was a major transaction only.
4. Company A submitted that the disposal should be a major transaction instead of a very substantial disposal. When the offer was first announced one month earlier, the consideration ratio was less than 75 per cent based on Company A’s then market capitalisation. Since then, there was no material change in Company A’s operations and financial position, but its share price had decreased substantially due to the general market downturn. The consideration ratio (calculated based on

its latest market capitalisation) became substantially larger than the other percentage ratios. It considered the consideration ratio was anomalous.

APPLICABLE LISTING RULES OR PRINCIPLES

5. Rule 14.01 states that:

This Chapter deals with certain transactions, principally acquisitions and disposals, by a listed issuer. ...

6. Rule 14.07(4) provides the calculation of a consideration ratio as follows:

the consideration divided by the total market capitalisation of the listed issuer. The total market capitalisation is the average closing price of the listed issuer's securities as stated in the Exchange's daily quotations sheets for the five business days immediately preceding the date of the transaction (see in particular rule 14.15); and

7. Rule 14.20 provides that:

the Exchange may, where any of the calculations of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, disregard the calculation and substitute other relevant indicators of size, including industry specific tests. The listed issuer must provide alternative tests which it considers appropriate to the Exchange for consideration.

ANALYSIS

8. Chapter 14 governs an issuer's transactions, including acquisitions or disposals of assets having material impacts on its financial position.
9. Rule 14.07 sets out five percentage ratios for assessing the impact of a transaction on an issuer. They form the basis for classifying the transaction which determines whether the transaction is subject to any disclosure and/or shareholders' approval requirements under Chapter 14.
10. The consideration ratio measures the materiality of a transaction by reference to the issuer's latest market capitalisation. It is an important size test as it takes into account the issuer's size at the time of the transaction.

11. This case involved Company A selling the Target's shares under an offer made by a third party. The Exchange noted that:
- When the offer was made, the percentage ratios (including the consideration ratio) calculated at that time indicated that the disposal would be a major transaction.
 - There was no material change in Company A's financial position and the impact of the disposal on it. The consideration ratio changed only because of the substantial decrease in Company A's share price in a short period.
 - Company A held the Target's shares as an investment and it had other significant operations. The disposal could not be considered "very substantial"²² to Company A compared to its financial position. This was supported by the other percentage ratios which were substantially smaller than the consideration ratio.
 - The disposal required shareholders' approval whether it was treated as a major transaction or a very substantial disposal.
12. The Exchange considered it acceptable to disregard the consideration ratio.

CONCLUSION

13. The disposal was classified as a major transaction.

Note: On 1 October 2019, Rule 14.20 was amended to clarify that if any calculation of the percentage ratio produces an anomalous results or is inappropriate to the sphere of activities of the issuer, the Exchange (or the issuer) may apply an alternative size test that it considers appropriate to assess the materiality of a transaction under Chapter 14.

The Rule amendments would not change the analysis and conclusion in this case.