

HKEx LISTING DECISION
HKEx-LD112-2 (November 2010)

Parties	Company X – a Main Board issuer, incorporated in Bermuda
Issue	Whether the provisional liquidator must despatch a circular and obtain shareholder approval for the sale of Company X’s business under Chapter 14
Listing Rules	Main Board Rules 14.48 and 14.49
Decision	The requirement to despatch a circular and obtain shareholder approval did not apply to the sale

FACTS

1. A creditor petitioned to wind-up Company X for its inability to pay debts. The High Court of Hong Kong appointed provisional liquidators to the company.
2. The provisional liquidators agreed to sell Company X’s principal business to an independent investor, and would use the proceeds to pay the debts. The sale would be a very substantial disposal.
3. Under the law, completion of the sale was subject to a court order. The provisional liquidators considered that the sale should not require shareholder approval under Chapter 14 because Company X was insolvent and would not have residual assets for distribution to shareholders. The shareholders therefore had no interest left in the company.

APPLICABLE LISTING RULES

4. Rule 14.38A states that:

... A listed issuer which has entered into a major transaction must send a circular to its shareholders ...

5. Rule 14.48 states that:

In the case of a very substantial disposal ..., the listed issuer must comply with the requirements for all transactions for major transactions set out in rules 14.34 to 14.37 and 14.38A.

6. Rule 14.49 states that:

A very substantial disposal ... must be made conditional on approval by shareholders in general meeting. ...

ANALYSIS

7. Chapter 14 seeks to protect shareholders' interests by giving them the rights to participate in the decision process for material transactions through voting at shareholders' meetings. It does not specifically provide for the case where the issuer is insolvent and its assets have to be liquidated to repay creditors.
8. In this case, the court appointed the provisional liquidators to take control of Company X and arrange for its restructuring. The sale was part of the restructuring process and would take place under a court order. The proceeds would be used to repay creditors. Under the law, creditors' claims ranked higher than shareholders' equity in terms of distribution by Company X. As Company X had insufficient assets to repay the creditors, its shareholders had no interest left in Company X. In these circumstances, the shareholders' interests would not be prejudiced in the absence of a shareholder meeting to approve the sale under Chapter 14.

CONCLUSION

9. The requirement to despatch a circular and obtain shareholder approval under Rules 14.48 and 14.49 did not apply to the sale. However, Company X should keep shareholders informed of the progress of the sale under Rule 13.09(1).