

## HKEx LISTING DECISION

Cite as HKEx-LD75-4 (Published in October 2009) (Updated in July 2014 and November 2015)

Summary	
<b>Parties</b>	Company A – a Main Board listed company  Subsidiary B – a wholly owned subsidiary of Company A  The Parent Shareholder – Company A’s controlling shareholder  The Investor – a third party who agreed to acquire all the Parent Shareholder’s shareholding in Company A
<b>Subject</b>	Whether the proposed distribution of Subsidiary B’s shares in specie by Company A would be regarded as a transaction for Company A under Chapter 14 and/or Chapter 14A of the Rules
<b>Listing Rules</b>	Main Board Listing Rules 2.03(4), 2.04, 14.04(1), 14A.24
<b>Decision</b>	The proposed Distribution would not constitute a transaction for Company A under Chapter 14 or Chapter 14A. Given the measures proposed by Company A to protect the interests of independent shareholders, the Exchange did not impose any additional requirements on Company A under Rule 2.04

### SUMMARY OF FACTS

1. The principal businesses of Company A and its subsidiaries (the **Group**) included hotel investment and operation.
2. The Parent Shareholder requested Company A’s board of directors to put forward for shareholders’ consideration a proposed distribution of all Subsidiary B’s shares in specie to Company A’s shareholders on a pro rata basis (the **Distribution**). Subsidiary B and its subsidiaries would be carrying on all the businesses of the Group other than the hotel business.
3. After completion of the Distribution, the Parent Shareholder would make a voluntary unconditional cash offer under the Takeovers Code to acquire all Subsidiary B’s shares other than those held by the Parent Shareholder and parties acting in concert with it (the **Subsidiary Offer**). The Subsidiary Offer would provide a cash alternative for other shareholders of Company A to realize their holdings of the shares in Subsidiary B.

4. The Distribution was proposed by the Parent Shareholder to facilitate the proposed disposal of the Parent Shareholder's controlling interest in Company A to the Investor. The Parent Shareholder had entered into an agreement with the Investor under which the Investor would acquire all the Parent Shareholder's shareholding in Company A (the **Parent Transaction**). This transaction was conditional upon, among other things, approval of the Distribution by Company A's shareholders.
5. On completion of the Parent Transaction, the Investor would make a mandatory unconditional cash offer under the Takeovers Code to acquire all the shares in Company A other than those already held or agreed to be acquired by the Investor and parties acting in concert with it (the **Company Offer**).
6. A disposal of Company A's entire interest in Subsidiary B would constitute a very substantial disposal under Chapter 14 based on the percentage ratio calculations.

#### **ISSUE**

7. Whether the proposed Distribution would be regarded as a transaction for Company A under Chapter 14 and/or Chapter 14A.

#### **APPLICABLE LISTING RULES OR PRINCIPLES**

8. Rule 2.03 provides that

The Exchange Listing Rules reflect currently acceptable standards in the market place and are designed to ensure that investors have and can maintain confidence in the market and in particular that: -

...

- (4) all holders of listed securities are treated fairly and equally;

...

9. Rule 2.04 provides that

... the Exchange Listing Rules are not exhaustive and that the Exchange may impose additional requirements or make listing subject to special conditions whenever it considers it appropriate. ...

10. Rules 14.04(1) and 14A.24 provide guidance on the scope of "transactions" subject to the notifiable transaction rules and connected transaction rules.

## ANALYSIS

11. The notifiable transaction rules in Chapter 14 deal with transactions, principally acquisitions and disposals, which are outside the issuer's ordinary and usual course of business and have an impact on it. The Exchange takes the view that dividend distributions to shareholders are not intended to fall within Chapter 14.
12. The connected transaction rules in Chapter 14A seek to ensure that an issuer takes account of the interests of shareholders as a whole when it enters into transactions with connected persons, in particular to safeguard against connected persons (such as the issuer's directors, chief executives or substantial shareholders, or their associates) taking advantage of their positions to the detriment of minority shareholders. The connected transaction rules cover any transactions with connected persons irrespective of whether they are capital or revenue in nature. While dividend distributions to shareholders are not explicitly mentioned in the definition of transactions in Chapter 14A, Rule 14A.92(1) provides that a connected person receiving a pro rata entitlement to securities in its capacity as shareholder is fully exempt from connected transaction requirements. Following the same principle, the Exchange will normally consider a dividend distribution as falling outside Chapter 14A where the connected person involved only receives a pro rata entitlement in its capacity as shareholder.
13. However, Rule 2.04 provides that the Listing Rules are not exhaustive and that the Exchange may impose additional requirements as it considers appropriate. In the case of a distribution in specie, the Exchange may be concerned about whether the distribution is fair to all shareholders and whether the persons proposing the distribution have an interest different from other shareholders, particularly where unlisted assets are being distributed and there will be no liquid market for minority shareholders to realise a value from the distribution. The Exchange may impose additional requirements under Rule 2.04 to ensure compliance with the principles in Rule 2.03. In making the determination, the Exchange will need to consider all the facts and circumstances.
14. In this case, the Distribution would not constitute a transaction under Chapter 14 or Chapter 14A. However, the Distribution was proposed by the Parent Shareholder to facilitate the disposal of its controlling interest in the remaining Group, and the Parent Shareholder's interest in the Distribution and related arrangements was different from that of other shareholders. After the Distribution, the minority shareholders of Company A would either hold the unlisted shares in Subsidiary B or sell them to the Parent Shareholder under the Subsidiary Offer. Given the significant impact of the Distribution on Company A and the Parent Shareholder's material interest in the Distribution and related arrangements, there should be safeguards against the Parent Shareholder taking advantage of its

position to the detriment of minority shareholders. In this connection, the Exchange noted the following measures proposed by Company A:

- a special general meeting would be held for its shareholders to consider and approve the resolution(s) in respect of the Distribution and other related arrangements. The Parent Shareholder and its associates would abstain from voting on the relevant resolution(s). The Investor and its associates did not hold any shares in Company A; and
- to allow the independent shareholders to make an informed decision on how to vote,
  - the disclosures in the circular relating to the Distribution would be comparable to those for a very substantial disposal circular; and
  - an independent financial adviser was appointed and the circular would contain its opinion on the Distribution and related arrangements.

## **DECISION**

15. The Exchange determined that the proposed Distribution would not constitute a transaction for Company A under Chapter 14 or Chapter 14A. Given the measures proposed by Company A to protect the interests of its independent shareholders, the Exchange did not impose additional requirements under Rule 2.04.

## **SUBSEQUENT DEVELOPMENT AND ADDITIONAL GUIDANCE** *(added in November 2015)*

16. The Exchange reviewed a number of cases this year involving issuers distributing significant portions of their businesses in specie, relative to the operations left in the issuers. The Exchange considers that, in addition to the concerns stated above, such distributions are tantamount to delistings of the assets to be distributed and accordingly, shareholders should be afforded the same level of protection available for a withdrawal of listing<sup>1</sup>.
17. Accordingly, where a disposal of the assets by an issuer amounts to a very substantial disposal under the Rules (based on the percentage ratio calculations), the proposed distribution would also be subject to the Rule requirements applicable to a withdrawal of listing, in addition to the measures set out in paragraph 14 above:

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<sup>1</sup> See Rules 6.12(1) to (4)

- the issuer should obtain prior approval of the distribution by independent shareholders<sup>2</sup> in a general meeting. The approval should be given by at least 75% of the votes attaching to any class of listed securities held by holders voting either in person or by proxy at the meeting, and the number of votes cast against the resolution is not more than 10% of the votes attaching to any class of listed securities held by holders permitted to vote in person or by proxy at the meeting; and
  - the issuer's shareholders (other than the directors (excluding independent non-executive directors), chief executive and controlling shareholders) should be offered a reasonable cash alternative or other reasonable alternative for the distributed assets.
18. Issuers who intend to conduct significant distributions of unlisted assets described in paragraph 17 above should observe the additional guidance and consult the Exchange at the earliest opportunity. The Exchange will impose the additional requirements set out in paragraph 17 on these distributions under Rule 2.04.

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<sup>2</sup> Any controlling shareholders (or if there is no controlling shareholder, the directors (other than independent non-executive directors) and chief executive of the issuer) and their respective associates should abstain from voting in favour of the resolution.