**HKEx LISTING DECISION**
**HKEx-LD14-2011 (Published in June 2011) (Updated in July 2014)**

| Parties | Company A – a Main Board issuer |
| --- | --- |
| | Parent Company – Company A's controlling shareholder |
| | Parent Group – the Parent Company and its subsidiaries |
| Issue | Whether the Exchange required aggregation of the agreements between Company A and the Parent Company for<br>(i)  the Parent Group contracting out certain system works to Company A; and<br>(ii)  Company A sub-contracting some of the works back to the Parent Group |
| Listing Rules | Main Board Rules 14A.81, 14A.82 and 14A.83 |
| Decision | The connected transactions should be aggregated. |

**FACTS**

1.  Company A was engaged in the provision of information technology infrastructure and internet services.

2.  It proposed to enter into two framework agreements ("**Agreements 1 and 2**") with the Parent Company for the following transactions for 3 years:

    - Under Agreement 1, the Parent Company would engage Company A to carry out certain network infrastructure and security system works on a project basis for the buildings owned and/or managed by the Parent Group.

    - Under Agreement 2, Company A would engage the Parent Company's subsidiaries as sub-contractors to carry out part of the works in projects awarded to Company A under Agreement 1.

3.  Based on the percentage ratio calculations, Agreement 1 was a non-exempt continuing connected transaction, and Agreement 2 was exempt from the independent shareholders' approval requirement under the de minimis provision in Rule 14A.76(2).

4.  Company A considered that the agreements should not be aggregated under Chapter 14A because:

    - They were distinct and separate from each other.

- The transactions were of different nature to Company A. One of them was of an income nature and the other was of an expense nature.

## APPLICABLE LISTING RULES

5. Rule 14A.81 states that:

> The Exchange will aggregate a series of connected transactions and treat them as if they were one transaction if they are all completed within a 12-month period or are otherwise related. The listed issuer must comply with the applicable connected transaction requirements based on the classification of the connected transactions when aggregated. …

6. Rule 14A.82 states that:

> Factors that the Exchange will consider for aggregation of a series of connected transactions include whether:
>
> (1) they are entered into by the listed issuer with the same party, or parties who are connected with one another;
>
> (2) they involve the acquisition or disposal of parts of one asset, or securities or interests in a company or group of companies; or
>
> (3) they together lead to substantial involvement by the listed issuer's group in a new business activity.

7. Rule 14A.83 states that:

> The Exchange may aggregate all continuing connected transactions with a connected person.

## ANALYSIS

8. Under Rule 14A.81, the Exchange may require an issuer to aggregate a series of transaction if they are completed within a 12 month period or are otherwise related.

9. Rule 14A.82 sets out a non-exhaustive list of factors which the Exchange will consider in applying the aggregation rule. The Rule is intended to provide guidance on the circumstances where aggregation may be required. When determining whether aggregation is required in a particular case, the Exchange will consider all relevant facts and circumstances.

10.    The Exchange considered Agreements 1 and 2 were related and should be aggregated because:

- they were entered into by Company A with the same party i.e. the Parent Company; and

- the sub-contracting arrangements under Agreement 2 were part of the transactions subject to Agreement 1.   The agreements were connected with each other.

11.    Company A submitted that the transaction of an income nature under Agreement 1 should not be aggregated with that of an expense nature under Agreement 2. However, the Exchange did not agree.  It may aggregate income and expense items in appropriate circumstances (see also Listing Decision LD64-4).

12.    Here, Agreements 1 and 2 were in substance one transaction involving (i) the Parent Group contracting out certain system works to Company A and (ii) Company A sub-contracting some of the works back to the Parent Group. They, when aggregated, would be classified with reference to the larger of (i) or (ii).  On this basis, both agreements would be non-exempt continuing connected transactions and would require independent shareholders' approval.


**CONCLUSION**

13.    The connected transactions should be aggregated under Rule 14A.81.