

HKEx LISTING DECISION

HKEx-LD16-2011 (published in July 2011) (Updated in July 2014)

Parties	Company X – a PRC issuer, listed on the Main Board and on a Mainland stock exchange
Issue	Whether the Exchange would waive certain connected transaction requirements for the possible issue of new A shares by Company X to its connected persons under a proposed public offer in the Mainland
Listing Rules	Main Board Rules 14A.36, 14A.39, 14A.46, 14A.92(1)
Decision	The Exchange waived the requirements

FACTS

1. Company X proposed to issue certain new A shares (“**New A Shares**”) through a public offer in the Mainland.
2. Under the proposed offer, Company X’s existing A-share holders would have preferential rights to subscribe the New A Shares on a pro rata basis. If any A-share holders gave up their pro rata entitlements, the New A Shares not taken up (the “**Excess Shares**”) would be offered to the public by online subscription through the system of the Mainland stock exchange and offline placement.
3. The issue price would be determined with reference to the prevailing market price of the A shares at the time of the proposed offer. It was expected that the New A Shares would represent about 15% of Company X’s existing issued share capital.
4. Company X would use the proceeds for general working capital.
5. Under Company X’s articles of association and Rule 19A.38, the proposed offer required approvals by (i) shareholders at a general meeting and (ii) A-share holders and H-share holders at separate class meetings. It also required approvals of regulatory authorities including the CSRC.
6. Company X had a wide spread of shareholder base and did not have any controlling shareholder. However, as some connected persons were A-share holders, they would be entitled to subscribe the New A Shares on a pro rata basis. They might also apply for the Excess Shares if any.

7. Company X enquired whether the subscriptions of New A Shares by the connected persons set out in paragraph 6 would fall within the exemption under Rule 14A.92(1).
8. If the exemption did not apply, Company X sought a waiver from the connected transaction requirements to seek independent shareholders' approval of, and to include an opinion from the independent board committee and the independent financial advisers on, the possible issue of New A Shares to the connected persons under the proposed offer (the **Requirements**). It would be unduly burdensome for Company X to comply with the Requirements because:
 - Any subscription of New A Shares by the connected persons would be subject to the same terms and conditions as those available to the other A-share holders or independent investors. The Excess Shares, if any, would be allocated on a fair and equal basis and in compliance with the Mainland requirements. No preferential treatment would be given to the connected persons; and
 - The proposed offer was subject to shareholders' approval under other requirements described in paragraph 5.

APPLICABLE LISTING RULES

9. Rule 14A.36 states that:

The connected transaction must be conditional on shareholders' approval at a general meeting held by the listed issuer. Any shareholder who has a material interest in the transaction must abstain from voting on the resolution.

10. Rule 14A.39 states that:

If the connected transaction requires shareholders' approval, the listed issuer must (1) set up an independent board committee; and (2) appoint an independent financial adviser.

11. Rule 14A.46 states that:

The listed issuer must send a circular to its shareholders...

12. Rule 14A.92 states that:

An issue of new securities by a listed issuer or its subsidiary to a connected person is fully exempt if:

- (1) the connected person receives a pro rata entitlement to the issue as a shareholder; ...

...

13. Rule 19A.38 modifies Rule 13.36(1)(a) for PRC issuers:

... the directors of the PRC issuer shall obtain the approval by a special resolution of shareholders in general meeting, and the approvals by special resolutions of holders of domestic shares and overseas listed foreign shares (and, if applicable, H shares) (each being otherwise entitled to vote at general meetings) at separate class meetings conducted in accordance with the PRC issuer's articles of association, prior to:—

- (i) authorising, allotting, issuing or granting:—

(A) shares;

.....

ANALYSIS

14. The exemption under Rule 14A.92(1) did not apply to the issue of New A Shares to the connected persons under the proposed offer because some existing shareholders of Company X (i.e. H-share holders) would not have pro rata entitlements to the shares.
15. The Exchange agreed to waive the Requirements having considered the following:
 - This case involved a public offer of New A Shares in the Mainland and must comply with the Mainland law and regulations.
 - Any issue of New A Shares to the connected persons would be made on the same terms and conditions as other A-share holders or independent investors. There would be no preferential treatment to the connected persons.
 - As Company X had a wide spread of shareholder base, most of the New A Shares would be offered to the existing A-share holders who were not connected persons. The offer was not made with a view to providing benefits to the connected persons.
 - The proposed offer required approval of H-share holders at a separate class meeting. H-share holders could veto the offer, hence their shareholders' rights were protected.

CONCLUSION

16. The Exchange waived the Requirements.