Listing Decisions on Aggregation of Connected Transaction

Relevant Listing Rules

Under Rule 14A.25 of the Rules (Listing Rules) Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (SEHK), SEHK may require an issuer to aggregate a series of transactions if they are completed within a 12-month period or are otherwise related for the purpose of determining the classification of connected transactions.

Rule 14A.26 of the Listing Rules sets out a non-exhaustive list of factors which SEHK would consider when applying the aggregation rule. Such factors include whether the transactions:

- are entered into by the issuer with the same party or with parties connected or otherwise associated with one another;
- involve the acquisition or disposal of securities or an interest in one particular company or group of companies;
- involve the acquisition or disposal of parts of one asset; and
- together lead to substantial involvement by the issuer in a business activity which did not previously form a part of the issuer's principal business activities.

Listing Decisions

Hong Kong Exchanges and Clearing Limited (HKEx) published the following listing decisions on 30 June 2011 in relation to aggregation of connected transactions and such decisions may give a better understanding on the application of the aggregation rule:

FIRST LISTING DECISION (HKEX-LD13-2011)

Background

The principal business activities of Listco A included operating railway systems. It intended to construct a new railway line. The project involved granting several construction contracts to contractors for different portions of the railway line and each contract was subject to a separate tender process.

As part of the project plan, Listco A intended to award one contract to Associate A (Contract A) and another contract to Associate B (Contract B), both of which were associates of a substantial shareholder of Listco A and therefore connected persons of Listco A. The issue was whether Contract A and Contract B should be aggregated for the purpose of determining connected transaction classification.

Listco A made the following submission:

- Each contract was related to a different and distinct part of the railway line and the contracts were awarded to Associate A and Associate B through separate tender processes.

- In relation to the construction of the new railway line, Listco A would enter into a number of separate construction contracts (including Contract A and Contract B) to minimise the project risk. Such model was not aim to "decompose" the construction work for the purpose of circumventing the Listing Rules.

Ruling

SEHK was of the view that Contract A and Contract B were related and should be aggregated and treated as one connected transaction and classified according to their total contract sum due to the following reasons:

- They were parts of the new railway project of Listco A.

- They were entered into by Listco A with Associate A and Associate B who were parties connected with one another.

Copies of the Listing Decision "HKEx-LD13-2011" can be downloaded via the link below:

http://www.hkex.com.hk/eng/rulesreg/listrules/ listdec/Documents/ld13-2011.pdf

SECOND LISTING DECISION (HKEX-LD14-2011)

Background

Listco B was engaged in the business of providing information technology infrastructure and internet services. It intended to enter into two framework agreements (Agreement 1 and Agreement 2) for a period of three years with its controlling shareholder (Parent Company) as explained below:

- Under Agreement 1, the Parent Company (and together with its subsidiaries Parent Group) would engage Listco B to conduct certain network infrastructure and security system work on a project basis for the buildings owned and/or managed by the Parent Group.

- Under Agreement 2, Listco B would engage subsidiaries of the Parent Company to conduct part of the work in projects granted to Listco B under Agreement 1.

Under the Listing Rules, Agreement 1 would be a non-exempt continuing connected transaction and Agreement 2 would fall under the de minimis provision and be exempt from the independent shareholders' approval requirement.

Submission

Listco B made the following submission to support its view that the agreements should not be aggregated:

- The agreements were distinct and separate from each other.

- The transactions were of different nature as one of them was of an income nature and the other was of an expense nature.

Ruling

SEHK decided that Agreement 1 and Agreement 2 were related transactions and should be aggregated based on the following rationale:

- They were both entered into by Listco B with the same party i.e. the Parent Company.

- The sub-contracting arrangements under Agreement 2 were part of the transactions under Agreement 1 and accordingly, they were connected with each other.

Also, SEHK did not agree that transactions of an income nature should not aggregate with that of an expense nature and clarified that it might aggregate income and expense items in appropriate situations.

SEHK was of the view that Agreement 1 and Agreement 2 were in substance one transaction. After the aggregation, the agreements should be classified with reference to the larger of the two. On such basis, both of them would be non-exempt continuing connected transactions and require independent shareholders' approval.

Copies of the Listing Decision "HKEx-LD14-2011" can be downloaded via the link below:

http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld14-2011.pdf

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