HKEx LISTING DECISION
HKEx-LD7-2011 (Withdrawn in October 2019)

[This Listing Decision is superseded by the amendments to Rules 14.92 and 14.93 (with effect from 1 October 2019) and the withdrawal of the general waiver from Rule 14.92.]

Parties	Company A – a Main Board issuer The Acquisition Target – a company to be acquired by Company A from the Vendor The Disposal Target – a major operating subsidiary of Company A to be sold to the Purchaser The Vendor and the Purchaser – each an independent third party Company X – Company A's controlling shareholder
Issue	Whether the Exchange would grant a waiver from Rule 14.92 for the disposal of the Disposal Target
Listing Rules	Main Board Rules 14.06(6), 14.92, 14.93
Decision	The Exchange did not grant the waiver

FACTS

Background

1. Company A and its subsidiaries (the **Group**) manufactured and sold chemical products through the Disposal Target.

2. Company X acquired a controlling interest in Company A a year ago and became its controlling shareholder.

Proposed acquisition

3. A year after the change in control, Company A agreed to acquire the Acquisition Target from the Vendor. The Acquisition Target manufactured and sold lighting and related products (the **Acquired Business**). The acquisition would be a major transaction.

4. Company A would pay for the acquisition by cash and issuing convertible bonds to the Vendor. The terms of the convertible bonds prohibited conversion which would trigger a mandatory general offer under the Takeovers Code.

5. Company A considered that the Acquisition would diversify its business portfolio and broaden its income base.

<u>Proposed disposal</u>

6. Shortly after signing the acquisition agreement, Company A agreed to sell the Disposal Target to the Purchaser for cash consideration. This would be a very substantial disposal.

7. Company A submitted that it would continue its existing business by trading chemical products (the **Trading Business**). As part of the terms of the disposal, the Disposal Target would appoint the remaining Group as a non-exclusive distributor of its chemical products for a number of years. The Group would also source chemical products from other outside manufacturers for the Trading Business.

8. While the Disposal Target was profit making, Company A considered the disposal was in the interest of its shareholders because of the uncertain business prospects of the Disposal Target, including a decrease in turnover in recent years and the expected increase in production costs and substantial capital investment in the production facilities.

9. Company A would use the sale proceeds for other possible investment opportunities and working capital of the group.

10. In light of a change in control of Company A within 24 months, Rule 14.92 applied to the disposal. Company A sought a waiver from the rule.

APPLICABLE LISTING RULES

11. Rule 14.06(6) defines a "reverse takeover" as:

> an acquisition or a series of acquisitions of assets by an issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction or arrangement or series of transactions or arrangements which constitute, an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new applicants set out in Chapter 8 of the Exchange Listing Rules. A "reverse takeover" normally refers to:
>
> (a) an acquisition or a series of acquisitions (aggregated under rules 14.22 and 14.23) of assets constituting a very substantial acquisition where there is or which will result in a change in control (as defined in the Takeovers Code) of

the listed issuer (other than at the level of its subsidiaries); or

(b) acquisition(s) of assets from a person or a group of persons or any of his/their associates pursuant to an agreement, arrangement or understanding entered into by the listed issuer within 24 months of such person or group of persons gaining control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries), where such gaining of control had not been regarded as a reverse takeover, which individually or together constitute(s) a very substantial acquisition. …

12. Rule 14.92 states that:

> A listed issuer may not dispose of its existing business for a period of 24 months after a change in control (as defined in the Takeovers Code) unless the assets acquired from the person or group of persons gaining such control or his/their associates and any other assets acquired by the listed issuer after such change in control can meet the trading record requirement of rule 8.05.

13. Rule 14.93 states that:

> A disposal by a listed issuer which does not meet the requirement under rule 14.92 will result in the listed issuer being treated as a new listing applicant.

ANALYSIS

14. Rules 14.92 and 14.93 are part of the reverse takeover Rules. They aim to address circumvention of Rule 14.06(6) in situations where the new controlling shareholder may structure a reverse takeover as a series of transactions, for example, by deferring the disposal of the issuer's existing business after an injection of assets to the issuer shortly after a change in control, thereby avoiding classification of the asset injection as a very substantial acquisition.

15. However, the drafting of Rule 14.92 supports a narrower interpretation and effectively restricts an issuer from disposing any of its existing businesses within a 24-month period after a change in control, even where there is no asset injection and there is a legitimate business reason for the disposal. The Listing Committee considered the issue and concluded that the Rule should be applied to meet its policy intent. The Exchange may grant a waiver from Rule 14.92 to issuers if their cases do not fall under the following circumstances:

(a) there has been an injection of assets from the new controlling shareholder; and

(b) taking into account the disposal(s), the asset injection (or a series of injections) from the new controlling shareholder during the period leading to and after the change in control would have resulted in a very substantial acquisition.

(See 2008 Listing Committee Annual Report)

16. Here, Rule 14.92 applied as Company A would dispose of its existing business within a 24-month period after its change in control. However, the disposal could not meet the requirements in the Rule.

17. When assessing the waiver application, the Exchange noted that:

- The Disposal Target's revenue and total assets accounted for 100% and 70% of Group's revenue and total assets. After the disposal, the remaining Group's material assets would include cash and other receivables. The disposal would result in Company A selling almost the entire existing business of the Group.

- Company A would start the Trading Business after the disposal, and its business model was fundamentally different from the existing business where the Group itself produced chemicals for sale. The Trading Business was a new business to the Group and not a continuation of its existing business.

- As a result of the acquisition and the disposal, the restructured Group would be engaging in new businesses (i.e. the Acquired Business and the Trading Business). It would cease to conduct its existing business.

- If the acquisition was made after the disposal, it would become a very substantial acquisition of Company A, and in terms of size, would be significant to the Group. The Acquired Business, completely different from the existing business, would form a substantial part of the Group's business upon completion. The acquisition would be a means to achieve the listing of the Acquired Business.

- Neither the Acquisition Target nor the restructured Group would meet Rule 8.05.

18. The Exchange considered that the change in control, the acquisition and the disposal were a series of arrangements to circumvent the reverse takeover Rules. This case fell within the policy intent of Rule 14.92 and no waiver would be granted.

CONCLUSION

19. The Exchange did not grant a waiver for Rule 14.92. Company A would be treated as a new listing applicant under Rule 14.93 if it proceeded with the disposal.