

HKEx LISTING DECISION

HKEx-LD44-2013 (published in January 2013) (updated in October 2019
(amendments to the reverse takeover Rules) **and withdrawn in January 2024**)

[This listing decision is withdrawn.]

Parties	Company A – a Main Board issuer The Target – a company which Company A proposed to acquire from certain independent third parties
Issue	Whether the Target had the right to participate actively in the exploration for and/or extraction of natural resources
Listing Rules	Main Board Rules 14.06B and 18.03(1)
Decision	The Exchange accepted that the Target had the right to participate actively in the exploration of natural resources through an earn-in arrangement

FACTS

1. Company A proposed to acquire the Target which participated in a gold mining project (the **Project**).
2. At the time of the acquisition, the Target did not have any interest in the Project, but it had entered into certain agreements (the **Agreements**) with the owner of the Project (the **Owner**) to “earn” an interest in it. Under the Agreements, the Target provided funding and technical expertise for the exploration activities of the Project. When the Target achieved the performance targets set out in the Agreements (including the completion of the scoping study, the pre-feasibility study and the feasibility study), the Owner would transfer 52% of its interest in the Project to the Target. Upon completion of the exploration works, the Target and the Owner would form a joint venture to develop the Project and share the profits of the mining activities.
3. The size of the acquisition was very significant to Company A. When assessing whether the acquisition would constitute a reverse takeover, one of the factors that the Exchange considered was whether the Target could meet the new listing requirements (see Guidance Letter HKEX-GL104-19 for guidance on the application of the reverse takeover Rules). There was an issue whether the Target could meet Rule 18.03(1) which requires a new applicant mineral company to have the right to participate actively in the exploration for and/or extraction of natural resources.

4. Company A submitted that earn-in arrangements were common for exploration activities in the mining industry. While the Target did not yet own an interest in the Project, it had actively participated in the Project and could exercise sufficient influence in the decisions over the exploration activities through the Agreements given that:
- The Agreements gave the Target the sole and exclusive rights to explore for minerals over the Project areas. All the required licenses, permits and approvals had been obtained for the Target to conduct the exploration activities.
 - The Target was the manager of the Project and was responsible for executing the scoping study, the pre-feasibility study and the feasibility study. It also had the right to appoint other contractors and consultants to assist it in carrying out the activities.
 - The Target and the Owner had set up a committee to oversee the exploration activities of the Project, including monitoring the progress of the scoping study, the pre-feasibility study and the feasibility study of the Project, assessing whether the studies met the required technical standards, and making recommendation as to whether the Project should proceed to the next stage. A majority of the committee members were appointed by the Target.
 - The Owner did not have right to unilaterally terminate the Agreements unless the Target materially breached the Agreement terms.

APPLICABLE LISTING RULES

5. Rule 18.03(1) requires that “*A mineral company must establish to the Exchange’s satisfaction that it has the right to participate actively in the exploration and/or extraction of natural resources, either:-*
- (a) *through control over a majority (by value) of the assets in which it has invested together with adequate rights over the exploration for and/or extraction of natural resources; or*
- Note: ‘control over a majority’ means an interest greater than 50%.*
- (b) *through adequate rights (arising under arrangements acceptable to the Exchange), which give it sufficient influence in decisions over the exploration for and/or extraction of the natural resources;”*
6. Paragraph 9 under Part B of Consultation Conclusions on New Listing Rules for Mineral Companies published in May 2010 states that “*The natural resources industry is characterized by enforceable arrangements which may not give a company control of its assets but will give it a right to participate in the exploration*

for and/or extraction of Natural Resources. These agreements include joint ventures, production sharing contracts or specific government mandates, which are all legitimate ways of participating in the exploration for and/or extraction of Natural Resources. Companies adopting these arrangements will accordingly be eligible under Chapter 18 provided that their rights give them sufficient influence over the exploration for and/or extraction of Natural Resources.”

7. FAQ Series 12, No. 3 states that *“Companies may rely on exploration and extraction rights held by third parties if they participate in mineral and/or exploration activity under joint ventures, product sharing agreements or other valid arrangements if they can demonstrate the agreements give them sufficient influence over the exploration for and extraction of Resources and Reserves. Ordinarily we would expect that applicants have an interest of at least 30% in assets relevant to extraction of Reserves. However, we will consider other arrangements where companies have interests smaller than 30% but actively operate mining projects. Rights granted under specific government mandates will be recognized...”*

ANALYSIS

8. In this case, the Target did not have any interest in the Project at the time of the acquisition and could not meet Rule 18.03(1)(a).
9. Rule 18.03(1)(b) states that the Exchange may accept other arrangements which give a company adequate rights to actively operate mining projects. Here, the Target had entered into the Agreements which allowed it to explore for minerals in the Project areas using its own resources and to secure an interest in the Project by completing the exploration works. Company A had demonstrated that the Agreements gave the Target the rights to exercise significant influence in the decisions over the exploration activities of Project.

CONCLUSION

10. The Exchange considered that the Target had the right to participate actively in the exploration of natural resources as required under Rule 18.03(1)(b).