

HKE_x LISTING DECISION

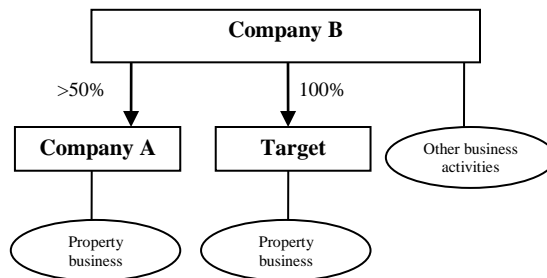
HKE_x-LD29-2012 (updated in October 2019 (amendments to the reverse takeover Rules))

Parties	Company A – a Main Board issuer Company B – Company A’s controlling shareholder The Target – a company which Company A proposed to acquire from Company B
Issue	Whether Company A’s proposed acquisition of the Target from Company B was a reverse takeover
Listing Rules	Main Board Rule 14.06(6)(b) <u>Note 2(b) to Main Board Rule 14.06B</u>
Decision	The transaction was a reverse takeover

FACTS

Background

1. Company A was principally engaged in property business. Company B was engaged in various business activities including certain property projects held through the Target.
2. A year ago, Company B acquired a controlling interest in Company A and accounted for Company A as a subsidiary. The following was the simplified group structure:



Proposed transaction

3. The companies proposed that Company A would acquire the Target from Company B and would issue new shares to Company B to settle the consideration.
4. The transaction was a very substantial acquisition for Company A based on its size. While it was made within 24 months after a change in control of Company A, the company submitted that it should not be classified as a reverse takeover because:
 - Company A had been engaging in the property business for many years. It had substantive business operations and was not a shell company.
 - The Target and Company A were engaged in the same line of business.
 - The transaction was a group reorganization to consolidate Company B's property business into Company A. Its purpose was not to achieve a listing of the Target's business.
 - The Target's business could meet the profit requirement for new applicants under Rule 8.05(1).

APPLICABLE LISTING RULES

5. 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.”

(Rule 14.06(6) (now Rule 14.06B) was amended on 1 October 2019. See Note 1 below.)

ANALYSIS

6. Rule 14.06(6) seeks to prevent circumvention of the new listing requirements. Its introductory paragraph defines “reverse takeover” as an acquisition or a series of acquisitions which represents, in the Exchange’s opinion, an attempt to list the assets to be acquired and circumvent the new listing requirements.
7. In addition, paragraphs (a) and (b) of Rule 14.06(6) refer to two specific forms of reverse takeovers which involve a change in control of the issuer and injection of significant assets into it. They are bright line tests to determine a change in control based on the Takeovers Code and to assess an asset injection based on size tests.
8. In this case, the transaction was a reverse takeover for Company A under Rule 14.06(6)(b) because:
 - it was a very substantial acquisition; and
 - the Target was to be acquired from Company B within 24 months after it gained control of Company A.
9. While the transaction was a reorganization of property business within Company B’s group, the Target was of a very significant size to Company A. The transaction, together with the change in control of Company A, was a means to list the Target’s property business.

CONCLUSION

10. The transaction was a reverse takeover for Company A.

Notes

1 The reverse takeover Rules were amended on 1 October 2019. Under the new Rule 14.06B (which incorporates former Rule 14.06(6) with certain modifications).

- A “reverse takeover” is defined as an acquisition or series of acquisitions by a listed issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction and/or arrangement or series of transactions and/or arrangements which constitutes, an attempt to achieve a listing of the acquisition targets and a means to circumvent the requirements for new applicants as set out in Chapter 8 of the Listing Rules.
- Note 1 to Rule 14.06B sets out the factors that the Exchange will normally consider in assessing whether the acquisition or series of acquisitions is a reverse takeover.
- Note 2 to Rule 14.06B states that:

“Without limiting the generality of rule 14.06B, the following transactions are normally reverse takeovers (the bright line tests):

- (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 36 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.”

2 The Rule amendments would not change the analysis and conclusion in this case.