

HKEx LISTING DECISION

HKEx-LD39-2013 (published in January 2013) (updated in October 2019 (amendments to the reverse takeover Rules) and withdrawn in January 2024)

[Streamlined and incorporated into the guidance letter GL104-19 (Guidance on application of the reverse takeover Rules).]

Parties	Company A – a Main Board issuer The Vendor – an independent third party The Target – a company which Company A proposed to acquire from the Vendor
Issue	Whether the Target had a portfolio of natural resources that was meaningful and of sufficient substance to justify a listing
Listing Rules	Main Board Rules 14.06B and 18.03(2)
Decision	The Target did not have a portfolio of natural resources as required

FACTS

1. Company A proposed to acquire the Target that was engaged in the exploration, exploitation and processing of mineral resources in some offshore areas (the **Areas**). The acquisition was subject to disclosure and shareholder approval requirement under Chapter 14 of the Rules.
2. The consideration for the acquisition would include cash and consideration shares and convertible bonds to be issued by Company A. It was agreed that:
 - Company A would pay 10% of the consideration to the Vendor upon completion of the acquisition on the basis that the Vendor produced a valuation report showing that the Areas had Indicated Resources of value not less than 10% of the consideration.
 - Company A would deliver to an escrow agent the convertible bonds representing the remaining 90% of the consideration. After completion of the acquisition, the Vendor could perform extra works in the Areas during a specified period, and the escrow agent would release an amount of convertible bonds to the Vendor according to the value of any additional Indicated Resources discovered. After the specified period, Company A would cancel any convertible bonds that had not been released to the Vendor, and the consideration for the acquisition would be reduced accordingly.
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(2) which requires a new applicant mineral company to have at least a portfolio of Indicated Resources, and the portfolio must be meaningful and of sufficient substance.

4. Company A submitted that it would only pay the consideration based on the value of the Indicated Resources identified under a reporting standard acceptable by the Rules. The portfolio of mineral resources to be acquired was meaningful and of sufficient substance.

APPLICABLE LISTING RULES

5. Rule 18.03(2) states that “A *Mineral Company* must:—

...

(2) *establish to the Exchange’s satisfaction that it has at least a portfolio of:—*

(a) *Indicated Resources; or*

(b) *Contingent Resources,*

identifiable under a Reporting Standard and substantiated in a Competent Person’s Report. This portfolio must be meaningful and of sufficient substance to justify a listing;”

6. Paragraph 4 under the Executive Summary section of Consultation Conclusions on New Listing Rules for Mineral Companies published in May 2010 (the **Consultation Conclusion**) elaborated our view on early stage exploration company: “*Given the importance of retail investors in the Hong Kong IPO market and the significantly higher investment risks involved in investing in early stage or pure-play exploration companies, we consider it is not appropriate to list early stage exploration companies at this time.*”
7. Paragraph 224 under Part B of Consultation Conclusions further states that “*Early stage exploration companies are considered speculative by nature. The requirement for Indicated or Contingent Resources together with a production plan should also ensure that the market is less susceptible to potential abuse.*”

ANALYSIS

8. As stated in the Consultation Conclusion, the Exchange considers it inappropriate to list early exploration companies. To ensure the market is less susceptible to abuse, the Rules require new applicant mineral companies to have Indicated or Contingent Resources together with a production plan.

9. When Company A acquired the Target, the parties could only prove the existence of Indicated Resources of value representing 10% of the consideration, and a substantial part of the Target's portfolio of minerals was not substantiated in the competent person's report. The Vendor was given a long period after completion of the acquisition to ascertain whether there were any additional Indicated Resources in the Areas. The circumstances of the case indicated that the Target was an early exploration company at the time of the acquisition.

CONCLUSION

10. The Target did not have a portfolio of natural resources required under Rule 18.03(2).