HKEx LISTING DECISION
HKEx-LD58-2013 (published in April 2013) (updated in October 2019 (amendments to the reverse takeover Rules))

Parties	Company A – a Main Board issuer under the delisting procedures of Practice Note 17 Target – a company that Company A proposed to acquire under its resumption proposal Vendor – the owner of the Target and an independent third party
Issue	Whether the Exchange would waive Rule ~~14.06(6)(a)~~14.06B so that Company A's proposed acquisition of the Target would not be classified as a reverse takeover
Listing Rules	Main Board Rule ~~14.06(6)~~14.06B
Decision	The Exchange refused to waive the Rule

FACTS

1. Company A was a long suspended company under the delisting procedures of Practice Note 17. It had ceased most of its business operations and failed to maintain sufficient assets or operations to meet Rule 13.24.

2. Under its resumption proposal, Company A would acquire the Target from the Vendor. The Target's principal business was similar to that of Company A before its trading suspension.

3. The acquisition would be a very substantial acquisition based on the size tests. As a result of the issue of consideration shares to the Vendor under the acquisition, the Vendor would hold more than 90% of Company A's issued share capital and become its controlling shareholder. The Vendor intended to place down its shares in Company A before resumption to meet the public float requirement.

4. As the acquisition was a very substantial acquisition and the Vendor would become a controlling shareholder of Company A, it would be a reverse takeover under Rule 14.06(6)(a).

5. Company A asked the Exchange not to treat the acquisition as a reverse takeover as it believed that the Target would be able to meet the trading record requirements for new listing applicants under Rule 8.05. It referred to the Listing Decision (LD95-1) where the Exchange did not apply the reverse takeover Rules to an issuer's acquisition of a company that could meet Rule 8.05.

APPLICABLE LISTING RULES

6. 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:*
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> *(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*
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> *(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

7. 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.

8. 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.

9. In this case, the Exchange refused to waive Rule 14.06(6)(a) because:-

a. The acquisition was a very substantial acquisition which would result in a change in control of Company A. It fell within the bright line tests of Rule 14.06(6)(a).

b. Company A had ceased operations and was a listed shell. The acquisition was an attempt by the Vendor, the new controlling shareholder of Company A, to achieve a listing of its business (i.e. the Target) by injecting it into Company A.

c. This case was different from the circumstances in Listing Decision LD95-1 quoted by Company A where there was no asset injection by the investor who also obtained control of the listed issuer concerned.

CONCLUSION

10. The acquisition was a reverse takeover under Rule 14.06(6)(a). Company A must submit a new listing application for its resumption proposal.

Notes

1 *The reverse takeover Rules have been amended with effect from 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.