HKEx LISTING DECISION
HKEx-LD59-2013 (published in April 2013) (updated in October 2019 (amendments to the reverse takeover Rules))

Summary	
Parties	Company A – a Main Board listed issuer Mr. X – Company A's executive director and substantial shareholder
Issue	Whether the Exchange would waive Note 2(a) to Rule 14.06B~~(6)(a)~~ so that Company A's proposed acquisition of certain assets from Mr. X would be classified as a very substantial acquisition rather than a reverse takeover
Listing Rules	Note 2(a) to Main Board Rule ~~14.06(6)(a)~~14.06B
Decision	The Exchange granted the waiver to Company A

FACTS

1. Company A was principally engaged in the development and sale of electronic gaming systems.

2. It proposed to acquire from Mr. X a number of patents in an overseas market (the **Patents**) in relation to certain technological know-how applied in a computerized betting terminal system (the **System**). The consideration for the acquisition would include cash and consideration shares to be issued by Company A to Mr. X.

3. The acquisition was a very substantial acquisition based on the asset ratio of about 150% and the consideration ratio of about 300%. It was also a connected transaction as Mr. X was a director and substantial shareholder of Company A.

4. Mr. X had been the single largest shareholder of Company A for some years. As he would hold more than 30% of Company A's enlarged issued share capital following the acquisition, he would apply for a whitewash waiver under the Takeovers Code so that no mandatory general offer would need to be made.

5. As the acquisition was a very substantial acquisition and Mr. X would become a controlling shareholder of Company A as a result of the acquisition, it would be a reverse takeover under Rule 14.06(6)(a).

6. Company A sought a waiver from Rule 14.06(6)(a) because:

- the reason for acquiring the Patents was to expand its existing gaming business to the overseas market. It had engaged in the gaming business for some years and used similar patents for the sale of the System in the local market;

- the existing business had a substantive scale of operation and was making profits. The acquisition was not significantly larger than Company A.

7. Company A submitted that it would enhance the disclosure in its circular for the acquisition to a standard comparable to an IPO prospectus. The circular would also contain details of Company A's due diligence work on the Patents and a valuation report on them.

APPLICABLE LISTING RULES

8. 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

9. 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.

10. 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.

11. Here the acquisition was a reverse takeover under Rule 14.06(6)(a). When assessing the waiver application, the Exchange was satisfied that the Patents were related to Company A's existing principal business, and would enable an expansion of the business in an overseas market. Circumvention of the new listing requirements was not a material concern in this case.

CONCLUSION

12. The Exchange agreed to waive Rule 14.06(6)(a). The acquisition was classified as a very substantial acquisition and connected transaction.

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.