

HKEx LISTING DECISION

HKEx-LD95-4 (July 2010) (updated in October 2019 (amendments to the reverse takeover Rules) **and withdrawn in January 2024**)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).]

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| Parties | Company A – a Main Board issuer The Target – a company to be acquired by Company A from the Vendor, an independent third party |
| Issue | Whether Company A’s proposed acquisition constituted a reverse takeover under Rule 14.06B |
| Listing Rules | Main Board Rule 14.06B |
| Decision | The proposed acquisition constituted a reverse takeover |

FACTS

- 1 Company A was in the business of selling machinery and equipment (the **Existing Business**).
- 2 It proposed to acquire the Target from the Vendor (the **Acquisition**). The transaction would be a very substantial acquisition. Company A would pay for the Acquisition in cash and by issuing consideration shares and convertible bonds. The terms of the convertible bonds did not allow any conversion which would trigger a mandatory general offer under the Takeovers Code (the **Conversion Restriction**).
- 3 The Target was engaged in oil and natural gas exploration, extraction and processing. It had exploration and extraction rights in two gas fields. One gas field was in a preliminary exploration stage and had resources classified as “Prospective Resources” under the Petroleum Resources Management System (**PRMS**). The Target had yet to commence any exploration work in the other gas field.
- 4 Company A intended to continue the Existing Business after the Acquisition.
- 5 There was an issue whether the Acquisition would constitute a reverse takeover under Rule 14.06(6).

APPLICABLE LISTING RULES AND PRINCIPLES

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:

- (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.)

7 Rule 18.02(1)(in force before 3 June 2010) states that an application for listing from a company whose current activities consist solely of exploration will not normally be considered, unless the issuer is able to establish:

the existence of adequate economically exploitable reserves of natural resources, which must be substantiated by the opinion of an expert, in a defined area over which the issuer has exploration and exploitation rights.

8 At the time of this case, the Exchange was consulting the market on proposed new Rules for mineral and exploration companies. The consultation conclusions were published on 20 May 2010 and the new Rules became effective on 3 June 2010. New Rule 18.03(2) states that a mineral company must establish to the Exchange’s satisfaction that it has at least a portfolio of (a) Indicated Resource (for minerals); or (b) Contingent Resources (for oil and gas).

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 (i) list the assets to be acquired and (ii) circumvent the new listing requirements. Rules 14.06(6)(a) and (b) provide bright line tests which apply to two specific forms of reverse takeover. They are not meant to be exhaustive. Therefore, transactions which are in substance backdoor listings but fall outside sub-rules (a) and (b) could still be treated as reverse takeovers. This, in practice, has been applied only to extreme cases (see the Listing Committee Annual Report 2009).
- 10 Rules 14.06(6)(a) and (b) did not apply here because (i) the Acquisition would not trigger the change in control test under sub-rule (a); and (ii) the Vendor did not gain control of Company A within 24 months before the Acquisition would be completed.
- 11 Nevertheless the Exchange classified the proposed Acquisition as a reverse takeover under Rule 14.06(6). In its determination, the Exchange considered that:
- a. The Acquisition would be a very substantial acquisition and, in terms of size, would be significant to Company A. The Target’s business, completely different from the Existing Business, would form a substantial part of Company A’s business upon completion. The Acquisition would be a means to achieve the listing of the Target’s business.
 - b. The Target had yet to generate revenue, and could not meet the profit test for new applicants under Rule 8.05(1).
 - c. The Target was an early stage exploration company. It was unsuitable for listing because Company A had not been able to show that the gas fields had oil and gas reserves required under the then Rule 18.02(1).
- 12 The new Chapter 18 sets out the listing requirements for mineral companies. One requirement is that mineral companies must have at least a portfolio of identifiable resources (Rule 18.03(2)). For oil and gas companies, this would mean Contingent Resources as defined in the new Chapter 18. The Target would still fail to meet this requirement under the new Rules.

CONCLUSION

- 13 The proposed Acquisition was a transaction intended to list the Target’s business and circumvent the new listing requirements. It was an extreme case and should be classified as a reverse takeover under Rule 14.06(6).

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, including:*
 - i) the size of the acquisition or series of acquisitions relative to the size of the issuer;*
 - ii) a fundamental change in the issuer’s principal business;*
 - iii) the nature and scale of the issuer’s business before the acquisition or series of acquisitions;*
 - iv) the quality of the acquisition targets;*
 - v) a change in control (as defined in the Takeovers Code) or de facto control of the listed issuer (other than at the level of the subsidiaries); and/or*
 - vi) other transactions or arrangements which, together with the acquisition or series of acquisitions, form a series of transactions or arrangements to list the acquisition targets.*
- Note 2 to Rule 14.06B contains two specific forms of reverse takeovers involving a change in control (as defined in the Takeovers Code) of the listed issuer (other than at the level of the subsidiaries) and an acquisition or a series of acquisitions of assets from the new controlling shareholder and/or its associates at the time of, or within 36 months from, the change in control.*

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