

HKE_x LISTING DECISION

HKE_x-LD43-2013 (published in January 2013) (updated in October 2019
(amendments to the reverse takeover Rules))

Parties	Company A – a Main Board issuer The Target – a company which Company A proposed to acquire from a third party
Issue	Whether the Target had a clear path to commercial production
Listing Rules	Main Board Rules 14.06B, 18.04 and 18.07
Decision	The Target was able to demonstrate a clear path to commercial production

FACTS

1. Company A proposed to acquire the Target. The Target had interests in certain mining companies in the PRC (the **Mining Companies**) which held the mining licenses of a number of coal mines (the **Coal Mines**) in a province (the **Province**) in the PRC.
2. There was a substantial amount of resources at the Coal Mines. However, the operations of the Coal Mines had been suspended for some years to undertake reconstruction and improvement works required by the government authorities. The Mining Companies had not yet completed the improvement works and had not obtained all the necessary permits and licenses for the Coal Mines to commence commercial production.
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 demonstrate a clear path to commercial production.
4. To address the issue, Company A submitted details of the reconstruction and improvement works of the Coal Mines and its plans for the mines to proceed to production with indicative dates and costs. It also submitted additional information to demonstrate that the Coal Mines would be able to resume operations as planned:
 - The Target was one of the entities delegated by the government authorities to undertake the merger and reorganisation of coal mines in the Province. Under the government policies at the relevant time, coal mines which were

not able to meet the required standard of safety and minimum production capacity were closed until the necessary reconstruction and improvement works had been undertaken. The Target acquired the Mining Companies to undertake the merger and reorganisation of the Coal Mines according to the policies.

- When Company A acquired the Target, most of the reconstruction and improvement works of the Coal Mines had been completed. Company A would also disclose all the outstanding permits and licenses necessary for commercial production of the Coal Mines and the status of the relevant applications. The PRC legal advisers confirmed that there was no impediment for the Target group to obtain the outstanding permits and licenses.
- The competent person was of the view that the schedule for the reconstruction and improvement works of the Coal Mines and the expected timetable for the commencement of commercial production were attainable.

APPLICABLE LISTING RULES

5. Rule 18.03(1) states that “*A Mineral Company must:—*
 - (1) *establish to the Exchange’s satisfaction that it has the right to participate actively in the exploration for and/or extraction of Natural Resources ...*”
6. Rule 18.04 states that “*if a Mineral Company is unable to satisfy either the profit test in rule 8.05(1), ... , it may still apply to be listed if it can establish to the Exchange’s satisfaction that its directors and senior managers, taken together, have sufficient experience relevant to the exploration and/or extraction activity that the Mineral Company is pursuing.*”
7. HKEx Guidance Letter HKEx-GL22-10 and paragraph 6 under the Executive Summary of Consultation Conclusions on New Listing Rules for Mineral Companies published in May 2010 states that, “*While we expect most applicants taking advantage of Rule 18.04 will still be at the development stage, those who are already in the production stage are not necessarily precluded. This is because Mineral Companies in production may have junior assets that are yet to be developed. Waivers from the financial standard requirements are only likely to be considered favourably where Mineral Companies demonstrate a clear path to commercial production*”.
8. Rule 18.07 states that “*if a Mineral Company has not yet begun production, it must disclose its plans to proceed to production with indicative dates and costs. These plans must be supported by at least a Scoping Study, substantiated by the opinion of a Competent Person. If exploration rights or rights to extract Resources and/or*

Reserves have not yet been obtained, relevant risks to obtaining these rights must be prominently disclosed.”

ANALYSIS

9. In this case, the Target did not meet the track record requirements for new listing as required under Rule 8.05.
10. As stated in the guidance materials published by the Exchange, waivers from the financial standard requirements are only likely to be considered favourably where mineral companies demonstrate a clear path to commercial production. In this case, there was concern whether the Target’s plan for commercial production could be achieved in light of the prolonged suspension of operations of the Coal Mines and that the Mining Companies had not obtained all the necessary permits and licenses for coal production.
11. However, the Exchange also considered the special circumstances of the case, and Company A’s submission to demonstrate that the Coal Mines would be able to commence commercial production within a reasonable period. The risks to obtaining regulatory approval for commercial production of the Coal Mines would be prominently disclosed.

CONCLUSION

12. The Exchange considered that the Target had demonstrated a clear path to commercial production.