

HKEx LISTING DECISION

Cite as HKEx-LD75-1 (October 2009) (Updated in October 2019)

Summary	
Parties	Company A - a Main Board listed company The Subsidiary – a major subsidiary of Company A before the Disposal
Subject	Whether proposed acquisitions of certain new businesses by Company A would constitute a reverse takeover under Rule 14.06B
Listing Rules	Main Board Listing Rule 14.06B
Decision	The acquisitions would constitute a reverse takeover for Company A under Rule 14.06B. Company A would be treated as if it were a new listing applicant under Rule 14.54

SUMMARY OF FACTS

1. Company A was a long suspended company. At the time of the initial suspension, Company A and its subsidiaries (the **Group**) were principally engaged in the business of nurturing, selling and trading tree seedlings and seeds.
2. Company A had been placed in the delisting procedures under the Listing Rules given its continued failure to comply with Rule 13.24, which requires an issuer to maintain a sufficient level of operations or assets of sufficient value to warrant its continued listing.
3. Company A agreed with a third party to dispose of its entire interest in the Subsidiary at nominal consideration (the **Disposal**). At the relevant time, the Group's principal business was conducted by the Subsidiary which was under substantial third party claims. The Disposal constituted a very substantial disposal for Company A and had been completed.
4. As part of its proposal to resume trading, Company A would enter into other transactions and arrangements, including:
 - equity fund raising by way of (i) open offer of new shares to its shareholders in proportion to their then shareholdings; and (ii) placing of new shares to independent third parties and a substantial shareholder (the **Placing**); and

- acquisitions of certain serviced apartments and elderly home businesses (collectively the **New Businesses**) from independent third party vendors for cash consideration (the **Acquisitions**). The vendors were not shareholders of Company A and would not subscribe for new shares in Company A under the proposed Placing.
5. Since completing the Disposal, the Group had ceased to operate its original principal business. Company A intended to focus on the New Businesses.
 6. Based on the percentage ratio calculation, the Acquisitions would be a very substantial acquisition. Company A submitted that there would not be a change in control (as defined in the Takeovers Code) of Company A as a result of the Acquisitions and other transactions and arrangements contemplated in its resumption proposal.

ISSUE

7. Whether the Acquisitions would constitute a reverse takeover (**RTO**) under Rule 14.06B.

APPLICABLE LISTING RULES OR PRINCIPLES

8. Rule 14.06B defines a “reverse takeover” as an acquisition or series or acquisitions which, in the opinion of the Exchange, constitutes an attempt to achieve a listing of the assets acquired and a means to circumvent the new listing requirements (principle based test).
9. 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 RTO transaction under the principle based test.
10. Note 2 to Rule 14.06B contains two specific forms of RTOs involving a change in control of the listed issuer 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 of the change in control (bright line tests).
11. Guidance Letter HKEX-GL104-19 provides guidance on the application of the RTO Rules and the related requirements.

ANALYSIS

12. In this case, Company A was of the view that the Acquisitions would not constitute a reverse takeover mainly because there would not be a change in

control as a result of the Acquisitions and other transactions and arrangements contemplated in the resumption proposal.

13. The Exchange disagreed. An acquisition is a reverse takeover under Rule 14.06B if the Exchange is satisfied that it is an attempt to (i) list the assets to be acquired and/or to be acquired and (ii) circumvent the new listing requirements. Rule 14.06B may apply irrespective of whether the acquisition would result in a change in control (as defined under the Takeovers Code).
14. The Exchange determined that the Acquisitions would constitute a reverse takeover under the principle based test of Rule 14.06B for the following reasons:
 - The Group had disposed of the Subsidiary. Thereafter, it no longer retained any material operating assets and ceased to conduct its original principal business. Company A was in substance a listed shell.
 - The Acquisitions formed part of a series of transactions and arrangements which constituted an attempt to achieve a listing of the New Businesses. If Company A proceeded with the transactions and arrangements as submitted in its then resumption proposal, the new listing requirements would be circumvented.

DECISION

15. The Acquisitions would constitute a reverse takeover for Company A under Rule 14.06B. Company A would be treated as if it were a new listing applicant under Rule 14.54.