

HKEX LISTING DECISION
HKEX-LD131-2021 (published in July 2021)

Parties	<p>Company A – a Main Board issuer</p> <p>Target Company – a company listed on a PRC stock exchange</p> <p>Company X – the controlling shareholder of Company A and the Target Company</p> <p>Company Y – a state-owned enterprise which indirectly held 51% interest in Company X</p> <p>The Provincial Government – a provincial government in the PRC which held 49% interest in Company X</p>
Issue	Whether the Exchange would waive Rule 14.06B so that the proposed acquisition of the Target Company by Company A would not be classified as a reverse takeover
Listing Rules	Main Board Rule 14.06B
Decision	The Exchange agreed to waive Rule 14.06B. The proposed acquisition was classified as a very substantial acquisition.

FACTS

1. Company A operated port terminals in the PRC.
2. Company X (being the controlling shareholder of Company A and the Target Company) was originally wholly owned by the Provincial Government. About a year ago, Company Y acquired 51% equity interest in Company X from the Provincial Government. This constituted a change in control of Company A under the Takeovers Code.

Proposed transaction

3. Company A proposed a merger with the Target Company which also operated port terminals in the PRC (the **Proposed Merger**). The Proposed Merger would constitute a reverse takeover (**RTO**) under the bright line test set out in Note 2 to Rule 14.06B as it was a very substantial acquisition from Company X, an associate of Company Y, within 36 months of Company Y gaining control of Company A through Company X. The profit ratio was about 120%. Other size tests were below 100%.
4. The Proposed Merger would allow Company A to expand its existing port terminal business by integrating its port-related resources with those held by the Target Company and bring synergy amongst the port operators controlled by Company X. Company A submitted that the Proposed Merger was not an attempt to achieve a listing of new business and sought a waiver from applying the bright line test of Rule 14.06B to the merger.

APPLICABLE LISTING RULES

5. Rule 14.06B defines a "reverse takeover" as *"an acquisition or a series of acquisitions of assets 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 constitute, an attempt to achieve a listing of the acquisition targets (as defined in rule 14.04(2A)) and a means to circumvent the requirements for new applicants set out in Chapter 8 of the Listing Rules."* This is a principle based test.
6. 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.
7. Note 2 to Rule 14.06B contains two specific forms of RTOs (the bright line tests). It states that:

"Without limiting the generality of rule 14.06B, the following transactions are normally reverse takeovers (the bright line tests):

- (a) 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. For the purpose of determining whether the acquisition(s) constitute(s) a very substantial acquisition,..."*
8. The Exchange Guidance Letter ([HKEX-GL104-19](#)) on reverse takeovers explains that the RTO rules are principle based, anti-avoidance provisions designed to prevent the circumvention of new listing requirements for the assets acquired and/or to be acquired. Paragraph 6 of the guidance letter states that:

"In applying the RTO Rules, the Exchange has regard to the following:

- The RTO Rules are principle based, anti-avoidance provisions designed to prevent the circumvention of new listing requirements for the assets acquired and/or to be acquired. As such, the Exchange would apply the RTO Rules purposively and the six assessment factors described in the Rules provide guidance to the market on factors that the Exchange would normally consider in a RTO assessment. The applications of these assessment factors would vary from case to case, depending on the specific circumstances of the issuer.*

- *As the RTO Rules are principle based, they should provide a framework for addressing backdoor listings and sufficient flexibility to address changing RTO structures, without imposing undue restrictions on legitimate business activities of issuers.*
- *The RTO Rules are not intended to restrict legitimate business activities of listed issuers, including business expansion or diversification that is part of the issuer's business strategies related to its existing business, or is consistent with the issuer's size and resources.*
- *When applying the RTO Rules, the Exchange's approach is targeted towards transactions that represent an attempt to circumvent the new listing requirements, particularly those involving companies engaging in "shell" activities, as indicated by the factors (a) change in control or de facto control of the listed issuer and (b) fundamental change in the issuer's principal business."*

ANALYSIS

9. The Proposed Merger fell under the bright line test of Rule 14.06B as it involved a very substantial acquisition from an associate of Company A's controlling shareholder (i.e. Company Y) within 36 months from the change in control. Having considered the specific circumstances of this case, the Exchange agreed that the Proposed Merger was not a backdoor listing of new business by the incoming controlling shareholder:
 - (a) Company A's existing port terminal business was of a substantial size. The Proposed Merger would not result in a fundamental change to Company A's principal business as it was in line with Company A's strategies to expand its port terminal business and the size of the merger was not significant to Company A.
 - (b) The Proposed Merger represented an internal restructuring of the port-related businesses held under Company X. Company Y, through Company X, controlled Company A and the Target Company before the Proposed Merger and would continue to do so after the merger. There was no injection of asset or business from Company Y.

CONCLUSION

10. The Exchange agreed to waive Rule 14.06B. The Proposed Merger was classified as a very substantial acquisition and connected transaction.