

HKE_x LISTING DECISION

Cite as HKE_x-LD35-1 (July 2003) (Updated in April 2013 and April 2014)

| Summary | |
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| Name of Parties | Company A – an applicant for new listing Mr X – company secretary of Company A |
| Subject | PRC issuer – company secretary not possessing relevant professional qualifications |
| Listing Rules | Rules 8.17 ¹ and 19A.18 ² |
| Decision | To be assisted by suitably qualified person for three years |

Summary of Facts

Company A proposed to retain Mr X as its company secretary after listing. However, Mr X did not possess the qualifications required under Rule 8.17¹ of the Listing Rules.

Analysis

Rule 8.17¹ provides as follows:

“The secretary of the issuer must be a person who is ordinarily resident in Hong Kong and who has the requisite knowledge and experience to discharge the functions of secretary of the issuer and who:-

- (1) in the case of an issuer which was already listed on 1st December 1989 held the office of secretary of the issuer on that date;
- (2) is a member of The Hong Kong Institute of Company Secretaries, a solicitor or barrister as defined in the Legal Practitioners Ordinance or a professional accountant; or
- (3) is an individual who, by virtue of his academic or professional qualifications or relevant experience, is, in the opinion of the Exchange, capable of discharging those functions.”

In the case of a PRC issuer, this requirement is modified by Rule 19A.18² which provides as follows:

“The secretary of a PRC issuer need not be ordinarily resident in Hong Kong, provided such person can meet the other requirements of rule 8.17¹.

Note: Where the secretary of a PRC issuer does not possess a qualification as required by Rule 8.17(2)¹, the PRC issuer will have to satisfy the Exchange the requirement under Rule 8.17(3)¹. In assessing the "relevant experience" of person under rule 8.17(3)¹, the Exchange will normally have regard to, among other considerations, period of his employment with the PRC issuer and his familiarity with the Exchange Listing Rules. The

Exchange would expect submission from the sponsor demonstrating that (a) sufficient time and efforts have been spent on training the appointee by way of induction courses or other means which are satisfactory to the Exchange; and (b) the sponsor is satisfied that the appointee will be able to discharge a secretary's duties.”

The company secretary plays an important role in the corporate governance of an issuer, particularly in assisting the issuer as well as its directors in complying with the Listing Rules and the applicable company law. For these purposes, he should possess the requisite knowledge and experience to discharge his functions as company secretary.

The Note to Rule 19A.18² sets out a non-exhaustive list of factors which the Exchange will take into account in assessing the “relevant experience” of a proposed company secretary of a PRC issuer where he does not possess the professional qualifications required under Rule 8.17(2)¹. These factors include, among other things, the period of his employment with the PRC issuer and his familiarity with the Listing Rules.

Since, generally speaking, a PRC issuer does not conduct any business in Hong Kong and its management does not reside in Hong Kong, it is particularly important that its company secretary should possess sufficient knowledge and experience in discharging his functions as company secretary.

For the protection of shareholders and to promote good corporate governance, the Exchange was of the view that, where the company secretary of a PRC issuer does not possess the relevant professional qualifications required under Rule 8.17(2)¹ or the academic or professional qualifications or relevant experience under Rule 8.17(3)¹, the company secretary should be assisted by a suitably qualified person so as to enable him to acquire the “relevant experience” (required under Rule 8.17(3)¹) to discharge his functions as company secretary. Such person would need to possess the professional qualifications required under Rule 8.17(2)¹. Such person's place of residence would not be relevant, so long as the rendering of assistance by him to the company secretary would not in any way be hindered. Such person should be engaged for an initial period of three years from the date of listing (“**Three-year Period**”).

It was noted that, under this arrangement, a waiver of Rule 8.17¹ would be necessary as the company secretary himself would not, in the absence of such a waiver, be considered as having met the requirements of any of the limbs of that Rule.

At the end of the Three-year Period, a further evaluation of the qualifications and experience of the company secretary and the need for on-going assistance would be necessary. The expectation was, however, that the issuer should then endeavour to demonstrate to the Exchange's satisfaction that the company secretary, having had the benefit of the additional person's assistance for three years, would have acquired “relevant experience” within the meaning of Rule 8.17(3)¹ such that a further waiver would not be necessary. Accordingly, a further waiver would only be granted in exceptional circumstances.

Decision

Mr X could remain as the company secretary of Company A after listing provided that Company A engaged an additional person possessing the professional qualifications required under Rule 8.17(2)¹ for the Three-year Period. A waiver of Rule 8.17¹ for the Three-year Period would be granted upon such terms.

At the end of the Three-year Period, the Exchange would re-visit the situation in the expectation that the issuer should then endeavour to demonstrate to the Exchange's satisfaction that Mr X, having had the benefit of the additional person's assistance for three years, would have acquired "relevant experience" within the meaning of Rule 8.17(3)¹ such that a further waiver would not be necessary.

Subsequent Cases

In a number of subsequent cases, the Exchange had accepted an issuer's company secretary, who did not possess the academic or professional qualifications under note 1 to Rule 3.28 or relevant experience under note 2 to Rule 3.28, to be assisted by a suitably qualified person under the Rules for an initial period of one year from the date of listing ("**One-year Period**"). In considering these waivers, the Exchange took into consideration the fact that the relevant company secretary: (i) had been involved in company secretarial matters for more than one year, (ii) had more than ten years of work experience in the finance field or corporate management, (iii) had academic qualifications in accounting, law, business management and/or economics, and (iv) professional qualification in law. The sponsor had also confirmed that the issuer had established procedures, systems and controls which were adequate and sufficient under Rule 3A.15(5). (*Added in April 2013*)

At the end of the One-year Period, the Exchange would re-visit the situation in the same manner as in the case where an issuer applied for a waiver for the Three-year Period. (*Added in April 2013*)

Conclusion

The Exchange normally takes the following into consideration when determining whether to grant a waiver for a One-year Period or a Three-year Period:

- (i) the individual's experience in handling company secretarial matters (e.g. through acting as the secretary of the issuer's board of directors while the issuer is listed on overseas exchange), relevant professional qualifications and/or academic background;
- (ii) whether the issuer has established measures and systems in place to facilitate the individual in discharging his duties as a company secretary; and
- (iii) the issuer's regulatory compliance and/or deficiencies/weaknesses in internal controls during the track record period, and the sponsor's confirmation under Rule

3A.15(5) that the issuer has established procedures, systems and controls which are adequate and sufficient. (*Added in April 2013*)

In any event, each application will be considered on a case-by-case basis having regard to all relevant facts and circumstances. The issuer should include in its listing document details of its company secretary's experience in handling company secretarial matters, his work experience (including his roles and responsibilities for his jobs), professional qualifications and academic background. (*Added in April 2013*)

Notes:

1. *In January 2012, Rule 8.17 was amended as "[t]he issuer must appoint a company secretary who satisfies Rule 3.28". Rule 3.28 states that:*

"The issuer must appoint as its company secretary an individual who, by virtue of his academic or professional qualifications or relevant experience, is, in the opinion of the Exchange, capable of discharging the functions of company secretary.

Notes: 1 The Exchange considers the following academic or professional qualifications to be acceptable:

- (a) a Member of The Hong Kong Institute of Chartered Secretaries;*
- (b) a solicitor or barrister (as defined in the Legal Practitioners Ordinance);and*
- (c) a certified public accountant (as defined in the Professional Accountants Ordinance).*

2 *In assessing "relevant experience", the Exchange will consider the individual's:*

- (a) length of employment with the issuer and other issuers and the roles he played;*
- (b) familiarity with the Listing Rules and other relevant law and regulations including the Securities and Futures Ordinance, Companies Ordinance³, and the Takeovers Code;*
- (c) relevant training taken and/or to be taken in addition to the minimum requirement under rule 3.29; and*
- (d) professional qualifications in other jurisdictions."*

2. *Rule 19A.18 was subsequently amended as Rule 19A.16 and Rule 19A.16 was repealed in January 2012.*

³ Retitled as the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) with effect from March 2014 (*Updated in April 2014*).