

HKE_x LISTING DECISION
HKE_x-LD28-2012 (Updated in January 2022)

Party	Company A – a Main Board issuer The Target – a company listed on the Toronto Stock Exchange
Issue	Whether the Exchange would grant a waiver to Company A from the requirements for an accountants' report on the Target in the circular
Listing Rules	Main Board Rule 14.67(6)(a)(i)
Decision	The Exchange granted the waiver on condition that the circular for the Acquisition would contain alternative disclosures proposed by Company A in its waiver application

FACTS

1. Company A proposed to make a cash offer to acquire all the Target's shares (the **Acquisition**). Upon completion, the Target would become a subsidiary of Company A.
2. The Acquisition would be a major transaction. The Listing Rules required an accountants' report on the Target be included in Company A's circular for the Acquisition. Company A requested a waiver from the requirement for the following reasons:
 - The Target was listed on the Toronto Stock Exchange. It had published its financial information, including audited accounts, on a regular basis under the overseas regulatory requirements.
 - It would be unduly burdensome for Company A to engage professional accountants to prepare an accountants' report on the Target as required by the Rules in light of the substantial time and costs required.
 - The circular would contain alternative disclosure for the shareholders to assess the Target's financial performance:
 - The Target's published audited financial statements for the last three financial years and its latest published unaudited 9-months financial information prepared under the Canadian generally accepted accounting principles (**Canadian GAAP**). The Target's auditors had issued a clean opinion on the audited financial statements. They had also reviewed the unaudited 9-month financial information under the Canadian standards.

They were a firm of accountants with international name and reputation and registered with a recognized body of accountants.

- A line-by-line reconciliation of the Target's financial information for the differences between its accounting policies under the Canadian GAAP and Company A's accounting policies under HKFRS, with an explanation of the differences. Company A's auditors would review the reconciliation under Hong Kong Standard of Assurance Engagements 3000.
- Additional information which was required for an accountants' report under the Rules but not disclosed in the Target's published accounts.

APPLICABLE LISTING RULES

3. Rule 14.67 requires that:-

...a circular issued in relation to an acquisition constituting a major transaction must contain:-

...

(6)(a)(i) an accountants' report on the business, company or companies being acquired in accordance with Chapter 4 of the Exchange Listing Rules provided that, where any company in question has not or will not become a subsidiary of the listed issuer, the Exchange may be prepared to relax this requirement. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued. The financial information on the business, company or companies being acquired as contained in the accountants' report must be prepared using accounting policies which should be materially consistent with those of the listed issuer; ...

4. Rule 4.03¹ provides that :-

¹ On 1 January 2022, Rule 4.03(2) was amended to state that, in the case of a major transaction circular issued by a listed issuer in connection with the acquisition of an overseas company, the overseas audit firms must also be subject to independent oversight by a regulatory body of a jurisdiction that is a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ("IOSCO MMOU"). It would be acceptable if the relevant audit oversight body is not a signatory to the IOSCO MMOU but the securities regulator in the same jurisdiction must be a full signatory to the IOSCO MMOU. -The Rule amendment would not change the analysis and conclusion in this case. (Added in January 2022)

all accountants' reports must normally be prepared by certified public accountants who are qualified under the Professional Accountants Ordinance for appointment as auditors of a company and who are independent both of the issuer and of any other company concerned to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the requirements on independence issued by the Hong Kong Institute of Certified Public Accountants, provided that, in the case of a circular issued by a listed issuer in connection with the acquisition

of an overseas company, the Exchange may be prepared to permit the accountants' report to be prepared by a firm of practising accountants which is not so qualified but which is acceptable to the Exchange. Such a firm must normally have an international name and reputation and be a member of a recognised body of accountants.

5. Rule 4.11 requires that:-

the financial history of results and the balance sheet included in the accountants' report must normally be drawn up in conformity with:-

- (a) Hong Kong Financial Reporting Standards (HKFRS); or
- (b) International Financial Reporting Standards (IFRS); or
- ...

ANALYSIS

6. Under the Listing Rules, an issuer must ensure that the information in its circular for a notifiable transaction is accurate and complete in all material respects and not misleading or deceptive. The circular must contain all information necessary to allow the issuer's shareholders to make a properly informed decision on how to vote on the transaction.

7. In this case, the Exchange noted that:

- The Target had been publishing financial information to the market on a regular basis to enable investors to assess its activities and financial position. It was listed on an overseas stock exchange and its financial disclosures were subject to supervision by regulatory authorities.
- The Target's accounts to be disclosed in the circular were audited/reviewed by its auditors. While the auditors were not registered under the Hong Kong Professional Accountants Ordinance, they were a firm of accountants with international name and reputation and registered with a recognized body of accountants².

² The securities regulator in Canada was a full signatory to the IOSCO MMOU. (Added in January 2022)

- The reconciliation would provide financial information under HKFRS to facilitate shareholders' assessment of the Target's performance and financial position. Company A would engage its auditors to review the reconciliation.
 - Company A would make additional disclosures in the circular to bridge the gap between the Target's accounts and an accountants' report required by the Rules.
8. The Exchange considered that Company A had taken reasonable steps to provide sufficient information to its shareholders to assess the Target's business. It would be unduly burdensome for Company A to produce an accountants' report on the Target. Granting the waiver would be unlikely to result in undue risks to its shareholders.

CONCLUSION

9. The Exchange agreed to waive the accountants' report requirement.