

HKEx LISTING DECISION

Cite as HKEx-LD57-1 (October 2006)

Withdrawn, superseded by Australia Country Guide in December 2013

Summary	
Name of Parties	Company X - a company incorporated in Australia with a primary listing on the Australian Stock Exchange (ASX)
Subject	Whether the Exchange would accept (1) Australia as an approved jurisdiction under Chapter 19 of the Listing Rules for the purposes of primary and secondary listings on the Main Board of the Exchange; and (2) the ASX as an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong
Listing Rules	Chapter 19 of the Main Board Listing Rules
Decision	<p>The Exchange determined that (1) Australia would be accepted as an approved jurisdiction for the purpose of the proposed secondary listing on the Exchange under Chapter 19 of the Listing Rules; and (2) the ASX would be accepted as an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong.</p> <p>The Exchange also indicated that, in principle, Australia could also be accepted as an approved jurisdiction for the purpose of primary listing on the Exchange in appropriate future circumstances.</p> <p>Where a secondary listing is sought but an applicant's primary regulator is not the ASX, the Exchange would still be required to be satisfied that the regulatory oversight offered by the regulator of the issuer's primary listing venue is of a standard that is at least equivalent to that of the Exchange.</p>

SUMMARY OF FACTS

1. Company X was incorporated in New South Wales, Australia. Company X had been listed on the Australian Stock Exchange (ASX) for over three years and was considering an application for a secondary listing on the Exchange. Company X also indicated that it might consider a primary listing on the Exchange subsequently.

2. Company X made a pre-initial public offering enquiry seeking guidance on its listing in Hong Kong in respect of the acceptance of Australia under Chapter 19 of the Listing Rules.

Australian regulatory regime

3. All companies incorporated in Australia are subject to one federal regulatory regime administered by the Commonwealth Government of Australia. The principal legislation is the Corporations Act 2001, which regulates matters relating to, among other things, the incorporation and management of Australian registered companies.
4. Australia also embraces the common law system of adjudication which is fundamental to the protection of rights and the prevention of arbitrary determination. Australia also has, among other things, a well-developed accounting profession which follows international accounting standards.

The ASX

5. The Exchange Working Group on New Market Development announced in March 1997 that the ASX, among other selected exchanges, was one of the exchanges recognised by the Exchange for the purpose of introduction of a new trading facility for convertible bonds and derivative warrants as listed securities issued by companies in the Asia-Pacific Region. An extensive amount of work had been undertaken by the Exchange at that time before accepting the ASX as a recognised exchange.
6. In addition, companies listed on the ASX are bound by the ASX Listing Rules, which govern admission to listing, continuous disclosure, issuance of securities, transactions with persons in a position of influence, shareholder meetings and other related matters. The ASX Corporate Governance Principles set out 10 best practice recommendations for Australia listed companies, including board structures, decision making structures, reporting, risk management, committee structures and remuneration structures.
7. The ASX is regulated by the Australian Securities and Investments Commission (ASIC) which has recently confirmed that the ASX “continues to function as an effective and reliable market operator” after an annual assessment of how well the ASX is complying with its obligations with adequate arrangements to supervise its market. The ASIC reports to the Australian government annually on the ASX and the ASIC’s role is to enforce and regulate company and financial services laws to protect investors, among others.
8. A memorandum of understanding between HKEx and the ASX was signed on 11 December 2000 to exchange market surveillance information.

THE ISSUES RAISED FOR CONSIDERATION

9. Whether the Exchange would accept (1) Australia as an approved jurisdiction under Chapter 19 of the Listing Rules for the purposes of primary and secondary listings on the Main Board of the Exchange; and (2) the ASX as an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong

APPLICABLE LISTING RULES OR PRINCIPLE

For primary listings

10. Under Listing Rule 19.05, in considering approving listing of securities of an overseas issuer on the Exchange that is not incorporated in an approved jurisdiction (ie Hong Kong, Bermuda, the Cayman Islands and the People's Republic of China (PRC)), the Exchange is to be satisfied that the jurisdiction of the place of incorporation of the overseas issuer offers equivalent standards of shareholder protection to those provided in Hong Kong.

For secondary listings

11. Under Listing Rule 19.30, in addition to the standards of shareholder protection afforded in its place of incorporation, the Exchange is to be satisfied that the regulatory oversight by the overseas issuer's primary exchange is equivalent to that of the Exchange.

12. Note of Listing Rule 19.30(1) provides that:

Where the Exchange believes that the jurisdiction in which the overseas issuer is incorporated is unable to provide standards of shareholder protection at least equivalent to those provided in Hong Kong, but that it is possible by means of varying the overseas issuer's constitutive documents to provide standards of shareholder protection equivalent to those provided in Hong Kong, then the Exchange may approve the listing of securities of the overseas issuer subject to the overseas issuer making such variations to its constitutive documents as the Exchange may require.

13. In assessing whether the overseas issuer is "*incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are at least equivalent to those provided in Hong Kong,*" the Exchange would look at areas mainly from the perspective of the Companies Ordinance (Cap 32) of the Laws of Hong Kong. The Exchange would ordinarily request the potential applicant, through its legal advisers, to demonstrate to the Exchange, with written materials and otherwise, that its place of incorporation and venue of primary listing are acceptable for the purposes of the Listing Rules. The Exchange would expect the

submission to include details demonstrating that the regulatory regime where the potential applicant is incorporated provides standards of shareholder protection at least equivalent to those provided in Hong Kong. Its submission should, as a minimum, include:

- An analysis of the issuer's constitutive documents against the articles requirements of the Listing Rules;
 - An overview of the foreign regulatory regime, including its securities laws and stock exchange rules; and
 - A comparative analysis of the foreign and Hong Kong laws governing areas relevant to investor protection.
14. Any differences relating to the major areas concerning shareholder protection would be highlighted and addressed where necessary. The Exchange will also require a legal opinion from the proposed applicant's advisors and a confirmation from the sponsor that the proposed applicant's constitutive documents are in full compliance with the Listing Rules requirements to be provided in due course after the proposed applicant submits its listing application to the Exchange.

THE ANALYSIS

Overseas issuers seeking a secondary listing

15. The Exchange has previously considered Australia to be an acceptable jurisdiction for two issuers in connection with secondary listings. FAI Insurance was listed on 5 August 1986 and withdrew its listing on 12 February 1999, and AAPC Limited was listed on 6 July 1994 and withdrew its listing on 13 February 1998. In each case, the ASX was also accepted by the Exchange as a primary listing venue having an acceptable level of regulation comparable to that of the Exchange.
16. In accordance with the Exchange's practice, Company X submitted comparative tables on shareholder protection safeguards in Hong Kong and Australia in respect of (i) relevant provisions of the Listing Rules, the Companies Ordinance, the Securities and Futures Ordinance and the Codes on Takeovers and Mergers and Share Repurchases, and (ii) Appendix 3 of the Listing Rules on articles of association. The Exchange's view on the shareholder protection measures is based on an overview of the Australian regulatory regime and a comparative analysis of the Hong Kong and Australian laws and other provisions governing areas relevant to investor protection. Company X's legal advisors had compared the shareholder protection safeguards in Australia and Hong Kong and provided a legal opinion to confirm that Australia offers equivalent standards of shareholder protection to those provided in Hong Kong.
17. Based on the Exchange's understanding of Australia's rule of law, the independence of Australia's judiciary, the Exchange's past experience in

accepting Australia as an approved jurisdiction and the ASX as a recognised exchange, the previous work done in connection with listing applications of Australian companies, and the information provided by Company X as set out in paragraph 16 above, the Exchange concluded that Australia can be accepted as an approved jurisdiction and the ASX a recognised exchange for the purpose of Chapter 19 of the Listing Rules.

18. Company X had not yet appointed a sponsor in relation to its proposed listing on the Exchange at the time the matter was considered by the Listing Committee. Upon the submission of Company X's application for its proposed listing, its sponsor would be required to submit confirmation to the Exchange that all material areas regarding shareholder protection have been considered and reviewed by the sponsor in connection with its due diligence review pursuant to Practice Note 21 and that it is independently satisfied with the conclusion that the shareholder protection offered in Australia is at least equivalent to that in Hong Kong.
19. In the event the Exchange is of the opinion that the majority of trading in the overseas issuers' securities is likely to be on the Exchange, certain additional conditions must be fulfilled (see Main Board Listing Rule 19.57). The Exchange does not have any actual experience in dealing with such cases and the issue would be dealt with as and when required. Accordingly no determination was made on the prospective application in this regard.

Overseas issuers seeking a primary listing

20. Under this context, the Exchange will look to the same principles applicable to all overseas issuers as set out in paragraph 13 above in respect of shareholder protection. The Exchange went through a thorough review of the shareholder protection measures in two jurisdictions, namely, Bermuda and the Cayman Islands in early 1989 when Hong Kong experienced a turbulent period of issuers changing domicile to these offshore jurisdictions. As a result, additional requirements, largely in the format as they presently appear, were laid down in the Listing Rules for these two jurisdictions. These new requirements include requiring Bermudian and Cayman Islands companies to adopt prescribed provisions in their articles of association and adhere to certain disclosure requirements in their listing documents. This was also the case for companies incorporated in the PRC.
21. The question is whether a similar requirement would be necessary for an issuer incorporated in Australia and seeking a primary listing. As Company X's legal advisors had compared the shareholder protection safeguards in Australia and Hong Kong and provided a legal opinion to confirm that Australia offers equivalent standards of shareholder protection to those provided in Hong Kong, no additional requirements for Australian incorporated issuers as currently set out in Appendix 13 would be required.

22. For the purpose of Chapter 19 of the Listing Rules, a primary listing applicant does not need to demonstrate that the ASX or any other primary listing venue offers a level of shareholder protection at least equivalent to Hong Kong as the Exchange would be the primary regulator of the listing applicant which would be required to comply with, among other things, the Listing Rules and their appendices, the Securities and Futures Ordinance - Disclosure of Interests, the Codes on Takeovers and Mergers and the Codes on Share Repurchases. However, consideration must be given to this issue in cases where there is a dual primary listing made where there are differences in rules relating to takeovers and share repurchases. Such differences would be required to be dealt with on a case-by-case basis.
23. While there may be changes in the Australian company laws after acceptance of Australia as an approved jurisdiction, Australia will be treated on the same basis as currently afforded to Bermuda and the Cayman Islands ie as it would be unduly burdensome for the listed issuers to undertake a regular overview of the law changes in those jurisdictions, Australian incorporated issuers would not be required to provide a regular update. In the unlikely event that should there be major changes in Australia's company laws which render its standards of shareholder protection to significantly worsen compared to those in Hong Kong, the Exchange would then consider imposing further conditions as appropriate or reconsider accepting any future application where the applicant is incorporated in Australia.
24. Upon the submission of an applicant's application for its proposed primary listing, its sponsor would be required to submit confirmation to the Exchange as to Chapter 19, similar for that of a secondary listing as detailed in paragraph 18 above.

THE DECISION

25. The Exchange determined that (1) Australia would be accepted as an approved jurisdiction for the purpose of the proposed secondary listing on the Exchange under Chapter 19 of the Listing Rules; and (2) the ASX would be accepted as an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong. Where a secondary listing is sought but an applicant's primary regulator is not the ASX, the Exchange would still be required to be satisfied that the regulatory oversight offered by the regulator of the issuer's primary listing venue is of a standard that is at least equivalent to that of the Exchange.
26. The Exchange also indicated that, in principle, Australia could also be accepted as an approved jurisdiction for the purpose of primary listing on the Exchange in appropriate future circumstances.