

HKEX LISTING DECISION

HKEX-LD114-1 (December 2010) (~~Last Updated in April 2017 and January 2022~~)

Parties	Company A – a newly listed Main Board issuer, incorporated in Luxembourg The Firm – a firm of auditors in Luxembourg
Issue	Whether the Exchange would accept the Firm to act as Company A’s auditors after listing under Rule 19.20(2)
Listing Rules	Main Board Rule 19.20(2)
Decision	The Exchange would accept the Firm to act as Company A’s auditors after listing

FACTS

1. Company A, incorporated in Luxembourg, was required by law to engage a local accounting firm to be its statutory auditors. It had appointed the Firm as its statutory auditors for a number of years before its listing on the Exchange.
2. Shortly after listing, Company A proposed to appoint the Firm as the auditors of its annual accounts prepared under the Listing Rules. As the Firm was not qualified under the Professional Accountants Ordinance, Company A asked the Exchange to accept the proposed appointment under Rule 19.20(2) given the following:
 - a. The Firm was a member firm of the global network of a major and reputable international accounting company;
 - b. It was a member of Institut des Réviseurs d’Entreprises (**IRE**). IRE is the legal accounting profession organisation in Luxembourg and a member of the International Federation of Accountants (**IFAC**), a global organisation for the accountancy profession; and
 - c. It was a registered and approved statutory audit firm in Luxembourg, supervised and regulated by the Commission de Surveillance du Secteur Financier (**CSSF**). CSSF is a statutory regulator in Luxembourg with the power to investigate statutory auditors and audit firms in Luxembourg and to impose sanctions on those which have breached the legal or regulatory requirements or professional conduct. It is a member of the International Organisation of Securities

Commissions (**IOSCO**) and has signed the Multilateral Memorandum of Understanding Concerning Consultation and the Exchange of Information (**MMOU**) with other IOSCO members (including the Securities and Futures Commission of Hong Kong (**SFC**)) to facilitate mutual cooperation and exchange of information for securities regulatory enforcement purposes. CSSF is also a member of the International Forum of Independent Audit Regulators (**IFIAR**).

3. The Firm was independent from Company A under the statements on independence issued by IFAC.

APPLICABLE LISTING RULES

4. Rule 19.20¹ states that for overseas issuers:

The annual accounts must be audited by a person, firm or company who must be a practising accountant of good standing. Such person, firm or company must also be independent of the overseas issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the statements on independence issued by the International Federation of Accountants and, if the overseas issuer's primary listing is or is to be on the Exchange, must be either:—

- (1) qualified under the Professional Accountants Ordinance for appointment of auditor of a company; or
- (2) a firm of accountants acceptable to the Exchange which has an international name and reputation and is a member of a recognised body of accountants.

¹ Rule 19.20 was amended to reflect the amendment to the Financial Reporting Council Ordinance (Cap. 588) (FRCO) that established the PIE Engagement (as defined in Rule 1.01) regime which came into effect on 1 October 2019. The preparation of an auditors' report of the annual accounts is the PIE Engagement and the overseas audit firm must be a Recognised PIE Auditor (as defined in Rule 1.01) of that issuer under the FRCO.

In relation to an application for the recognition of an overseas audit firm under the FRCO, an issuer must obtain a statement of no objection from the Exchange. Generally, other than having an international name and reputation and being a member of a recognised body of accountants, an overseas audit firm must also be subject to independent oversight by a regulatory body of a jurisdiction that is a full signatory to the 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. See note to Rule 19.20. -The Rule amendment would not change the analysis and conclusion in this case. (Added in January 2022)

ANALYSIS

5. Under Rule 19.20, the Exchange may allow an overseas issuer's annual accounts to be audited by a firm of accountants who is not qualified under the Professional Accountants Ordinance. In making the assessment, the Exchange will consider the circumstances of each case, including those factors set out in Rule 19.20(2).
6. Here, the Exchange found the Firm acceptable under Rule 19.20 because:
 - the Firm had an international name and reputation and was a member of a recognised body of accountants; and
 - the Firm was subject to CSSF's oversight. CSSF has the statutory power to investigate auditors registered in Luxembourg and to impose sanctions for breach of legal or regulatory requirements or professional conduct. There are arrangements between CSSF and the SFC for mutual assistance and exchange of information for enforcing and securing compliance with the laws and regulations of Luxembourg and Hong Kong.

CONCLUSION

7. The Firm could act as Company A's auditors after listing under Rule 19.20(2)².

² From 1 October 2019 onwards, the overseas audit firm is also required to be a Recognised PIE Auditor of that issuer under the FRCO. (Added in January 2022)