

HKEx LISTING DECISION

Cite as HKEx-LD74-1 (Published in October 2009) (~~Last Updated in April 2015 and the reference to the standard on the preparation of accountants' reports in March 2019 and January 2022~~)

Summary	
Parties	Company A – a Main Board listed company The Vendor – a company listed on the New York Stock Exchange
Subject	Whether the Exchange would grant a waiver to Company A from the requirements for the accountants' report on the Target Business
Listing Rules	Main Board Listing Rules 4.03, 4.08, 4.11, 14.69(6)(a)(i)
Decision	The Exchange granted the waiver on the basis that the circular for the Acquisition would contain alternative disclosure proposed by Company A in its waiver application

SUMMARY OF FACTS

1. Company A agreed to acquire from the Vendor certain assets and assume certain liabilities in connection with the Vendor's business in manufacturing and selling certain electronic products (the **Target Business**) (the **Acquisition**). This constituted a very substantial acquisition for Company A.
2. Chapter 4 of the Listing Rules required the financial information of the Target Business included in the accountants' report to be drawn up in conformity with Hong Kong Financial Reporting Standards (**HKFRS**), the standards adopted by Company A, and the accountants' report to be prepared in accordance with the Auditing Guidelines – Prospectus and the reporting accountant (Statement 3.340) issued by the Hong Kong Institute of Certified Public Accountants (**HKAG 3.340**)¹.
3. Company A proposed that instead of an accountants' report on the Target Business that strictly complied with Chapter 4, its circular for the Acquisition (the **Circular**) would include:

¹ HKAG 3.340 was superseded by Hong Kong Standard on Investment Circular Reporting Engagements 200 "Accountants' Reports on Historical Financial Information in Investment Circulars" (HKSIR 200), which became effective for engagements where the investment circular is dated on or after 1 July 2017. (*Added in March 2019*)

- the audited combined financial statements of the Target Business (the **US Financials**) prepared by the Vendor in accordance with US GAAP and audited by the Vendor's auditors in accordance with the standards of Public Company Accounting Oversight Board (United States) (**PCAOB Standards**); and
- an explanation of the differences and a line-by-line reconciliation (the **Reconciliation**) between the accounting policies of the Target Business under US GAAP and Company A's accounting policies under HKFRS. Company A's auditors would review and report on the adjustments in the Reconciliation in arriving at the financial information of the Target Business under HKFRS under HKAG 3.340¹;

Further, as the Vendor would submit to the US Securities and Exchange Commission a Form 8K with the US Financials, they would not be presented in the format of an accountants' report in Hong Kong. Nevertheless, the US Financials in the Circular would include additional disclosure so that the Circular would contain the same level of information as an accountants' report under the Listing Rules.

4. Company A applied for a waiver from the Chapter 4 requirements for the accountants' report on the Target Business for the following reasons:

- The Vendor was active in over 160 countries. The Target Business had been centrally operated by the Vendor together with other divisions and had never been operated individually under a separate entity or otherwise on a standalone basis. The Target Business was only part of the Vendor's business operations and was not required to be reported on as a distinct business under any regulation or legislation. No audited financial statements for the Target Business had been previously prepared or reported on a standalone basis.
- The Vendor's accounting systems, control procedures and data maintenance functions were managed on a centralised basis. The accounting records of the Vendor and therefore the Target Business were maintained under US GAAP, and the financial reporting processes were designed to facilitate independent audit under the PCAOB Standards.
- In view of the complexity and extensive coverage of the Vendor's accounting systems worldwide, there would be practical difficulties in changing the Vendor's accounting standards to conform with HKFRS in order to prepare the financial statements of the Target Business under HKFRS.
- Company A also submitted that for a professional accounting firm to opine on the financial statements of the Target Business, it would need to extend its audit scope to cover all the accounting systems and control procedures of the Vendor which supported the operations of not just the Target Business but other different divisions within the Vendor group. Company A had been informed that the Vendor would not allow any accounting firms other than its own auditors to access its systems and accounting records which covered the other parts of its group. Although Company A's auditors were an affiliated firm of the Vendor's

auditors, they were two separate legal entities and were managed independently. As the Vendor did not consent to Company A's auditors reviewing the Vendor's books and records other than those of the Target Business, it was impossible for them to report on the financial information of the Target Business by themselves or jointly with the Vendor's auditors under HKAG 3.340¹ as required by Rule 4.08(3). Further, the Vendor advised that its auditors had limitations in preparing an accountants' report as prescribed by HKAG 3.340¹ as the US Financials were prepared under US GAAP.

- While the Vendor's auditors were not registered under the Professional Accountants Ordinance as required by Rule 4.03, it was a firm with international name and reputation and registered with the PCAOB. In addition, Company A was of the opinion that PCAOB Standards and the Hong Kong Statements of Auditing Standards were substantially consistent with each other.
- The audit opinion on the US Financials would be a "fairly presented" opinion under US GAAP and this would not strictly comply with Rule 4.08(2) which required a "true and fair" opinion. Company A considered that both opinions provided the same degree of assurance on audited financial statements.

ISSUE

5. Whether the Exchange would grant a waiver from the requirements under Chapter 4 for the accountants' report on the Target Business.

APPLICABLE LISTING RULES OR PRINCIPLES

6. Rule 14.69(6)(a)(i) provides that a circular issued in relation to a very substantial acquisition or a listing document issued in relation to reverse takeover must contain:-

...

(6)(a) on an acquisition of any business, company or companies:

- (i) an accountants' report on the business, company or companies being acquired in accordance with Chapter 4 of the Exchange Listing Rules... 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.

7. Rule 4.03² provides that :-

all accountants' reports must 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 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.

8. Rule 4.08(2) provides that in all cases:-

the reporting accountants must express an opinion as to whether or not the relevant information gives, for the purposes of the accountants' report, a true and fair view of the results and cash flows for the period reported on and of the statement of financial position as at the end of each of the period reported on.

9. Rule 4.08(3) provides that in all cases:-

the accountants' report must state that it has been prepared in accordance with the Auditing Guideline – Prospectuses and the

² Rule 4.03(1) 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 accountants' report in a very substantial acquisition circular is the PIE Engagement. In the case of a very substantial acquisition circular issued by a listed issuer incorporated outside Hong Kong relating to the acquisition of an overseas company, the Exchange may be prepared to accept the appointment of an overseas audit firm that is not qualified under the Professional Accountants Ordinance but is 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 (as defined in Rule 1.01). 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 notes to Rule 4.03(1). The Rule amendment would not change the analysis and conclusion in this case. (Added in January 2022)

reporting accountant (Statement 3.3.40) ¹ issued by the Hong Kong Institute of Certified Public Accountants.

10. Rule 4.11 provides that:-

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

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

ANALYSIS

11. 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.
12. In this case, the facts submitted by Company A demonstrated that it was extremely difficult for Company A to prepare an accountants' report on the Target Business that strictly complied with Chapter 4. The Exchange was satisfied that the circumstances of this case were exceptional and compliance with the Listing Rules by Company A in unmodified form would be unduly burdensome and impractical.
13. The Exchange also took into account:
 - The US Financials would contain the same level of information as required in an accountants' report under the Listing Rules. The waiver application mainly involved modifications to the Rule requirements concerning the accounting and auditing standards for preparing financial information of the Target Business for incorporation in the Circular.
 - While the US Financials were prepared under US GAAP, the Reconciliation would provide financial information under HKFRS to facilitate shareholders' assessment of the performance and financial position of the Target Business. Company A's auditors took additional procedures according to HKAG 3.340¹ in respect of the Reconciliation which gave assurance on the unaudited financial information of the Target Business under HKFRS.
 - The US Financials were audited by the Vendor's auditors in accordance with PCAOB Standards.
 - While Rule 4.03 requires the reporting accountants to be qualified under the Professional Accountants Ordinance, it also provides that for an acquisition of an overseas company, the Exchange may permit an accountants' report to be prepared by a firm of accountants which is not so qualified but which must

normally have an international name and reputation and must be a member of a recognised body of accountants. The circumstances here were similar to an acquisition of an overseas company and the Vendor's auditors met the criteria in Rule 4.03.

14. The Exchange was satisfied that there would be sufficient and appropriate alternative disclosure in the Circular to enable Company A's shareholders to make a properly informed assessment of the Target Business. The granting of the waiver requested by Company A would be unlikely to result in undue risks to its shareholders.

DECISION

15. The Exchange granted the waiver³ on the basis that the Circular would contain the alternative disclosure proposed by Company A⁴ in the waiver application.

³ From 1 October 2019 onwards, this waiver is also subject to the overseas audit firm to be recognised by the Financial Reporting Council (FRC). (Added in January 2022)

⁴ Under the FRCO, only an issuer incorporated outside Hong Kong is permitted to appoint an overseas audit firm and submit a recognition application to the FRC for a PIE Engagement. (Added in January 2022)