

HKEx LISTING DECISION
HKEx-LD102-2 (August 2010)

Parties	Company A - a Main Board issuer Company B – a newly formed company holding a Type 6 licence under the Securities and Futures Ordinance (SFO) Mr X and Mr Y – Company B’s responsible officers
Issue	Whether Company B was qualified to act as independent financial adviser
Listing Rules	Main Board Rules 13.39(6)(b), 13.82
Decision	Company B was qualified to act on condition that Mr X and Mr Y remained its responsible officers

FACTS

1. Company A proposed to appoint Company B as independent financial adviser regarding its connected transactions.
2. Company B had a SFO Type 6 licence (advising on corporate finance) with the condition that it could not act as sponsor in listing applications.
3. Its two responsible officers, Mr X and Mr Y, each held a Type 6 licence without the condition and had more than 10 years of experience in corporate finance. In particular, each had provided financial advice in many transactions under the Rules.
4. Company B asked whether it could accept Company A’s appointment.

APPLICABLE LISTING RULES AND PRINCIPLES

5. Rule 13.39(6)(b) states that in relation to connected transactions,

the issuer shall appoint an independent financial adviser acceptable to the Exchange to make recommendations to the independent board committee and the shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests if the

issuer and its shareholders as a whole and to advise shareholders on how to vote.

6. Rule 13.82 states that:

an independent financial adviser must be appropriately licensed by the Commission and must discharge its responsibilities with due care and skill.

7. The Exchange's press release of 24 October 2006 states that a firm is acceptable as independent financial adviser if it:

- is appropriately licensed or registered to undertake sponsor work (i.e. it is licensed or registered under the SFO for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a sponsor); or
- meets the current Exchange practice as to what is acceptable i.e. it has completed two significant corporate finance transactions.

ANALYSIS

8. The role of an independent financial adviser is to advise independent shareholders on corporate finance transactions. The Exchange's press release cited above sets out non-exhaustive factors it would consider when assessing a company's suitability to act as independent financial adviser.

9. Company B was not permitted to take up sponsor work under its Type 6 licence. However, its responsible officers, Mr X and Mr Y, were holders of a Type 6 licence and had significant relevant experience. The Exchange was prepared to consider the qualifications of the responsible officers in assessing if Company B was suitable to act as independent financial adviser. For this case, the Exchange was satisfied that they had the technical competence and experience necessary to advise shareholders on corporate finance transactions.

CONCLUSION

10. The Exchange accepted that with Mr X and Mr Y as its responsible officers, Company B was qualified to act as independent financial advisor.