

Reform to Improve the Regulatory Regime for Listed Entity Auditors

上市實體核數師監管制度的改革

Patrick Ho 何宗基



Introduction

To upkeep Hong Kong's attraction as an international financial and capital market, it is important to maintain the confidence of both international and local investors in our overall financial regulatory regime and to ensure that our regime is benchmarked against international standards and practices. Apart from the various ongoing and recently completed initiatives to refine our financial regulation in respect of the securities, banking and insurance sectors, the Government has embarked on a reform exercise to improve the regulatory regime for auditors of listed entities in Hong Kong.

Objectives and Direction of the Reform

Auditors perform the role of a key gatekeeper in assuring the accuracy and

integrity of the financial reports of listed entities in Hong Kong. The key objective of the reform is to enhance the independence of the regulatory regime for listed entity auditors from the audit profession, bringing Hong Kong in line with the international standards that auditor regulatory regimes should be independent of the profession itself and be subject to independent oversight by bodies acting in the public interest. The reform proposals seek to better safeguard the interests of the investing public, reinforce Hong Kong's status as an attractive market to raise capital, and enable Hong Kong to be eligible for being represented on the International Forum of Independent Audit Regulators, which is an influential international organisation of independent auditor regulators established in 2006.

The Reform Proposals

The Government conducted a three-month public consultation last year to solicit views on proposals to introduce an independent oversight regime for the regulation of listed entity auditors, under which the Financial Reporting Council ("FRC") will be the independent auditor oversight body vested with direct powers to conduct recurring inspections, investigation and disciplinary actions in respect of listed entity auditors, whilst at the same time it will exercise independent oversight of the Hong Kong Institute of Certified Public Accountants ("HKICPA")'s regulatory functions in the registration and the setting of relevant standards and continuing professional development ("CPD") requirements in respect of listed entity auditors. Backed by majority support from the respondents on the objective



and direction of the reform, the Government issued the consultation conclusions in June 2015 with the commitment to implement the proposed reform.

The ensuing paragraphs highlight those key proposals which are of more relevance to listed entities in Hong Kong.

Independent oversight role of FRC and other regulatory functions of HKICPA

Without compromising the independence of the new auditor regulatory regime, we propose to take advantage of HKICPA's experience in handling registration, standard setting and CPD-related matters by entrusting the Institute with these statutory functions but subject to the oversight by FRC. Apart from exercising inspection, investi-

gation and disciplinary powers, FRC will exercise independent oversight over HKICPA's regulatory functions in respect of listed entity auditors by conducting periodic quality reviews on HKICPA and receiving periodic reports and relevant information from the Institute, and where it is in the public interest to do so, FRC may give written directions to the Institute in relation to the performance of these functions and the exercise of the relevant powers. To enhance transparency, FRC will be required to publish reports to inform the public of the performance of its regulatory and oversight functions.

Registration requirement of Hong Kong listed entity auditors and recognition requirement of overseas listed entity auditors

For Hong Kong auditors, only those who are registered as a listed entity auditor will be eligible to enter into audit engagements with listed entities in Hong Kong. HKICPA will be the Registrar who will, inter alia, be responsible for maintaining a new register of listed entity auditors for public inspection. There will not be any material change to the prevailing qualifications and experience requirements for being an auditor of listed entities. Apart from the listed entity auditors, the following three categories of individuals in respect of the auditors performing specific important roles in their audit engagements with listed entities will be required to be registered –

- audit engagement authorised persons, viz. individuals who issue opinions on the auditor's audit engagements with listed entities;

- engagement quality control reviewers, viz. individuals who provide an objective evaluation in respect of the auditor’s audit engagements with listed entities; and
- quality control system responsible persons of the auditor, viz. at least one senior personnel of the auditor so designated to be in charge of the said quality control system.

For overseas auditors, only those who are recognised by FRC will be eligible to enter into audit engagements with specific overseas listed entities in Hong Kong. Under the new regime, FRC will take over the existing functions of the Hong Kong Exchanges and Clearing Limited and the Securities and Futures Commission respectively in receiving and deciding on applications to be an overseas auditor of specific overseas incorporated companies and specific overseas collective investment schemes approved for listing in Hong Kong. The criteria for recognition will be largely modelled on the prevailing requirements with suitable modifications and adaptations. The recognised overseas auditors will be included in the above-mentioned

new register of listed entity auditors for public inspection.

The registration / recognition as listed entity auditors will be subject to annual renewal requirement and payment of a registration / recognition fee. There will be transitional arrangements for auditors who are already carrying out audit engagements with listed entities in Hong Kong.

Stronger enforcement powers against misconduct

Apart from removal / suspension of registration and issue of reprimand etc., HKICPA may impose a pecuniary penalty of up to \$500,000 only on auditors of listed entities and relevant persons under the present disciplinary system. The reform will empower FRC, as the independent auditor oversight body under the new regime, to exercise direct disciplinary powers and the maximum level of pecuniary penalty will be increased to \$10 million or three times the amount of profit gained or loss avoided as a result of the misconduct, whichever is the greater. There will be appropriate procedural safeguards to ensure the principles of

fairness and proportionality.

Funding mechanism

In accordance with the “user pays” principle and the principle that the independent auditor oversight body should be operationally and financially independent of the Government, FRC will be funded by introducing new levies on securities transactions, listed entities and listed entity auditors such that the three key stakeholder groups, viz. the investors, listed entities and listed entity auditors, would each make a roughly equal contribution to the operation of FRC under the new regime. The three-party funding mechanism is balanced and reasonable, taking into account that the establishment of a robust and more independent regulatory regime for listed entity auditors will better safeguard the interests of investors, enhance confidence in the effectiveness of the overall financial regulatory regime for Hong Kong as an international capital market, as well as further enhance the professional image of Hong Kong listed entity auditors and facilitate their recognition in overseas jurisdictions.

Governance of FRC

The composition of FRC will be suitably adjusted to reflect the expanded regulatory responsibilities of FRC. Within the parameter that a majority of its Council members should be independent from the audit profession, in future at least two persons who possess knowledge of and experience in the auditing of Hong Kong listed entities will be appointed to FRC to help provide FRC with the relevant expertise to perform the role of an oversight body.

Next Steps

Our target is to introduce an amendment bill into the Legislative Council in the 2016-17 legislative session. We will continue to engage relevant key stakeholders as necessary as we prepare the amendment bill. We look forward to continued support from all stakeholders to the reform.



引言

要保持香港作為國際金融及資本市場的吸引力，我們必須維繫國際和本地投資者對香港整體金融監管制度的信心，並確保香港的監管制度與國際標準和做法看齊。除了就證券、銀行及保險業監管制度進行的持續完善工作及新近完成的多項措施外，政府亦已展開香港上市實體核數師監管制度的改革工作。

改革目的及方向

核數師擔當重要的把關角色，確保香港上市實體的財務報告內容準確和完整。根據國際標準，核數師監管制度必須獨立於審計業和由以公眾利益為本的機構進行獨立監察。這次改革的主要目的，是要提高上市實體核數師監管制度的獨立性，使之獨立於審計業，以確保香港的制度符合有關的國際標準。各項改革建議旨在加強保障投資大眾的利益，鞏固香港作為資本市場的地位和優勢，並令香港符合獨立審計監管機構國際論壇的成員資格（該國際論壇在二零零六年成立，是一個具影響力的獨立核數師監察機構國際組織）。

改革建議

政府去年就推行上市實體核數師獨立監察制度的建議，展開為期三個月的諮詢，徵詢公眾意見。根據改革建議，財務匯報局會成為獨立的上市實體核數師監察機構，並獲賦予直接行使定期查核、調查和紀律處分有關核數師的權力。此外，該局也會對香港會計師公會（「公會」）就上市實體核數師進行註冊、制訂相關標準及準則和制訂專業進修規定的監管職能，作出獨立監察。基於大部分回應者都支持改革的目的和方向，政府於二零一五年六月發表諮詢總結，將落實推行有關改革。

下文分述各項與香港上市實體較有關連的主要建議。

財務匯報局的獨立監察角色和公會的其他監管職能

在不影響新的核數師監管制度獨立性的前提下，我們建議借助公會在處理註冊、制訂專業標準及準則和制訂專業進修規定方面的經驗，由公會在受財務匯報局的監察下履行該等法定職能。而財務匯報局除了行使查核、調查和紀律處分的權力外，會就公會如何履行其上述監管上市實體核數師的職能作出獨立監察，包括對公會進行定期質量審核、審閱公會提交的定期報告

及可要求提交相關資料。財務匯報局亦可在符合公眾利益的情況下，就公會履行有關職能和行使相關權力方面，向公會發出書面指示。此外，財務匯報局也須發表報告，以提高透明度，讓公眾知悉其履行監管和監察職能的表現。

香港上市實體核數師的註冊規定和海外上市實體核數師的認可規定

就香港核數師而言，將來只有註冊成為上市實體核數師的核數師，才符合資格為香港的上市實體執行審計項目。公會將擔任註冊主任，職責包括備存一份新的上市實體核數師紀錄冊，供公眾查閱。有關成為上市實體核數師所須符合的資格及經驗規定，將不會與現行規定有重大改變。除上市實體核數師外，下列三類為上市實體審計項目履行重要職務的人士也須註冊：

- 審計項目的獲授權人，即就核數師為上市實體執行的審計項目發表審計意見的人士；
- 對審計項目進行質量控制審核的人，即對核數師為上市實體執行的審計項目作出客觀評估的人士；以及
- 核數師質量控制系統的負責人，即由上市實體核數師指派負責主管有關質量控制系統的高層人員，而該人員數目不少於一位。

就海外核數師而言，將來只有獲財務匯報局認可的核數師，才符合資格為特定的香港上市海外實體執行審計項目。在新制度下，財務匯報局會分別取代香港交易及結算有限公司（「港交所」）和證券及期貨事務監察委員會現時的角色，負責審批獲准在香港上市的特定海外註冊公司及特定海外集體投資計劃的海外核數師的認可申請。認可的準則將主要參考現行要求並加以適當的微調而制訂。獲認可的海外核數師會載列在上文所述新的上市實體核數師紀錄冊，供公眾查閱。

上市實體核數師須每年辦理註冊續期手續和支付註冊／認可費用。我們會為目前負責執行香港上市實體審計項目的核數師，訂定過渡性安排。

加強對不當行為的執法權力

除可撤銷／暫時撤銷註冊和作出譴責等外，公會在現行紀律處分制度下，可以就上市實體核數師及有關人士施加不多於五十萬

元的罰款。作為新制度下的獨立核數師監察機構，財務匯報局將獲賦予直接行使紀律處分的權力，而罰款金額上限將提高至一千萬元，或相當於因不當行為而獲取的利潤金額或避免的損失金額的三倍（以金額較大者為準）。有關的紀律處分程序將會有適當的制衡措施，以確保公平及相稱的原則。

財政機制

根據“用者自付”及獨立核數師監管機構的日常運作及財政安排應獨立於政府的原則，在新制度下財務匯報局的經費會來自就證券交易和向上市實體及上市實體核數師收取的新徵費。根據新制度，投資者、上市實體及上市實體核數師這三大相關組別會各自就財務匯報局的營運需要支付份額大致相同的徵費。這個由三方分擔經費的財政機制持平合理，因為設立更健全獨立的上市實體核數師監管制度，既可更妥善地保障投資者的利益，亦可加強投資者對香港作為國際資本市場的整體金融監管制度的信心，以及提高香港上市實體核數師的專業形象並加強他們在海外司法管轄區的認受性。

財務匯報局的管治

財務匯報局的組成會有適當調整，以反映該局的新增監管職能。該局的大部分成員須獨立於審計業界，但會有最少兩名具備審計香港上市實體財務報告的知識及經驗的人士獲委任為成員，為該局在履行監察職責方面，提供相關的專業知識。

下一步工作

我們目標是在二零一六至一七年度立法會會期向立法會提交修訂條例草案。我們會在草擬修訂條例草案的過程中，繼續與相關持份者保持適切的溝通。我們期望相關各方會一如既往，繼續支持這項改革工作。



Patrick Ho is a Deputy Secretary for Financial Services and the Treasury (Financial Services), Financial Services and the Treasury Bureau
何宗基先生現為財經事務及庫務局副秘書長(財經事務)