Jeffrey Mak Law Firm
麦振兴律师事务所
www.jmaklegal.com

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Judicial Cooperation Spirit Heralded in Nuoxi Capital Limited v Peking University Founder Group Company Limited [2021] HKCFI 3817

On December 17, 2021, the Court of First Instance of Hong Kong (Court) handed down the judgment for *Nuoxi Capital Limited v Peking University Founder Group Company Limited* [2021] HKCFI 3817, in which the Court recognized the reorganization process in the Mainland while it did not stay the writ actions in Hong Kong.

Background

The case concerns the enforceability of the keepwell deeds given by the defendant (Keepwell Deeds), Peking University Founder Group Company Limited (PUFG), for the bonds issued by the offshore subsidiaries of PUFG in the British Virgin Islands, Nuoxi Capital Limited and Kunzhi Limited (collectively, Issuers). The bonds were guaranteed by two subsidiaries of PUFG in Hong Kong, Hong Kong JHC Co Limited and Founder Information (Hong Kong) Limited (collectively, Guarantors).

The Keepwell Deeds provide that PUFG shall cause each of the Issuers and the Guarantors (1) to have a consolidated net worth of at least US$1 at all times; and (2) to have sufficient liquidity to ensure timely payment of any amounts payable under the bonds. The Keepwell Deeds are governed by English law and contain Hong Kong exclusive jurisdiction clauses.

Subsequently, the Issuers have defaulted on their payment obligations under their respective bonds and the guarantees have not been honored. The Issuers and Guarantors contended that as a consequence PUFG defaulted on its obligations under the Keepwell Deeds and failed to provide sufficient finance to permit the Issuers to pay the bondholders.

On February 19, 2020, the Beijing No.1 Intermediate People's Court (Beijing Court) ordered PUFG to commence reorganization on the application of a bank. Administrator (Administrator) was appointed to supervise the reorganization. The Issuers and Guarantors submitted claims in respect of the Keepwell Deeds in the reorganization but were rejected (other than the claim of Hong Kong JHC Co Limited, which has not yet been adjudicated) by the Administrator without giving any reason. The Issuers and Guarantors lodged an objection to the Administrator, pending determination.

Actions in Hong Kong and Application for a Stay

The Issuers and Guarantors then commenced writ actions against PUFG in Hong Kong, seeking a declaration of the rights under the Keepwell Deeds. The Administrator sought a stay of actions on the following grounds:

(1) the Issuers and Guarantors have elected to proceed in the Mainland and submitted to the jurisdiction of the courts in the Mainland and in respect of the same cause of action to which the actions relate when submitting a proof of debt to the Administrator;

(2) there is great uncertainty as to whether any judgment obtained in the actions will be recognized or enforced in the Mainland and this is a strong reason for the Hong Kong courts to decline jurisdiction;

(3) the actions should be stayed in view of the principle of modified universalism;

(4) the Mainland courts are distinctly more appropriate in view of the process in the Mainland and the issues to be determined in the actions and, considering the best interests and convenience of the parties to the proceedings and the witnesses in the proceedings, the proceedings should be conducted in the Mainland.

Decision

The Court rejected the arguments of the Administrator and dismissed the application to stay the actions.

No absolute bar to adjudication

After reviewing the English case law, the Court observed that a claim in foreign insolvency proceedings would not create an absolute bar to a creditor seeking adjudication

of the claim in another jurisdiction, which is consistent with the well-established English position that a liquidation stay has no extra-territorial effect. What the creditor cannot do is to attempt to use proceedings outside the foreign insolvency jurisdiction to achieve a result, which is inconsistent with that mandated by the foreign insolvency regime. There is no evident principle that by the minimum act of submission to the foreign court supervising the foreign main proceedings, exclusive jurisdiction is placed in the hands of that court in respect of all possible issues concerning the insolvency. There is no objection in principle to a creditor invoking a purely adjudicatory jurisdiction.

The submission of the claims by the Issuers and the Guarantors in the reorganization in Beijing, although constituting submissions to the jurisdiction for the Beijing Court for the purpose of proving in the reorganization, would not alone constitute strong grounds for refusing to enforce the exclusive jurisdiction clause and bar the current proceedings.

Further, the Court observed that there is a number of cases where the courts have coordinated the exercise of a contractual jurisdiction before one court and an insolvency jurisdiction exercised by another. One example is the Lehman flip-clause litigation.

Modified universalism

The Administrator suggested that the writ actions would undermine the collective nature of the PUFG's restructuring and the principle of modified universalism.

While the Court recognized the reorganization process in the Mainland, the Court distinguished between a creditor seeking adjudication of a dispute only and a creditor seeking to recover in a debtor's foreign insolvency.

If a Mainland company subject to bankruptcy proceedings has assets overseas and a foreign creditor is seeking to obtain a judgment in order to enforce against the foreign assets, there will be inconsistent notions of modified universalism. However, the Issuers and Guarantors are not seeking to obtain repayment other than in the reorganization process in the Mainland but to obtain a judgment from Hong Kong court to advance a claim in reorganization or challenge the decisions of Administrator in the Beijing Court. The current legal proceedings are to establish contractual rights but not to determine how much the Issuers and Guarantors are entitled to prove for in a reorganization.

Weight of Hong Kong judgment and the appropriate adjudicatory court

The Administrator suggested that any judgment of the Hong Kong court would not be enforceable in Beijing. It was also suggested that the Beijing Court has no problem in applying English law and is well placed to determine the issues in the case. The Court found the suggestions unconvincing.

The issues of construction of the Keepwell Deeds and whether failure to seek or obtain what was necessary was a breach of Keepwell Deeds are matters of English law and are potentially extensive and complicated. The Court observed that Mainland judges often faced difficulties in determining disputes governed by foreign law due to their lack of familiarity with foreign legal concepts.

On the other hand, the report from the Administrator's expert directed to the question of whether or not any order of Hong Kong court would be enforceable in the Mainland but did not address the question of the evidential weight that might be given by the Mainland court to a judgment from Hong Kong court. The Court found that the letter of request from the Beijing Court did not provide that the Beijing Court would not recognize a judgment of the Hong Kong court. The common law of contract in England and Hong Kong are generally the same, the Court expected that the Beijing Court would give weight to a decision of the Hong Kong court on a contractual dispute under English law.

Communication and cooperation between the courts in Hong Kong and the Mainland

Previously at the case management conference, Mr. Justice Harris has requested the Administrator to discuss with the Beijing Court the possibility of the two courts cooperating in order that the Hong Kong court could determine issues relating to the construction of the Keepwell Deeds. His Lordship later wrote to the Administrator's solicitors in Hong Kong asking if this had been done. From the carefully chosen language in the answer, his Lordship found out that that the Administrator did not inform the Beijing Court that the Hong Kong court had suggested that consideration be given to the Hong Kong court deciding issues relating to construction of the Keepwell Deeds

There was also nothing to suggest in the evidence filed by the Administrator in support of the application for recognition and assistance that the Beijing Court had explained to it the issues that the application would give rise to in Hong Kong. There as also nothing in the letter of request acknowledging that the Hong Kong court would have to resolve the conflict between the rights of the Issuers and the Guarantors to have a claim determined in accordance with the jurisdiction and governing law clauses in the Keepwell Deeds and the priority given to the Beijing Court in determining whether a claim should be admitted in the reorganization.

Mr Justice Harris pointed out that cooperation between courts requires at least some understanding of each court's substantive law and procedure and the matters, which are likely to be of concern to them. The Mainland and Hong Kong have materially different legal systems and different economic models. Conscious and sensitive cooperation and communication is necessary in order to minimize misunderstandings and facilitate effective assistance. It is necessary for the Administrator and its lawyers in the Mainland to ensure that the Mainland courts receive complete and balanced information.

His Lordship pointed out that cross-border insolvency and assistance of foreign proceedings does not involve a contest between courts. The courts aim to work together to implement fair and efficient insolvency processes whilst respecting the substantive law and procedure of each other's jurisdiction.

The Hong Kong Court hopes that the decision would assist the Beijing Court to understand that the application for a stay is not as straight forward as it may have been led to believe and to advance the communication and cooperation between the courts. His Lordship suggested that it may be possible for the courts to agree the way in which the issues are to be determined, with the Hong Kong Court dealing with issues of construction of the Keepwell Deeds.

Remarks

Several incidents in this year illustrate the increasingly close cross-border insolvency cooperation between the Mainland and Hong Kong. On May 14, 2021, the Supreme People's Court in China and the Hong Kong Government signed the Record of Meeting on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region (Record of Meeting). In September 2021, the Hong Kong court recognized the reorganization proceedings in the Mainland for the first time in *Re HNA Group Co Limited* [2021] HKCFI 2897.

The decision in this case demonstrates the importance of collaboration spirit and sufficient communication and understanding between the courts in applying the mutual recognition, assistance and cooperation arrangement framework in the Record of Meeting. It also serves as a direction as to what lawyers in cross-border dispute resolution could do to minimize the misunderstandings and facilitate the effective judicial assistance between the courts. This decision would promote the confidence of corporations and investors in the judicial systems.

Hong Kong is a popular venue for Chinese offshore bond issuance. The continuous development in judicial cooperation between the Mainland and Hong Kong will bolster the onshore and offshore bondholder protection and reinforce Hong Kong's position as the world's premier international financial center and the dominant gateway to the Mainland.

Nuoxi Capital Limited v Peking University Founder Group Company Limited [2021] HKCFI 3817 一案彰显司法合作精神

2021 年 12 月 17 日， 香港高等法院原讼法庭（法院）就 *Nuoxi Capital Limited v Peking University Founder Group Defendant Company Limited* [2021] HKCFI 3817 一案作出重要判决，认可内地的重组程序，而不搁置香港的令状诉讼。

背景

案件涉及被告北大方正集团有限公司（PUFG）就 PUFG 在英属维尔京群岛的境外子公司诺熙资本有限公司和坤智有限公司（统称为发行人）发行的债券所出具的维好协议（维好协议）的执行问题。 该债券由 PUFG 在香港的两家子公司香港京慧诚有限公司和香港方正资讯有限公司（统称为担保人）提供担保。

维好协议规定，PUFG 应促使发行人和担保人中的每一方 (1) 在任何时候都拥有至少 1 美元的综合净值； (2) 有足够的流动资金以确保及时支付债券项下的任何应付款项。 维好协议受英国法律管辖，并包含香港专属管辖权条款。

随后，发行人未能履行其各自债券项下的付款义务，担保未获兑现。 发行人和担保人称，这是由于 PUFG 未能履行其在维好协议下的义务，未能提供足够的资金让发行人向债券持有人付款。

2020 年 2 月 19 日，北京市第一中级人民法院（北京法院）应某银行的申请，命令 PUFG 开始重组， 任命破产管理人监督重组。 发行人和担保人在重组中就维好协议提出索赔，但被破产管理人在没有给出任何理由下拒绝（香港京慧诚有限公司的索赔尚未裁定）。 发行人和破产管理人向管理人提出反对，等待裁决。

香港诉讼及搁置申请

发行人和担保人随后在香港对 PUFG 提起令状诉讼，寻求获得维好协议下的权利声明。 破产管理人基于以下理由寻求搁置诉讼：

(1) 发行人和担保人在向破产管理人提交债权证明时，已选择在内地进行诉讼，并就与诉讼相关的同一诉讼事项由提交内地法院管辖；

(2) 诉讼中获得的判决是否会在内地得到承认或执行存在很大的不确定性，这也是香港法院拒绝管辖权的充分理由；

(3) 应根据修正普遍主义的原则搁置诉讼；

(4) 鉴于内地的诉讼程序和诉讼所要解决的问题，并考虑到诉讼当事人和证人的最大利益和便利，内地法院显然更合适。诉讼应在内地进行。

判决

法院驳回了破产管理人的论点及搁置诉讼的申请。

没有对审判的绝对禁止

在翻阅英国判例法后，法院认为，外国破产程序中的债权申索不会绝对禁止债权人寻求在另一个司法管辖区对债权进行裁决，这与英国公认的清盘搁置没有域外效力的立场是一致的。债权人不能做的是试图利用外国破产管辖范围之外的程序来达到与外国破产制度规定不一致的结果。没有明显的原则表示通过向监督外国主要程序的外国法院提交最低限度的行为就把与破产有关的所有可能问题的专属管辖权交到该法院手中。原则上没有禁止债权人援引纯粹的审判管辖权。

发行人和担保人在北京重组中提交的申索，虽然构成为就重组申索向北京法院提交管辖权，但不能单独构成拒绝执行专属管辖条款的有力理由并禁止当前的程序。

此外，法院注意到，在一些案例中，法院间互相协调，一个法院行使合同管辖权而另一法院行使破产管辖权。雷曼倒置条款诉讼是一个例子。

修正普遍主义

破产管理人提出，令状诉讼将破坏 PUFG 重组的集体性质和修改普遍主义原则。

法院虽然认可内地的重组程序，但法院区分了仅寻求裁决争议的债权人和寻求在债务人的外国破产中追偿的债权人。

如果一家申请破产程序的内地公司拥有海外资产，而外国债权人寻求获得判决以对海外资产进行强制执行，则会出现和修正普遍主义不一致的概念。 然而，发行人和担保人并非寻求在内地进行的重组程序外获得还款，而是寻求香港法院的判决以在北京法院提出重组索赔或对破产管理人的决定提出质疑。 当前的诉讼是建立合同权利，而不是确定发行人和担保人有权在重组中证明其应能获得多少。

香港判决的权重和合适的审判法院

破产管理人提出香港法院的任何判决在北京均不可执行。其亦表示，北京法院在应用英国法律方面不存在问题，并且适合判定案件中的问题。 法院认为这些说法没有说服力。

维好协议的解释问题以及未能寻求或获得必要的事项是否违反维好协议是英国法律的问题，而且问题可能广泛和复杂。 法院观察到，由于不熟悉外国法律概念，内地法官在判定受外国法律管辖的争议时经常遇到困难。

另一方面，破产管理人专家的报告针对香港法院的任何命令是否可在内地强制执行的问题，但并未回答内地法院可能对来自香港的判决给予证据的证据分量的问题。法院认为，北京法院的请求书并未表明北京法院将不承认香港法院的判决。英国和香港的普通合同法大体相同，法院预计北京法院会重视香港法院对英国法项下合同纠纷的裁决。

香港法院与内地法院的交流与合作

此前在案件管理会议上，夏利士法官已要求破产管理人与北京法院讨论两个法院合作的可能性，以便香港法院能够确定与维好协议的解释有关的问题。 后来，他写信给破产管理人在香港的律师，询问是否已经这样做。 从答复中小心选择的语言中，法官大人发现破产管理人没有通知北京法院，香港法院曾建议考虑由香港法院决定有关维好协议解释的问题。

破产管理人提交的支持认可和协助申请的证据也没有表明北京法院已向其解释了该申请将会在香港引起的问题。请求书中也没有任何部分认可香港法院须根据维好协议中的管辖权和管辖法律条款解决发行人和担保人确定索赔的权利之间的冲突，以及北京法院有优先权考虑是否应在重组中承认这项索赔。

夏利士法官指出，法院之间的合作至少需要对每个法院的法律和程序以及可能引起他们关注的事项有一定的了解。 内地和香港的法律制度和经济模式截然不同。 有必要进行有意识和机敏的合作与沟通，以尽量减少误解并促进有效的协助。 破产管理人及其在内地的律师有必要确保内地法院收到完整和均衡的信息。

法官指出，跨境破产和协助外国程序不涉及法院之间的竞争。 法院旨在共同实施公平有效的破产程序，同时尊重彼此司法管辖区的法律和程序。

香港法院希望决定有助于北京法院理解搁置申请并不像其可能被引导相信的那样简单直接，并希望促进法院之

间的沟通与合作。 法官表示，法院或可就决定问题的方式达成一致，由香港法院处理维好协议的解释问题。

结语

今年发生的多件事宜均说明内地与香港的跨境破产合作日益密切。 2021 年 5 月 14 日，中国最高人民法院与香港政府签署了《关于内地与香港特别行政区法院相互认可和协助破产程序的会谈纪要》（《会谈纪要》）。2021 年 9 月，香港法院在 *Re HNA Group Co Limited* [2021] HKCFI 2897 一案中首次认可了在内地进行的重组程序。

本案的判决体现了法院在实行《会谈纪要》的相互认可、协助和合作安排框架中协作精神和充分沟通和理解的重要性。 它还为律师在跨境争议解决中可以做些什么来最大程度地减少误解和促进法院之间的有效司法协助提供了方向，增强企业及投资者对司法制度的信心。

香港是中国离岸债券发行的热门地点。 内地与香港司法合作的不断稳健发展将加强对在岸和离岸债券持有人的保护，巩固香港作为世界首要国际金融中心和通往内地的主要桥梁的地位。

Source 来源:
https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=141062&currpage=T

Hong Kong Exchanges and Clearing Limited Reaches Agreement with Mainland Partners on Adding ETFs to Stock Connect

On December 24, 2021, Hong Kong Exchanges and Clearing Limited (HKEX) announced that it has reached an agreement with Shanghai Stock Exchange (SSE), Shenzhen Stock Exchange (SZSE) and China Securities Depository and Clearing Corporation (CSDC) on the Stock Connect inclusion arrangements for eligible ETFs.

The agreement is made in accordance with a previous joint announcement by the Securities and Futures Commission (SFC) and China Securities Regulatory Commission (CSRC).

The agreement reflects the ongoing commitment by HKEX and its Mainland partners to continue expanding and enhancing the landmark mutual market access program between the capital markets of Mainland China and Hong Kong.

As a key enhancement of Stock Connect, the inclusion of ETFs will provide investors with more options by broadening the existing Connect product ecosystem as well as support the continued development of both markets.

ETFs are a low cost investment option and a popular choice for diversification. Adding eligible ETFs into Stock Connect will support the healthy development of ETFs in both the Hong Kong and Mainland China markets by expanding their investor base.

Next, HKEX, SSE, SZSE and CSDC will work closely on the details of inclusion, including business and technical preparations such as amendments to relevant rules. It is estimated that the preparation work will take approximately six months to complete.

沪深港交易所及中国结算就 ETF 纳入互联互通标的整体方案达成共识

于 2021 年 12 月 24 日，香港交易及结算所有限公司公布，为了持续优化内地与香港市场互联互通机制，丰富互联互通现有标的，根据两地证监会联合公告，上海证券交易所、深圳证券交易所、香港交易及结算所有限公司、中国证券登记结算有限责任公司（以下简称沪深港交易所及中国结算）现已就 ETF 纳入互联互通标的整体方案达成共识。

ETF 纳入互联互通标的是互联互通机制升级的又一个标志性成果，将使互联互通现货生态链更加完整，进一步促进内地与香港市场共创双赢。一方面，ETF 纳入互联互通标的可丰富境内外投资者的投资渠道和交易品种，有利于境内外投资者更加便捷有效地配置对方市场资源；另一方面，ETF 纳入互联互通标的将进一步改善投资者结构，有利于推动 ETF 市场的健康发展。

下一步，沪深港交易所及中国结算将抓紧做好 ETF 纳入标的相关的业务和技术准备工作，包括修改相关规则并公开征求意见，预计需要 6 个月左右准备时间。

Source 来源:
https://www.hkex.com.hk/News/News-Release/2021/211224news?sc_lang=en
https://sc.hkex.com.hk/TuniS/www.hkex.com.hk/news/news-release/2021/211224news?sc_lang=zh-cn

The Financial Reporting Council of Hong Kong Issues Guidelines for Effective Audit Committee and Report on Assessment of the HKICPA's Performance of the Specified Functions

On December 16, 2021, the Financial Reporting Council of Hong Kong (FRC) issued Guidelines for Effective Audit Committees – Selection, Appointment and Reappointment of Auditors (the Guidelines) and the FRC's second Report on its Assessment of the

HKICPA's Performance of the Specified Functions (the Oversight Report).

Dr. Kelvin Wong, Chairman of FRC remarked, “In fulfilling our mission to uphold the quality of financial reporting of listed entities so as to enhance protection for investors, the FRC goes further than just effectively discharging our statutory functions. Through our non-statutory Policy and Governance functions, we aim to identify key issues, share insights and make recommendations about the pivotal role of good governance in supporting high quality financial reporting and audits of listed entities."

Key details of the Guidelines are set out below. The Guidelines also set out the key questions to be asked by audit committees in relation to each issue.

Areas of focus for evaluation of auditors

The Guidelines identified two main areas of focus for evaluation of auditors, i.e. audit quality and audit fees.

Audit quality - The evaluation of an audit firm from the perspective of audit quality provides audit committees with the basis to make recommendations to the board on auditor selection, appointment, and reappointment.

Audit fees - Audit committees play a pivotal role in approving the remuneration of auditors. Audit committees should ensure audit fees are not at a level that compromises audit quality. Key factors in considering the reasonableness of audit fees include the nature, size, and complexity of the audit as well as market competition.

Code provision D3.3(a) of the Corporate Governance Code requires audit committees to make recommendations on auditor appointment. It is important for audit committees to make such recommendations based on the ability of an audit firm to deliver a high-quality audit at the engagement team and firm levels. Audit quality should be the key determinant when selecting an auditor for listed entities.

There are two key factors that the audit committees should consider in selecting and appointing auditors – audit quality and audit fees. The evaluation principles can be applied to both the appointment of new auditors and reappointment of incumbent auditors. To evaluate a potential new auditor, audit committees should obtain the necessary information through the public domain and through requests to the audit firm. For an incumbent auditor, audit committees can make their evaluations through ongoing observations and information collected throughout the audit.

Key considerations for evaluating audit quality

In selecting auditors, audit committees should consider the following factors to evaluate a potential auditor from an audit quality perspective: (a) governance and leadership; (b) compliance with relevant ethical requirements; (c) industry knowledge and technical competence; (d) engagement performance; (e) communication and interaction with the audit committee; and (f) monitoring process.

(a) Governance and leadership

Audit committees must be satisfied that an audit firm is committed to performing the audit in the interests of the entity’s stakeholders and in the wider public interest. The audit firm’s leadership is responsible and accountable for quality, the organizational structure, and the assignment of roles, responsibilities, and authorities to ensure they are appropriate to enable partners and staff of the audit firm to deliver quality audits.

(b) Compliance with relevant ethical requirements

Independence is required to safeguard individual members of the audit engagement team or the audit firm from influences that may compromise professional judgements, and helps them to act with integrity, and exercise objectivity and professional skepticism. Threats to auditor independence may include:

- Financial interests that exist between the auditors and the audited entity. Holding a financial interest in an audited entity may create a self-interest threat to independence.

- Business relationships between the auditor and the audited entity. A close business relationship between the audit firm, or a member of the engagement team, or an immediate family member, and the audited entity may create self-interest or intimidation threats.

- Provision of non-audit services to audit clients. Audit firms have traditionally provided their audit clients with a range of non-audit services that are consistent with their skills and expertise. Providing non-audit services may, however, create threats to independence. The threats created are most often related to self-review, self-interest, and advocacy.

- Partners and staff may believe that their remuneration and, indeed, their ongoing careers with the audit firm are dependent on retaining an audit client, creating a familiarity or self-interest threat.

- Situations where a former member of the engagement team, or partner of the audit firm, has joined the audited entity in a position that exerts significant influence over the preparation of the

accounting records and financial statements. The threats created are most often related to familiarity, self-interest and intimidation.

Audit committees should obtain a description of the audit firm's policies and procedures for monitoring and complying with relevant ethical requirements to which the firm and the audit engagement are subject, including integrity, objectivity, and independence requirements, and be satisfied with the effectiveness of the policies and procedures. They should also obtain an understanding of how the audit firm reviews compliance with these requirements and the results of such reviews.

Listed entities must not appoint an auditor who is not independent. Therefore, audit committees should:

(i) Obtain a confirmation, together with a detailed independence assessment, from the audit firm that any non-audit services, financial and business relationships between the audit firm and the listed entity, and the personal relationships (including financial, employment and family relationships) between the audit engagement team members (including their immediate family members) and the listed entity, that may impair independence will be completed or terminated before the beginning of:

- The financial year that is subject to audit; and
- The auditor's appointment.

(ii) Consider the reasonableness/effectiveness of any safeguards proposed by the audit firm to mitigate the independence threats of past non-audit services. Audit committees should also be satisfied that both the prior and current non-audit services provided by the audit firm do not result in the auditors reviewing their own work or decisions in the course of audit. For example, where the potential auditor was involved in the design and implementation of the listed entity's financial reporting system, whether another independent specialist will be engaged to evaluate the said system.

(c) Industry knowledge and technical competence

Audit committees should obtain from the audit firm information about audits of entities of similar size in the same industry as the listed entity in the past 5 years for evaluation of the firm's experience.

Audit committees should be satisfied that the audit engagement team has the necessary competence by obtaining from the audit firm the composition of the audit engagement team, the profiles of the audit engagement partners, the engagement quality reviewer, and the key audit engagement team members, and by considering:

- The years of audit and relevant industry experience of the audit engagement partner, the engagement quality reviewer and the key audit engagement team members (including individuals from the audit firm's network);
- The professional qualifications held by the audit engagement partner, the engagement quality reviewer and the key audit engagement team members; and
- The ratio of qualified staff to students that will be involved other than the audit engagement partner and the engagement quality reviewer.

It is also important that the audit committee obtain the succession planning and steps from the audit firm to ensure that the audit firm has sufficient competent staff to provide quality audits over many years.

(d) Engagement performance

Effective engagement performance is the essence of audit quality. The effective performance of an audit depends first on good audit planning as this helps secure adequate resources to obtain sufficient appropriate audit evidence to support the audit opinion. Audit committees should therefore obtain from the audit firm their overall audit strategy that sets out the scope, timing, and direction of the audit. The audit strategy will guide the auditor's development of the audit plan specifying the nature, timing, and extent of audit procedures to be performed in the course of the audit. It is crucial that the audit committee is satisfied that:

- The audit engagement team has sufficient and appropriate resources, including expertise and time to perform quality audits;
- The nature, timing and extent of direction and supervision of audit engagement teams and review of the work performed is in line with the size and complexity of the listed entity, the risks of material misstatement, the technical competence and experience of the audit engagement team members.

(i) Sufficient and appropriate resources

Audit committees should obtain information on the selection of the engagement team, including profiles of the audit engagement partner, engagement quality reviewer, and the key audit engagement team members, to assess whether the team comprises an adequate number of staff with an appropriate mix of knowledge, skills, and other competencies required for the audit.

Audit committees should also obtain the audit strategy from the audit firm indicating the time to be spent:

- On different audit phases (i.e., planning, execution and reporting);
- By staff members of different seniority (i.e., audit engagement partner, engagement quality reviewer, audit managers, specialists, and other team members); and

- On key risk areas for material misstatement;

to ensure the audit firm assigns sufficient and appropriate resources to each audit phase and to address key risk areas, and that the audit engagement partner is actively involved in risk assessment, planning, supervising and reviewing the work performed by the engagement team, evaluating the evidence obtained, and in reaching final conclusions.

(ii) Scope and characteristics of the engagement

Audit committees should satisfy themselves that the audit strategy covers/ addresses:

- Preliminary identification of significant components, areas of higher risk that may lead to material misstatement or are expected to be key audit matters, the audit approach, and the extent to which components are audited by other auditors (i.e., component auditors);
- The key audit matters of the listed entity identified by the incumbent auditor, and common key audit matters of entities in the same industry as the listed entity;
- Industry-specific requirements;
- The need for specialized expertise; and
- The timetable and form of reporting of audit findings.

(d) Communication and interaction with the audit committee

Audit committees should obtain the communication plan between auditors and the audit committee and should satisfy themselves that it will facilitate mutual understanding of the audit progress and ensure effective two-way discussion of significant financial reporting and auditing matters in a timely manner.

(i) Communication plan

In evaluating the communication plan, audit committees should assess:

- Whether the timing of the communication with the audit committee on audit milestones (e.g., audit planning, audit fieldwork, completion of fieldwork, and reporting of audit results) meets the reporting timeline of the listed entity; and

- Whether the communication plan includes the scope of the audit engagement and focuses on the key issues that may give rise to:
  - Greater risks of material misstatement in the financial statements; and
  - Greater risks of compromising auditor independence.

(ii) Private meetings between the audit committee and the auditor

Audit committees should hold private meetings with auditors, in the absence of management, to review key issues within their sphere of interest and responsibility. These private meetings help audit committees maintain their independence from management by allowing them to ask questions that might not have been specifically addressed during the audit. It also allows auditors to provide candid and confidential comments to the audit committees on such matters.

(e) Monitoring process

Audit committees should seek information from the audit firm on whether the firm or any audit engagement team members, including the audit engagement partner, the engagement quality reviewer, and other key engagement team members, are subject to regulatory actions and evaluate whether such instances, if any, might affect audit quality.

In addition, audit committees should check whether there is any information from the public domain indicating possible quality issues with the audit firm. The sources of such information include:

- The annual and interim inspection reports issued by the FRC;
- Information available on the websites of the FRC and the HKICPA about investigations and/or disciplinary actions concerning the audit firm; and
- Newspapers, magazines, databases, industry publications, internet searches and other sources in the public domain.

Audit committees should also obtain and evaluate information from the audit firm on the results of inspections by regulatory and professional bodies (e.g., the FRC and the HKICPA). In evaluating recent inspection results, audit committees should consider:

- When was an engagement led by the audit engagement partner and the engagement quality reviewer last inspected;
- The results of engagement reviews of inspections (e.g., satisfactory, or failed); and
- The summary of findings and remedial actions taken by the audit engagement team or firm in response to the findings.

Moreover, audit committees should obtain and assess information from the audit firm on the results of recent internal inspection of engagements completed by the audit engagement partner and the engagement quality reviewer in light of factors highlighted above.

Key considerations for assessing audit fees

Under code provision D3.3 of the Corporate Governance Code, audit committees are primarily responsible for approving the remuneration and terms of engagement of auditors. Auditor remuneration is the fee charged by the auditor for the audit of a listed entity, i.e., the audit fee.

Audit Committees should recognize that "various factors affect audit fees, including the nature, size and complexity of the audit, the reporting requirements for a particular engagement or in the particular jurisdiction, and market competition". A reduction of the audit fee may not generate significant savings for the listed entity but may impair audit quality, which would go against the interests of investors and other users of financial statements.

(a) Size and structure of listed entities

The size and structure of listed entities generally has a direct relationship with audit fees. Auditors are required to perform additional audit procedures on larger entities as they have more sophisticated operational and financial processes, which entail higher audit risk.

Audit committees may also consider the reasonableness of the proposed audit fees in light of the size and structure of listed entities in terms of:

- Total assets, revenue and net income;
- The number and relative significance of subsidiaries and associated entities;
- The number of geographical locations where the listed entity conducts business; and
- The lines of business operated by the listed entity

(b) Nature and complexity of listed entities' businesses

Audit committees should evaluate the nature and complexity of listed entities' businesses when considering the reasonableness of the audit fee level, as those factors may affect the required audit resources and audit fees. In general terms, the complexity of listed entities' businesses and their audits are directly related to the amount of audit fees. Audit committees may consider the reasonableness of the proposed audit fees in light of the following:

- The nature of the listed entity's principal activities, and whether those activities involved are specialized industries (e.g., banking, finance, or information technology), that may increase the complexity of audits.
- The effectiveness of the listed entity's financial reporting and findings of the internal audit function, as well as its internal control over financial reporting.
- Whether the listed entity conducts complex corporate transactions, such as mergers and acquisitions, which increase the complexity of the audits and may involve expensive technical specialists.
- Whether the listed entity uses technologies such as predictive analytics, robotic process automation, blockchain, machine learning and artificial intelligence and whether computer-aided audit tools are expected to be used and technology specialists should be involved.
- Whether the listed entity's business is diversified in terms of the number of business segments.

Audit committees should also obtain a breakdown of proposed audit fees from the audit firm and compare it against competing firms so as to assess the reasonableness of the proposed fees:

- By seniority of staff members (i.e. the number of hours that the audit partner, audit managers, specialists, and other team members will dedicate to the audit);
- By geographical locations of the listed entity's businesses (i.e. the amount of audit fees allocated by the audit firm to component auditors at each location); and • By business segments of the listed entity (i.e. the amount of audit fees allocated by the audit firm to the audit of each business segment).

Audit committees may also compare the audit fees proposed by the potential audit firms against:

- The audit fees charged by the incumbent auditor (where applicable);
- The audit fees charged by the audit firm for entities that operate in a similar industry; and
- The fees paid by other listed entities of similar size and nature for audits of similar complexity as disclosed in the Corporate Governance Reports of their Annual Reports; to consider the reasonableness of proposed audit fees.

Reappointment of incumbent auditor

The key considerations to assess audit quality for the appointment of new auditors are generally the same as those for the reappointment of incumbent auditors. Similar to the appointment of auditors, audit committees should be satisfied that the audit fees are not at a level that compromises audit quality. Audit committees should follow the guidelines above in evaluating the reasonableness of audit fees.

Timing and frequency of evaluating the incumbent auditor

The FRC recommends audit committees to at least meet with the auditor after the review of interim financial statements and the audit of the full-year financial statements to review their performance. Audit

committees may also obtain an indicative audit fee for the coming year to assess its reasonableness. This will enable them to make an informed decision on reappointment before the annual general meeting.

Additional considerations for the reappointment of the incumbent auditor

Audit committees should consider the following procedures and factors in developing their recommendations on auditor reappointment: (a) audit effectiveness; (b) relationship between the auditor and management of the listed entity; (c) interaction with the audit committee; and (d) other considerations

(a) Audit effectiveness

Audit committees should recommend reappointment of the incumbent auditor to the board if they are satisfied with the audit quality delivered. Audit committees should evaluate the actual performance of the incumbent auditor against the guidelines above in evaluating the quality of the incumbent auditor's work.

(i) Handling of key audit issues

Audit committees should evaluate whether the audit plan has appropriately identified the significant risks related to the audit engagement, and whether the auditor has explained clearly how it has addressed the issues in a timely and effective manner. If there were changes in assessed audit risks during the audit engagement, audit committees should obtain an explanation from the auditor of the reasons for the changes and how the planned work was appropriately amended to address the changes in assessed risks.

Audit committees should satisfy themselves that the incumbent auditor has applied professional skepticism appropriately by obtaining information from the auditor and evaluating the procedures undertaken to challenge management on:

- The reasonableness of key assumptions made by management in determining estimates, e.g., cash flow forecasts and discount rates used in going concern and asset impairment assessments, and whether sufficient appropriate evidence had been collected to support the auditor's position; and
- The business rationale and commercial substance for complex and unusual transactions that might indicate fraud or the misappropriation of assets involving related parties.

In addition, audit committees should be satisfied that the incumbent auditor has the necessary competence by demonstrating that it has:

- Made appropriate professional judgements about materiality, risks, significant audit issues and difficult management judgements;
- Designed and carried out effective audit procedures;
- Understood and interpreted the evidence they obtained appropriately;
- Made appropriate evaluations of evidence obtained;
- Applied professional skepticism appropriately and challenged management throughout the audit engagement; and
- Reported with clarity and candor.

(ii) Timely completion of audit work

For every audit engagement, the audit firm should provide the audit committee with an engagement plan indicating the time to be spent on audit phases, by staff members of different seniority and on key risks of material misstatement at the planning phase of the audit. Audit committees should obtain from the incumbent auditor:

- A comparison of budgeted hours against actual hours spent on the various audit phases, by staff members of each seniority level and on key risk areas of material misstatement;
- A comparison of actual completion time against planned completion time for key milestones; and
- Reasons for significant variances so as to evaluate whether the incumbent auditor has completed the audit engagement according to the agreed timetable.

The audit committee should also evaluate whether the incumbent auditor met the agreed timelines and reporting deadlines and if not, whether there were good reasons for the delays in the interest of audit quality.

(b) Relationship between the auditor and management of the listed entity

Audit committees should obtain feedback from members of management involved in the audit process in considering the effectiveness of the incumbent auditor's working relationship with management while being satisfied that the auditors have remained skeptical and objective and were prepared to challenge the reliability of the information provided by management.

(c) Interaction with the audit committee

Audit committees should be satisfied that the incumbent auditor has maintained open lines of communication with themselves, and the relationship has operated on a transparent and candid basis.

Moreover, the audit committee should evaluate whether the timing and content of communications were in line with what was set out in the communication plan.

The audit committee should also evaluate whether the auditor communicated with them as soon as practicable when circumstances warranted timely reporting, for example, a significant difficulty encountered during the audit, significant deficiencies identified in internal controls, or a possible modified opinion.

(d) Other considerations

There are other factors that may affect the audit committees' recommendation on the reappointment of the auditor, such as when there are implications for the auditor's independence of the incumbent auditors.

(i) Independence of the incumbent auditor

Audit committees should consider the need for the listed entity to mitigate the familiarity and self-interest threats arising from the relationship, when an incumbent auditor has served a listed entity for a considerable period of time. Audit committees should also be satisfied that the incumbent auditor has adequate plans for managing mandatory changes of the audit engagement partner or engagement quality reviewer to ensure there is no undue disruption to the audit.

香港财务汇报局发表审计委员会有效运作指引及对香港会计师公会执行指明职能的评估报告

于 2021 年 12 月 16 日，香港财务汇报局（财汇局）发表《审计委员会有效运作指引－甄选、委任及重新委任核数师》（指引）以及第二份《财务汇报局对香港会计师公会执行指明职能的评估报告》（监督报告）。

财汇局主席黄天佑博士表示：「财汇局不仅有效履行法定职能，我们亦透过法定职能以外的政策及管治职能，就良好管治作支持上市实体高质素财务汇报及审计的重要角色方面，识别关键问题、分享见解及提供建议，以履行我们维持上市实体财务汇报质素，从而加强对投资者保障的使命。」

指引的主要细节载于下文。该指引还列出就每个范围供审计委员会提出的关键问题。

评估核数师的重点范畴

指引指出评估核数师时，应考虑的两个主要范畴，即审计质素和审计费用。

审计质素 - 评估会计师事务所的审计质素，为审计委员会向董事会就甄选、委任及重
新委任核数师提出建议提供基础。

审计费用 - 审计委员会在批准核数师薪酬方面担当关键角色。审计委员会应确保审计费用水平不会损害审计质素。考虑审计费用合理性的主要因素包括审计的性质、规模及复杂程度、以及市场竞争状况。

《企业管治守则》守则条文第 D3.3(a)条规定审计委员会应就核数师的委任提出建 议。审计委员会根据会计师事务所于审计项目团队及事务所两个层面提供高质 素审计的能力，来提出委任建议是十分重要的。审计质素应为上市实体甄选核 数师的关键决定因素。

审计委员会在甄选及委任核数师时应考虑的两大因素 — 审计质素及审计费用。评估原则适用于新核数师的委任及现任审计师的重新委任。为评估候选核数师，审计委员会应透过公开信息及向会计师事务所提出请求获得必要资料。针对现任核数师，审计委员会可通过审计过程中的持续观察及已收集的资料作出评估。

评估审计质素的主要考虑因素

在甄选核数师时，审计委员会应考虑以下因素，以评估候选核数师的审计质素：(a) 管治及领导；(b) 遵守相关道德要求；(c) 行业知识及技术能力；(d) 项目执行；(e) 与审计委员会的沟通及互动；及 (f) 监控程序。

(a) 管治及领导

审计委员会须信纳会计师事务所致力为实体持份者的利益及更广泛的公众利益 执行有关审计。会计师事务所的领导层须对审计质素、组织架构以及角色、职责及权力分配负责，以确保该等因素能合适地帮助会计师事务所合伙人及人员提供高质素审计。

(b) 遵守相关道德要求

独立性是为防范审计项目团队的个别成员或会计师事务所，不因他人的影响而在 专业判断上作出让步，并帮助他们以诚信行事、运用客观及专业怀疑的态度。 可能威胁核数师独立性的情况包括：

- 核数师与被审计实体之间存在的财务利益。于被审计实体中持有财务利 益，可能对独立性造成自身利益威胁。
- 核数师与被审计实体之间的商业关系。会计师事务所、或审计项目团队的成员、或其直系亲属与被审计实体之间的密切商业关系，可能造成自身利 益或胁迫威胁。
- 向审计客户提供非审计服务。会计师事务所一般会向其审计客户提供多项 与其技能及专长一致的非审计服务。然而，提供非审计服务可能对独立性造成威胁。该等威胁通常与自我复核、自身利益及倡导有关。

- 合伙人及人员可能认为其薪酬以及于事务所内的职业生涯，乃取决于能否挽留审计客户，从而造成亲密关系或自身利益威胁。
- 审计项目团队的前成员或会计师事务所的前合伙人加入被审计实体，并担 任对会计记录及财务报表的编制能施加重大影响的岗位，所造成的威胁通 常与亲密关系、自身利益及胁迫有关。

针对会计师事务所及审计项目遵守所适用的相关道德要求（包括诚信、客观及独立性要求），审计委员会应取得会计师事务所的监控政策及程序描述，并信纳该等政策及程序的有效性。他们亦须了解会计师事务所如何检讨遵守该等要求的情况及相关的检讨结果。

上市实体不得委任非独立的核数师。因此，审计委员会应：

(i) 向会计师事务所取得独立性确认，以及详细的独立性评估。该确认应识别 会计师事务所与上市实体之间任何可能损害独立性的非审计服务、财务及商业关系，以及审计项目团队成员（包括其直系亲属）与上市实体之间任何 可能损害独立性的个人关系（包括财务、雇佣及家族关系），并确认该等关系将于以下期间开始前结束或终止：

- 接受审计的财政年度；及
- 核数师的委任。

(ii) 考虑为降低过往非审计服务的独立性威胁，由会计师事务所提出的防范措 施的合理性/有效性。审计委员会亦应信纳，会计师事务所过往及当前提 供的非审计服务，并不会导致核数师于审计过程中自我复核其本身的工作或决定。例如，如果候选核数师曾参与上市实体的财务汇报系统的设计及 实施，是否有其他独立专家对上述系统作出评估。

(c) 行业知识及技术能力

审计委员会应向会计师事务所获取，事务所于过往 5 年为与上市实体位处同一行业且具相若规模的实体执行审计的数据，以评估该事务所的经验。

审计委员会通过向会计师事务所获取审计项目团队的组成数据，以及审计项目合伙人、项目质量复核员及审计项目团队主要成员的简介，并透过考虑以下各项以信纳审计项目团队具备必要的胜任能力。

- 审计项目合伙人、项目质量复核员及审计项目团队主要成员（包括来自会 计师事务所同一网络所的其他成员）的审计年资及相关行业的审计经验；
- 审计项目合伙人、项目质量复核员及审计项目团队主要成员所持有的专业资格；及
- 除审计项目合伙人及项目质量复核员外，审计项目团队中持有专业资格的人员比率。

审计委员会应向会计师事务所获取继任规划及步骤，以确保事务所持续具备足够的胜任人员，可年复年地提供高质素审计。

(d) 项目执行

有效的项目执行是审计质素的重要元素。有效的项目执行首先取决于良好的审计计划，其有助于获取足够资源，取得充足及适当的审计凭证以支持审计意见。因此，审计委员会应从会计师事务所取得载有审计范围、时间表及方向的 整体审计策略。该审计策略为核数师订下基础，协助其制定将于审计过程中执行的程序的性质、时间及范围。审计委员会必须信纳：

- 审计项目团队具有充足及适当的资源，包括执行高质素审计需要的专业知 识及时间；
- 为审计项目团队提供指导及监督的性质、时间及范围以及为已执行的工作的复核，符合上市实体的规模及复杂程度、重大错误陈述的风险以及审计项目团队成员的技术能力及经验。

(i) 充足及适当的资源

审计委员会应取得有关候选审计项目团队的数据，包括审计项目合伙人、项目质量复核员及主要审计项目团队成员的简介，以评估该团队是否由足够数量的人员组成，且具备审计所需的适当知识、技能及其他胜任能力。

审计委员会亦应从会计师事务所取得审计策略，包括分类列示时间分配：

- 按不同审计阶段（即计划、执行及报告）；
- 按不同资历成员（即审计项目合伙人、项目质量复核员、审计经理、专家 及其他团队成员）；及
- 按重大错报的主要风险领域；

以确保会计师事务所分配充足及适当的资源至各个审计阶段以应对主要风险领域，以及确保审计项目合伙人积极参与风险评估、计划、监督并复核审计项目 团队所执行的工作、评估已取得的证据并得出最终结论。

(ii) 项目范围及特征

审计委员会应信纳审计策略涵盖/应对以下方面：

- 初步识别审计的主要组成部分、可能导致重大错报或预期为关键审计事项的范畴及组成部分核数师的参与程度;
- 由现任核数师识别的上市实体关键审计事项，及位处上市实体同一行业内实体的常见关键审计事项;
- 行业特有要求;
- 对专门知识的需求; 及
- 审计时间表及报告形式。

(d) 与审计委员会的沟通及互动

审计委员会应获取核数师与其之间的沟通计划并应使其信纳，该计划可促进双 方相互了解审计进度，并确保及时对重大财务报告及审计事项进行有效双向讨论。

(i) 沟通计划

审计委员会于评估沟通计划时应评估:

- 与审计委员会沟通关于审计里程碑（如完成审计计划、进行审计现场工作、完成现场工作及报告审计结果）的时间，是否符合上市实体汇报时间表; 及
- 沟通计划是否包含审计项目范围，并着重于可能导致以下各项情况的关键问题:
  - 对财务报表重大错报有较大风险; 及
  - 有较大风险影响核数师独立性。

(ii) 审计委员会与核数师的非公开会议

审计委员会应与核数师举行管理层缺席的非公开会议，以讨论与其利益相关及 职责范围内的主要问题。该等非公开会议让审计委员会提问于审计过程中可能 未有特别处理的问题，这有助审计委员会与管理层维持一定程度的独立性。会议亦可让核数师就有关事项，向审计委员会提供坦诚及保密的意见。

(e) 监控程序

审计委员会应从会计师事务所收集有关会计师事务所或任何审计项目团队成员 （包括该审计项目合伙人、项目质量复核员及审计项目团队其他主要成员）的资料，了解他们是否受监管行动约束并评估有关情况（如有）会否可能影响审计质素。

此外，审计委员会应查核是否有任何公开信息，显示会计师事务所可能存在质素问题。该等数据源包括:

- 财汇局发布的年度及中期查察报告;
- 于财汇局及公会网站可取得的有关对会计师事务所的调查及/或纪律处分的资料; 及
- 新闻报章、杂志、数据库、行业出版刊物、互联网搜寻结果及其他公开资讯。

审计委员会亦应从会计师事务所获取并评估有关监管及专业机构（如财汇局及公会）发出的查察结果资料。审计委员会于评估近期查察结果时应考虑:

- 由该审计项目合伙人或项目质量审核员负责的项目，最近一次被查察的时间;
- 查察项目的结果（如合格或不合格）; 及
- 查察结果概要，以及审计项目团队或会计师事务所为响应查察结果所采取的改善措施。

此外，审计委员会应从会计师事务所获取由该审计项目合伙人及项目质量审核 员完成的项目的近期内部查察结果数据，并参考上述强调的因素作出评估。

<u>评估审计费用的主要考虑因素</u>

根据《企业管治守则》守则条文第 D3.3 段规定，审计委员会主要负责批准核数师的薪酬及聘用条款。核数师薪酬为核数师就审计上市实体收取的费用（即审计费用）。

审计委员会应识别「影响审计费用的各种因素，包括审计性质、规模及复杂程度、该审计项目或其司法管辖区的特定呈报要求以及市场竞争状况」。削减审计费用未必能为上市实体节省大量开支，却可能损害审计质素，因而违背投资者及财务报告其他使用者的利益。

(a) 上市实体的规模及架构

上市实体的规模及架构通常与审计费用有直接关系。由于大型实体的营运及财务流程更为复杂，牵涉更高的审计风险，因此核数师需要执行额外审计程序。

鉴于上市实体的规模及架构，审计委员会亦可从以下方面考虑建议审计费用的合理性:

- 资产总值、总收入及净收益;
- 附属公司及联营实体的数目及相对重大程度;
- 上市实体经营业务的地区数目; 及
- 上市实体营运业务的种类。

(b) 上市实体业务的性质及复杂程度

审计委员会于评估审计费用水平的合理性时，应考虑上市实体业务的性质及复杂程度，因为该等因素可能影响所需的审计资源及审计费用。一般而言，上市实体业务

及其审计的复杂程度与审计费用的金额有直接关系。审计委员会可从 以下方面考虑建议审计费用的合理性:

- 上市实体主要业务的性质，以及所涉及业务是否属于可能增加审计复杂程 度的专门行业（如银行、金融或信息科技）。
- 上市实体财务汇报程序的有效性及内部审核职能的调查结果，以及财务汇报内部监控的成效。
- 上市实体有否进行复杂的企业交易（如并购），因其会增加审计的复杂程度，并可能涉及费用高昂的技术专家。
- 上市实体是否使用数据预测分析、机器人流程自动化、区块链、机器学习及人工智能等科技，以及是否预期会使用计算机辅助审计工具及需要科技专家参与。
- 就业务种类的数目而言，上市实体的业务是否多元化。

审计委员会亦应从会计师事务所取得建议审计费用明细，并从以下方面将其与竞争事务所对比，以评估建议费用的合理性:

- 按员工资历（即按审计合伙人、审计经理、专家及团队其他成员分别计算将投入审计的时数）;
- 按上市实体业务的地区（即会计师事务所分配至各地区分部核数师的审计费用金额）; 及
- 按上市实体的业务分部（即会计师事务所就审计各业务分部所分配的审计费用金额）。

审计委员会亦应将候选会计师事务所建议的审计费用与以下各项作比较:

- 现任核数师（如适用）所收取的审计费用;
- 该会计师事务所向于同类行业营运的其他实体所收取的审计费用; 及
- 类似规模及性质的其他上市实体就相似复杂程度的审计于年报的企业管治报告中所披露的审计费用;

以考虑建议审计费用的合理性。

重新委任现任核数师

评估其审计质素的主要考虑因素一般与委任新核数师无异。与委任新核数师相类似，审计委员会须信纳审计费用的水平不会损害审计质素。审计委员会在评估审计费用的合理性时应遵循上述的指引。

评估现任核数师的时间及频率

财汇局建议，审计委员会须至少于审阅中期财务报表及审计全年财务报表后与核数师会面，以评估他们的表现。审计委员会亦可从现任核数师获取来年的预计审计费用以评估其合理性，使其能够于股东周年大会前就重新委任作出决定。

重新委任现任核数师的额外考虑因素

就重新委任现任核数师作出建议时，审计委员会须考虑以下程序及因素: (a) 审计成效; (b) 核数师与上市实体管理层的关系; (c) 与审计委员会的互动; 及 (d) 其他考虑因素。

(a) 审计成效

倘审计委员会信纳所实现的审计质素，则应向董事会建议重新委任现任核数师。审计委员会在评估现任核数师的工作质素时，须对照上述所载指引以评估现任核数师的实际表现。

(i) 关键审计问题的处理

审计委员会须评估审计计划有否适当识别与该审计项目有关的重大风险，及核数师有否明确解释如何及时有效地解决该等问题。倘已评估的审计风险于审计过程中出现变动，审计委员会须听取核数师就有关变动的原因所作出的解释， 及了解核数师如何适当修订工作计划以应对变动的风险。

审计委员会应从现任核数师获取以下有关其质疑管理层的数据，并信纳该核数师已适当运用了专业怀疑态度:

- 管理层作出估计时使用的主要假设之合理性。例如，于持续经营及资产减 值评估中，使用的现金流量预测及折现率，以及核数师有否收集充分而适当的证据以支持其立场; 及
- 可能显示舞弊或涉及关联方挪用资产之复杂及不寻常交易的商业理据及性质。

此外，审计委员会须信纳现任核数师已透过以下方式展现其所具备的技术能力:

- 就重要性、风险、重大审计问题及复杂的管理层判断作出适当的专业判断;
- 设计并施行有效的审计程序;
- 正确理解并阐释其取得的证据;
- 就取得的证据作出适当评估;
- 于整个审计过程中，适当地运用专业怀疑态度及质疑管理层; 及
- 清晰坦诚地呈报结果。

(ii) 按时完成审计工作

就各审计项目而言，会计师事务所须向审计委员会提供一份项目计划，按审计阶段、各员工的资历等级，及于审计规划阶段识别的主要重大错报风险，说明拟分配的审计时数。审计委员会须从现任核数师获得：

- 按不同审计阶段、各员工的资历水平及主要重大错报风险，比较所用实际 时数与预算时数；
- 各主要里程碑的实际完成时间与预计完成时间比较；及
- 出现重大差异的原因；

以评估现任核数师是否已根据协议的时间表完成审计项目。该项数据亦有助评 估审计项目合伙人及其他资深人员是否充分参与整个审计工作。虽然效率低（如有）未必影响审计质素，但在评估建议费用变动及服务满意度时，可作为一项考虑因素。

审计委员会亦须评估现任核数师是否遵守协议的时间表及呈报期限。若否，则应评估是否存在充分理由支持该延误有利于审计质素。

(b) 核数师与上市实体管理层的关系

审计委员会于考虑现任核数师与管理层工作关系的成效时，应从有参与审计过程的管理层成员获得反馈。审计委员会须信纳核数师有保持怀疑及客观态度， 随时准备就管理层所提供数据的可靠性提出质疑。

(c) 与审计委员会的互动

审计委员会须 信纳现任核数师与其维持畅顺的沟通渠道，且双方的关系是以透明及坦诚为基础。

此外，审计委员会须评估沟通的时间及内容是否符合上文所载的沟通计划。

在需要更及时呈报的情况下，审计委员会亦应评估核数师有否在可行范围内尽快与他们沟通。情况包括于审计过程中遇到重大困难、内部监控中识别出重大缺失，或可能发表的非无保留意见。

(d) 其他考虑因素

审计委员会应考虑其他影响其重新委任核数师建议的因素，例如现任核数师的独立性。

(i) 现任核数师的独立性

现任核数师为上市实体服务一段相当长的时间后，审计委员会须考虑上市实体是否需要减低由双方关系带来的亲密关系威胁及自身利益威胁。审计委员会亦须信纳，现任核数师备有周全的计划，以确保审计项目合伙人或项目质量复核 员的强制性变更不会对审计造成不当干扰。

Source 来源:
https://www.frc.org.hk/en-us/news-events/news/news-article?folder=FRC-issues-Guidelines-for-Effective-Audit-Committee-and-Report-on-Assessment-of-the-HKICPA
https://www.frc.org.hk/en-us/Documents/publications/Guidelines-for-Effective-Audit-Committees_EN.pdf

China Securities Regulatory Commission Issues Regulations on the Implementation of the System for Parties' Commitment to Administrative Enforcement Regarding Securities and Futures

Recently, the State Council of the PRC announced the Measures for the Implementation of the System for Parties' Commitment to Administrative Enforcement Regarding Securities and Futures (the Measures). In order to implement the Measures and fully achieve the systemic value of the commitment of parties to administrative enforcement upon conciliation, the China Securities Regulatory Commission (CSRC) has further refined and improved the relevant provisions of the Measures and issued the Regulations on the Implementation of the System for Parties' Commitment to Administrative Enforcement Regarding Securities and Futures (the Regulations).

The drafting of the Regulations adheres to the following principles: First, it should fully demonstrate the characteristics of the commitment system for parties to administrative enforcement to promptly compensate investors for their losses and enhance the sense of security and satisfaction of the investor community. Through the application of the commitment of the parties to administrative enforcement, the commitment money paid by the parties can be used to compensate investors for their losses, providing investors with a new way of timely and effective relief, which is more conducive to protecting the legitimate rights and interests of investors, especially small and medium-sized investors; restoring market order as soon as possible and stabilizing market expectations. It should effectively improve the effectiveness of law enforcement and resolve the contradiction between the "difficulty of investigation and punishment" and the "speed of investigation and punishment" demanded by the market. It should also form an effective supplement to administrative penalties and better adapt to the complex regulatory situation. Secondly, it should be steadily and prudently promoted. In general, the new form of administrative law enforcement, the commitment of the parties, is still being promoted in accordance with the principle of steady and prudent progress. On the basis of complying with the

requirements of the higher law, the CSRC will carefully summarize the practical experience, strictly limit the scope of application, refine and improve the handling procedures, and ensure that the new system will be implemented smoothly. Thirdly, it should strengthen supervision and constraints. The Regulations plan to establish a strict system of internal and external supervision and control and clarify the division of responsibilities between the department handling the parties' commitment and the departments handling the investigation, adjudication, investor protection insurance, the external agencies and other departments and units, so as to enhance compliance and avoid conflicts of interest.

The Regulations, which are not divided into chapters and contain 23 articles, are based on the Securities Law and the Measures. It mainly refines the processing procedures and the management and use of the commitment funds. The details are as follows:

First, it clarifies the coordination and interface mechanism between the commitment processing department and the investigation and adjudication departments. The Regulations require that the processing department should refer the case of commitment-related matters to the investigation and adjudication departments for consultation, the case must still go through the necessary investigation, and the investigation and adjudication would not be suspended pending the commitment process. Secondly, the department handling the commitment and the department to assess the commitment amount should work closely and fully cooperate with each other. The insurance fund company should be responsible for assessing the loss of the investors, the investigation department, the trial department, with the securities and futures exchanges, securities registration and settlement houses, investor protection agencies and other departments and units to provide necessary support. Thirdly, it provides for arrangements for investor payout mechanisms. The insurance fund companies are required to formulate a plan for the management and use of the commitment fund and report it to the CSRC for record. It also clarifies the procedures for the parties to compensate investors on their own and encourages them to compensate investors in advance. Fourthly, it clarifies the role of the external agencies in the administrative enforcement of the parties' commitment. On the one hand, it stipulates that the external agency’s jurisdiction in verifying and monitoring the commitment party's fulfillment of the commitment recognition agreement; on the other hand, it states that commitment procedures can apply to cases investigated and handled by external agencies. At this stage such commitment procedures should be handled by the commitment processing department in a unified manner. Fifthly, it requires the strengthening of supervision to safeguard the integrity of the procedures. A collective decision-making mechanism and an internal supervision and control mechanism should be established to reduce uncertainty in the exercise of discretion in determining the amount of the commitment. It strengthens the verification and supervision role of the external agencies in the process of commitment performance and requires timely announcement and disclosure of relevant information.

In the next step, the CSRC will implement the requirements of the Regulations, respond in a timely manner to address new situations and issues arising in the implementation of the commitment system for parties involved in the administrative enforcement regarding securities and futures, protect the legitimate rights and interests of investors in accordance with the law, maintain an open, fair and just capital market order and promote the stable and healthy development of the capital markets.

中国证券监督管理委员会发布《证券期货行政执法当事人承诺制度实施规定》

近期，中国国务院公布了《证券期货行政执法当事人承诺制度实施办法》(以下简称《办法》)。为落实好《办法》，充分发挥行政执法当事人承诺的制度价值， 中国证券监督管理委员会(证监会)进一步细化完善《办法》相关规定，并发布《证券期货行政执法当事人承诺制度实施规定》(以下简称《规定》)。

《规定》的起草坚持以下原则：一是发挥制度特色。充分发挥行政执法当事人承诺制度特色，及时赔偿投资者损失， 增强投资者群体的获得感和满足感。通过适用行政执法当事人承诺，当事人交纳的承诺金可用于赔偿投资者损失，为投资者提供了及时有效救济的新途径，更加有利于保护投资者尤其是中小投资者的合法权益；尽快恢复市场秩序，稳定市场预期；有效提高执法效能，化解资本市场执法面临的“查处难”与市场要求“查处快”之间的矛盾；对行政处罚形成有效补充，更好适应复杂的监管形势。二是稳步审慎推进。对于行政执法当事人承诺这一新型执法方式，总体上仍然按照稳步审慎的原则推进。在遵守上位法规定的基础上，认真总结实践经验，严格限定适用范围，细化完善办理程序，确保新制度平稳落地实施。三是强化监督制约。建立严格的内外部监督制约制度，明确当事人承诺办理部门与调查、审理、投保、派出机构等各部门单位的职责分工，防范道德风险和利益冲突。

《规定》未分章节，共 23 条，在《证券法》《办法》的基础上，主要细化规定了办理程序、承诺金的管理使用等内容。具体情况如下:

一是厘清承诺办理部门与调查、审理部门之间的协调衔接机制。要求承诺办理部门应当就案件适用当事人承诺相关事项征求调查、审理部门的意见，适用当事人承诺的案件必须经过必要的调查，案件受理后不中止案件调查，中止案件审理。 二是明确承诺办理部门与承诺金测算部门做好协调配合。由投保基金公司负责测算投资者损失情况，调查部门、审理部门、证券期货交易场所、证券登记结算机构、投资者保护机构等部门单位提供必要支持。三是规定投资者赔付机制安排。要求投保基金公司制定承诺金管理使用方案并报证监会备案，同时明确当事人自行赔偿投资者程序，鼓励当事人提前赔偿投资者。四是明确派出机构在行政执法当事人承诺中的作用。一方面，明确当事人所在辖区的派出机构负责核查验收当事人履行承诺认可协议的情况，另一方面，明确派出机构查处的案件可以适用行政执法当事人承诺，现阶段由承诺办理部门统一办理。五是加强监督制约，严防道德风险。建立集体决策机制、内部监督制约机制，压缩承诺金协商数额的裁量空间，强化派出机构在承诺履行过程中的核查监督作用，要求及时公告披露相关信息。

下一步，证监会将贯彻落实《规定》要求，及时回应解决证券期货行政执法当事人承诺制度执行中出现的新情况、新问题，依法保护投资者合法权益，维护公开、公平、公正的资本市场秩序，促进资本市场平稳健康发展。

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http://www.csrc.gov.cn/csrc/c100028/c1681018/content.shtml

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