

**HKE<sub>x</sub> GUIDANCE LETTER**  
Cite as HKE<sub>x</sub>-GL2-06 (April 2006)

*(Withdrawn in July 2018; superseded by HKEX-GL99-18)*

<b>Summary</b>	
<b>Listing Rule</b>	Main Board Listing Rule 3A.08
<b>Subject</b>	Procedures for assessing a sponsor's independence when a partnership is the controlling shareholder of the sponsor
<b>Contents</b>	Extracts of a letter from the authorised signatory of the Stock Exchange of Hong Kong

[\*] March 2005

*[Name and Address of the Legal Adviser to Sponsor A]*

Dear Sirs

Re: Enquiry of a Main Board Sponsor ("Sponsor A") regarding the  
requirements of Chapter 3A of the Main Board Listing Rules

Thank you for your recent letter of [*\*day\*month\*year*] regarding [*Sponsor A*] and certain questions of interpretation under Chapter 3A of the Listing Rules for the Main Board. We understand from your letter that [*Sponsor A*] is a regular sponsor of new listings on the Main Board, the controlling shareholder of which is a partnership (the "Partnership")

***Public Consultation Process***

As you know, the new requirements of Chapter 3A that took effect in January 2005 were the result of an extensive public consultation process undertaken by the Exchange and the SFC. The Consultation Conclusions on the Regulation of Sponsors and Independent Financial Advisers published on 19 October 2004 represented a significant step forward in implementing the Government's more general goal of improving the quality of Hong Kong's financial market. The Exchange and the SFC view the role of sponsors as a critical element in maintaining market quality and this importance is reflected in the now more stringent requirements of Chapter 3A of the Listing Rules. While all of the desires of the various constituencies that commented on the proposals are not accommodated in the current standards, in our view the revised Chapter 3A represents a balanced and fair approach to regulating sponsors under the Listing Rules.

## *Considerations in the Case of [Sponsor A]*

### *Interpretation of the Term “Controlling Shareholder”*

Under Chapter 3A both individual persons and groups of persons may be regarded as controlling shareholders, based on the definition of the term set forth in Rule 1.01 of the Listing Rules.

For partnerships and other legally recognised entities that are not bodies corporate, our analysis of the appropriate application of the Listing Rules would be based upon the legal characteristics of the entity in question. Though your letter does not provide details of the partnership agreement of the Partnership, in our experience we would consider it likely that a basic partnership structure would be treated as a group of persons for these purposes, given the individual liability and powers to bind the partnership normally held by general partners. Alternatively, for more complex partnership arrangements involving limited partners and/or other exotic features the Listing Division would likely consider whether it was more appropriate to consider the partnership as analogous to a body corporate and therefore treat the controlling shareholder in a manner consistent with that of a “company” for purposes of the Listing Rules. It is clear to the Listing Division that partnerships were intended to fall within one of these two principle categories under the Listing Rules.

### *Interpretation of the Term “Associate”*

Our interpretation of the term “associate” under the Listing Rules would be similar. That is, we would consider the legal characteristics of the partnership in the first instance. In our view it is not accurate to equate such a review to a review of each shareholder of a company. Among other things, shareholders generally have no liability beyond their equity investment and, as shareholders, have no powers to bind the corporation.

### *Definition of Sponsor Group*

Based on the information set forth in your letter, we agree with your initial conclusion that the Partnership would be a member of the “sponsor group” of [Sponsor A] under Rule 3A.01, given its status as the controlling shareholder of [Sponsor A]. For purposes of this letter we have not further considered the status of [other related entities mentioned in your letter] under the Listing Rules in light of your view that none of these entities is a controlling shareholder of [Sponsor A].

### *Your Proposals*

In view of the fact that a detailed analysis of the Partnership Agreement has not been submitted, we are not prepared to comment on the proposals set forth in your letter at this time. We would also note that it is the view of the Listing Division that whether or not a sponsor is independent as required by the Listing Rules in connection with an individual engagement is a question of fact the assessment of which remains fundamentally the responsibility of the sponsor. We are hopeful that our guidance set forth above will provide a basis for [Sponsor A] to understand our views on these matters for purposes of reaching their own conclusions in the future.

### *Additional Considerations*

We would also call to your attention that under the provisions of Rule 2.04, the Listing Rules are not exhaustive and the Exchange is empowered to impose additional requirements whenever it considers appropriate. Among other things, the Exchange may consider acting pursuant to Rule 2.04 to ensure that the general principles of Rule 2.03 are adhered to at all times. Such power would include the ability to expand the reach of Chapter 3A in appropriate circumstances to ensure that the issue and marketing of securities is conducted in a fair and orderly manner and that holders of listed securities, including those purchasing at the time of initial listing, are treated fairly and equally.

As such, when considering their actions in the future it is the view of the Listing Division that *[Sponsor A]* and other sponsors should consider both the letter and the spirit of the Chapter 3A requirements. Given the continuing process of reform being undertaken by the Exchange and the SFC, with its emphasis on improving the quality of the financial markets in Hong Kong, absent evidence showing there will be an undue burden on the individual party the Listing Division would be inclined to interpret the Listing Rules expansively - that is, as minimum rather than maximum standards of behaviour - if doing so would demonstrably enhance the principles of investor protection set forth in Rule 2.03.

The Listing Division is generally aware that many sponsor firms and related institutions invest considerable time and effort to establish comprehensive systems for reviewing conflicts of interest for purposes of assessing independence in various circumstances. Such market practice is to be commended as representing a good faith effort to meet the highest standards of professional responsibility reasonable under the circumstances. In the event such systems are available the Listing Division may not consider it reasonable to limit an independence review to a small group of partners in a partnership, given the fundamental importance of the independence of sponsors under Chapter 3A. Such an artificial limitation might result in an actual conflict that is readily discoverable being disregarded by a sponsor. In our view such a result would clearly conflict with the underlying rationale of Chapter 3A.

Therefore, in making its assessment of independence for purposes of the sponsor's statement regarding independence required by Rule 3A.08 it is the view of the Listing Division that *[Sponsor A]* should consider the following factors, among others, when assessing what would constitute a reasonable review under the circumstances:

- the current conflict declaration arrangements for partners and staff within *[Sponsor A's]* global organisation;
- the systems and controls that currently exist for reviewing the independence obligations of *[Sponsor A]*, the Partnership and other related entities for purposes of ensuring compliance with legal, regulatory and professional standards;
- whether such systems are currently able, or capable of being modified without undue effort or expense, to review the independence of the Partnership and other related entities or individuals for purposes of assessing independence as defined in the Listing Rules;

- whether, in the event that a responsible officer or director of *[Sponsor A]* has actual knowledge of an interest that would lead *[Sponsor A]* to not be considered independent for purposes of the Listing Rules (with or without the use of the systems and controls referenced above), but such interest was not held by one of the individuals contemplated in paragraphs 10(a)(i) or 10(a)(ii) of your letter, such actual conflict would be disregarded when making the sponsor's statement required by Rule 3A.08.

We wish to emphasise that our views set forth above are made based on the information provided in your letter. We reserve the right to alter our views should additional information come to light or the information provided in your letter change. Please note that the views set forth above are the views of the Listing Division, and are subject to endorsement by the Listing Committee.

*[Portion of Letter Purposely Omitted]*

Yours faithfully  
For and on behalf of  
The Stock Exchange of Hong Kong Limited

*[signed]*

*[Authorised Signatory]*