

Summary	
Parties	Company A – a Main Board listing applicant Mr. A – a director and controlling shareholder of Company A Company B – a potential Main Board listing applicant Mr. B – a director and co-founder of Company B
Issue	Whether each of Mr. A and Mr. B is suitable to act as a director of an issuer in light of bribery incidents
Listing Rules	Main Board Rules 3.08 and 3.09
Related Publications	Guidance Letters HKEX-GL68-13 (“ GL68-13 ”) and HKEX-GL96-18 (“ GL96-18 ”) Listing Decision HKEX-LD92-2015
Decision	The Exchange determined that (i) each of Mr. A and Mr. B was not suitable to act as a director of an issuer under the Rules; and (ii) given Mr. A’s substantial influence on Company A, Company A was not suitable for listing.

FACTS

Company A and Mr. A

1. Mr. A was an executive director, the chairman and one of the founders and controlling shareholders of Company A.
2. According to the court judgement issued shortly before the filing of Company A’s listing application, Mr. X, a former PRC government official, was convicted of receiving a bribe around ten years ago from Mr. A in exchange for his assistance in Company A’s application for certain government funding.
3. Mr. A was named as a witness in the court judgement, but was not prosecuted or convicted in the bribery case. However, the relevant court judgement stated that Mr. X’s conviction was premised on the fact that Mr. X received a bribe from Mr. A in exchange for assistance from Mr. X.

Company B and Mr. B

4. Mr. B was a director and a co-founder of Company B and intended to continue to serve as a director of Company B after its proposed listing. He was responsible for the overall management and strategic development of Company B’s business.

5. Mr. C, who was a former director of Company B, made gifts and payments to Mr. Y, a former PRC government official, in the hope of facilitating the regulatory approval process of Company B's products. These incidents had taken place over a period of seven years, and with the most recent incident occurring around six years before Company B's intended listing application.
6. According to the court judgement, Mr. Y was convicted of receiving bribes from Mr. C in exchange for his assistance for Company B's application. Mr. B and Mr. C were named as witnesses but were not prosecuted or convicted in the bribery case. However, based on the relevant judgement, Mr. B was aware of Mr. C's plan to give bribes to Mr. Y.

ISSUES RAISED FOR CONSIDERATION

7. Whether (i) each of Mr. A and Mr. B is suitable to act as a director of an issuer in light of the bribery incidents, and (ii) Mr. A's substantial influence on Company A would affect the suitability of listing of Company A?

APPLICABLE RULES AND PRINCIPLES

8. Main Board Rule 3.08 states that, among other things, the Exchange expects the directors to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law.
9. Main Board Rule 3.09 provides that directors of a listed issuer must have the character, experience and integrity and be able to demonstrate a standard of competence commensurate with their positions as directors of a listed issuer.
10. Paragraph 17 of GL96-18 states that an individual may not be suitable to be a director if an incident involving him raises a serious doubt as to his character or integrity and his ability to fulfil his duty to act honestly, in good faith and for a proper purpose. One example is where such individual is involved in bribery. The assessment is on a case-by-case basis.
11. Paragraph 18 of GL96-18 further states that if a director is no longer suitable to act as a director, the retention of office by the director is prejudicial to the interests of minority shareholders. If he is also a person being highly likely to be able to exert control or substantial influence over the issuer's operation and management, the concern about the company's suitability for continued listing would exist irrespective of whether he ceases to be a director.
12. Paragraph 3.4 of GL68-13 also states that if a controlling shareholder is culpable for the bribery incidents, so long as such controlling shareholder has the ability to exert substantial influence over the new applicant, the new applicant will not be suitable for listing. The assessment of substantial influence will be determined on a case-by-case basis, taking into all relevant facts and circumstances.

ANALYSIS

13. The board of directors of an issuer is responsible for directing and supervising the issuer's affairs and hence, can affect how the issuer conducts its business. In addition, the board of directors is entrusted with public funds. As such, it is imperative that the directors must be suitable in terms of character, experience, integrity and competence.

14. Bribery is serious in nature and would raise a concern as to a director's character and integrity, and ability to fulfil a director's duties to act honestly, in good faith and for a proper purpose.
15. The Exchange took into account all relevant facts and circumstances when assessing each of Mr. A's and Mr. B's suitability to act as a director of an issuer under the Rules (including their respective roles and nature of involvement in the bribery incidents).
16. In both cases, Company A and Company B argued that neither Mr. A nor Mr. B was prosecuted or convicted in the bribery cases. However, the relevant court judgements stated clearly that (i) Mr. A did give a bribe; and (ii) Mr. B was aware of his fellow director's plan to give a bribe. Mr. A's direct involvement in the bribery incident relating to Company A, and the fact that Mr. B (who was responsible for the overall management and strategic development of Company B's business) did not express any disagreement or take any action against the bribery incident relating to Company B even after he became aware of it, had impugned their character and integrity. As such, the Exchange considered that the retention of office by Mr. A and Mr. B would be prejudicial to the interests of shareholders of Company A and Company B, respectively.
17. In addition, the sponsor of each of Company A and Company B had failed to demonstrate to the Exchange's satisfaction that each of Mr. A and Mr. B was able to meet the character and integrity standards required under Main Board Rules 3.08 and 3.09 based on the submitted facts and circumstances.
18. In the case of Company A, Mr. A, as a controlling shareholder of Company A, is capable of continue exerting substantial influence over the operation and management of Company A even if he resigns as a director and from all management roles of Company A. After taking into account all relevant facts and circumstances (including Mr. A's involvement in the bribery incident relating to Company A and his substantial influence on Company A as its controlling shareholder), the Exchange considered that Company A was not suitable for listing.

DECISION

19. Based on the specific facts and circumstances, the Exchange determined that each of Mr. A and Mr. B was not suitable to act as a director of an issuer under Main Board Rules 3.08 and 3.09. The Exchange also considered that Company A was not suitable for listing because it would be subject to substantial influence by Mr. A.
