

Applicant	Background and Decision
<p data-bbox="165 327 331 461">Company A (MB applicant) (2005)</p> <p data-bbox="165 510 325 645">Rule reference: MB Rules 10.07, 10.08</p>	<p data-bbox="363 327 517 356"><i>Background</i></p> <ol style="list-style-type: none"> <li data-bbox="363 398 1455 495">1. More than six months prior to the hearing of Company A's listing application, Company A issued a certain amount of convertible notes ("Convertible Notes") to pre-IPO investors ("Pre-IPO Investors"). <li data-bbox="363 537 1455 741">2. The terms of the Convertible Notes provided that, unless otherwise redeemed by Company A, all the outstanding principal amount and accrued interest would automatically be converted into shares of Company A ("Shares") at the IPO offer price upon or shortly after the listing (being the third business day after delivery of a written notice by Company A to the Pre-IPO Investors confirming that the Exchange had approved its listing). <li data-bbox="363 779 1455 1294">3. As submitted by the sponsor and Company A: <ol style="list-style-type: none"> <li data-bbox="421 846 1455 913">(i) A substantial portion of the proceeds from issuance of the Convertible Notes had been used in the acquisition of a company by the Group; <li data-bbox="421 952 1455 1048">(ii) The Pre-IPO Investors decided to invest in Company A because of the investment return of the Convertible Notes and the business potential of the Group; <li data-bbox="421 1086 1455 1182">(iii) The directors of Company A considered that the issue of the Convertible Notes was a strategic step to enhance the Group's relationship with the Pre-IPO Investors; and <li data-bbox="421 1220 1455 1288">(iv) All the Pre-IPO Investors (and their directors and shareholders) were independent of and not connected with Company A. <p data-bbox="363 1332 472 1361"><i>Decision</i></p> <ol style="list-style-type: none"> <li data-bbox="363 1400 1455 1603">4. The Exchange ordinarily interprets MB Rule 10.07(1)(a), which restricts controlling shareholders to dispose shares during the first six months of the listing, to apply to a deemed disposal situation. On the other hand, the Exchange ordinarily considers that issue of new shares pursuant to an agreement entered before the listing is allowed under Listing Rule 10.08 provided that the material terms of the agreement have been disclosed in the listing document. <li data-bbox="363 1641 1455 2049">5. The Exchange determined that it did not consider the conversion to be barred by MB Rules 10.07 or 10.08 after having considered the following: <ol style="list-style-type: none"> <li data-bbox="421 1747 1455 1843">(i) The material terms of the Convertible Notes including the reasons for the issue and the use of the proceeds were prominently disclosed in the listing document in accordance with the Exchange's expectations under MB Rule 10.08; <li data-bbox="421 1881 1455 1948">(ii) The Convertible Notes were issued more than six months before the date of the hearing of Company A's listing application; and <li data-bbox="421 1986 1455 2049">(iii) The Pre-IPO Investors were independent third parties and there was no evidence to suggest that the Pre-IPO Investors had any connection with the

Applicant	Background and Decision
	controlling shareholders such that they would constitute a group of controlling shareholders for the purpose of MB Rule 10.07.
<p>Company B (MB applicant) (2009)</p> <p>Rule reference: MB Rules 2.13, 8.04, 8.05(1)(c), 11.07</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> Company B's shares were listed on a foreign exchange and it sought a dual primary listing by way of introduction on the Main Board. Company B applied for a waiver of MB Rule 10.08 which restricts an issuer from issuing further shares within six months after listing. In support of the waiver application, Company B submitted that: <ol style="list-style-type: none"> As Company B was not issuing new shares or raising new funds, its listing on the Exchange would not result in dilution of shareholders' interests; The existing shareholders would be prejudiced if Company B was restricted from fund raising activities. The restriction would affect its business development; The interests of the shareholders would be safeguarded by the shareholders' approval mechanism under MB Rule 13.36. For example, its shareholders had approved a general mandate pursuant to MB Rule 13.36 for the issue of new shares; MB Rule 10.08(5) provided that the restriction in MB Rule 10.08 did not apply to issue of securities on the Main Board by a listed issuer successfully transferred from GEM to the Main Board. The relaxation provided under MB Rule 10.08(5) should also be extended to companies already listed on an overseas stock exchange which were seeking to list on the Exchange by way of introduction; and The applicant agreed to the following conditions: <ol style="list-style-type: none"> Any issue of shares (or convertible securities) by Company B during the first six months of listing must be either for cash to fund a specific acquisition or as part or full consideration for acquisitions; Any acquisitions mentioned in (a) above must be for asset or business that would contribute to the growth of Company B's operation; and Company B would not apply for a waiver of MB Rule 10.07. Company B's controlling shareholder would not cease to be the controlling shareholder upon the issue of any shares within the first 12 months of listing. <p><i>Decision</i></p> <ol style="list-style-type: none"> The Exchange was satisfied that Company B was able to address the underlying concern of the restriction under MB Rule 10.08 and granted Company B the requested waiver subject to the conditions in paragraph 2(v) above based on the considerations that:

Applicant	Background and Decision
	<ul style="list-style-type: none"> (i) Company B's controlling shareholder had demonstrated its commitment to Company B by not disposing of any of Company B's shares since its first listing on a foreign exchange in 2006; and it would remain a controlling shareholder of Company B for the first 12 months of its listing on the Exchange as required by MB Rule 10.07; (ii) Any issue of shares after Company B's listing on the Exchange would be governed by the pre-emptive rights provisions in MB Rule 13.36. The approval of general mandate by Company B's existing shareholders would be disclosed in the listing document; and (iii) As Company B was not raising new funds for its listing on the Exchange, strict compliance with MB Rule 10.08 would limit its right to access the capital markets which it could otherwise do as a foreign listed issuer on its primary exchange. This might prejudice its business development and therefore might not be in the best interests of its public shareholders.
<p>Company C (MB applicant) (2009)</p> <p>Rule reference: MB Rules 10.07(1)(b), 10.08</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> 1. Company C was listed on a foreign exchange and it sought a dual primary listing by way of introduction on the Main Board. It proposed to enter into an agreement with certain potential investors before listing for the issue of convertible bonds convertible at the option of the investors six months after its listing (i.e. during the Second Lock-Up Period). Upon conversion, Shareholder X's shareholding in Company C might be diluted to below 30% according to the conversion formula based on the latest market price of the shares. Company C applied for a waiver from MB Rule 10.07(1)(b). 2. When considering the waiver application, the Exchange took into consideration that: <ul style="list-style-type: none"> (i) Company C was already listed on a foreign exchange. The Exchange noted that the restriction under MB Rule 10.07(1)(b) might hinder potential business opportunities and development of Company C, such as the proposed issue of convertible bonds; (ii) Company C was seeking a listing on the Exchange by way of introduction which would not involve any issue of new shares and would not result in any dilution of the shareholders' interest in Company C; (iii) Shareholder X had demonstrated its commitment to Company C by not disposing of any shares since its establishment. It would undertake not to dispose of any shares in the first 12 months following Company C's listing, except for the deemed disposal resulting from the conversion of convertible bonds; (iv) The proposed issue of the convertible bonds would be structured so that Shareholder X's interest in Company C would not be diluted below 28% in the first 12 months after its listing. Under this structure, Shareholder X would continue to be the single largest shareholder, though not the controlling shareholder, of Company C; and

Applicant	Background and Decision
	<p data-bbox="421 248 1455 349">(v) Company C would set out the details of the proposed issue of the convertible bonds, including the use of the proceeds, in the listing document; and there would be regular updates of the progress in its future regular reports.</p> <p data-bbox="363 387 472 416"><i>Decision</i></p> <p data-bbox="363 454 1455 555">3. The Exchange considered that MB Rule 10.07(1)(b) applied to a deemed disposal resulting in a dilution of the controlling shareholder's interest from the issue of new shares by the issuer.</p> <p data-bbox="363 593 1455 663">4. The Exchange waived MB Rule 10.07(1)(b) to enable dilution of shareholder X's interest in Company C during the Second Lock-Up Period, subject to:</p> <p data-bbox="421 701 1455 801">(i) Shareholder X's undertaking not to dispose of any of its interests in Company C in the first 12 months after its listing, except for the dilution resulting from the issue of conversion shares; and</p> <p data-bbox="421 840 1455 909">(ii) Company C making sufficient disclosure of the convertible bonds in the listing document and future regular reports after listing.</p>