

Applicant	Background and Decision
<p>Company A (MB applicant) (2006)</p> <p>Rule reference: MB Rule 3A.07</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> 1. A subsidiary of the parent company of Sponsor X (the “Associate”) subscribed for pre-IPO convertible notes of Company A. 2. The Associate intended to convert the convertible notes into shares shortly before listing, which represented not more than 2% of the enlarged issued share capital of Company A. 3. The conversion price was at a discount of 20% to 35% to the IPO price which was subject to downward adjustment based on a guaranteed profit clause. 4. The Associate would not be entitled to appoint any board members of Company A and no other arrangement was entered into or proposed to be entered into between Company A and the Associate concerning the management of the Group. 5. Save as acting as sponsor and global coordinator, no other relationship existed between Company A (on the one hand) and Sponsor X and its fellow subsidiaries (on the other hand). 6. The operation of the Associate was independent of Sponsor X. They shared only one common non-executive director. None of the members of the management team of the Associate was involved in the daily operation of Sponsor X or vice versa. <p><i>Decision</i></p> <ol style="list-style-type: none"> 7. The guaranteed profit clause was a financial commitment provided by Company A to the Associate and could be construed as a material interest of Sponsor X in the listing of Company A, which could adversely affect the independence of Sponsor X. In view of the Exchange’s concern, Sponsor X removed the guaranteed profit clause and the Exchange had no further comments on the independence of Sponsor X.
<p>Company B (GEM applicant) (2015)</p> <p>Rule reference: GEM Rule 2.09; GEM Chapter 11</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> 1. Company B was a GEM applicant engaged in a regulated business. 2. Mr. J, a non-voting member of the executive committee and a senior management of the group companies of Sponsor Y (the “Sponsor Group”), subscribed for pre-IPO convertible bond issued by the Company B. 3. Such pre-IPO convertible bond would be fully converted into the Company B’s shares before listing and Mr. J would be interested in more than 5% of the Company B upon listing. 4. To address the Exchange’s concern on Sponsor Y’s independence under GEM Rule 6A.07(9), Sponsor Y proposed to arrange for the Company B to redeem the pre-IPO convertible bond held by Mr. J before listing. <p><i>Decision</i></p>

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	<ol style="list-style-type: none"> 5. The Exchange considered Sponsor Y was not independent under GEM Rule 6A.07(9) due to Mr. J's positions in the Sponsor Group, under which Mr. J was delegated various management powers. In particular, the Exchange considered that the executive committee of the Sponsor Group was fulfilling a similar role of its board of directors. The above raised concern that Mr. J might be able to exert actual influence on Sponsor Y. In addition, even if the internal conflicts of interest measures within the Sponsor Group were assumed to be effective, Mr. J's positions in the Sponsor Group nevertheless would reasonably give rise to a perception that Sponsor Y was not independent. 6. The proposal of redeeming the pre-IPO convertible bond before listing did not address the issue, given that Sponsor Y must be independent of Company B from the date of submission of its listing application up to the date of listing under GEM Rule 6A.07. As a result, the listing application was rejected.
<p>Company C (MB applicant) (2019)</p> <p>Rule reference: MB Rule 2.06; MB Chapter 8</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> 1. Company C, a GEM company, supplied electronic components. It applied to transfer to the Main Board. 2. Sponsor Z acted as the sole sponsor in respect of Company C's GEM listing and thereafter also acted as Company C's compliance adviser. Sponsor Z then acted as sole sponsor to Company C's transfer application from GEM to the Main Board of the Exchange. <p><i>Decision</i></p> <ol style="list-style-type: none"> 3. Sponsor Z was not independent because its roles as a compliance adviser would reasonably give rise to a perception that it could not objectively assess Company C's compliance records when Sponsor Z would be effectively reviewing its own work. Company C should appoint another sponsor for the purpose of Rule 3A.07. As a result, the transfer application was rejected.