

Applicant	Background and Decision
<p><b>Company A</b> (MB applicant) (2015)</p> <p>Rule reference: MB Rule 2.06, 3.08 and 3.09; MB Chapter 8</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> <li>1. Company A was engaged in wholesaling and retailing of goods.</li> <li>2. A director who was also a controlling shareholder of Company A had made payments to an ex-government official who was then convicted of receiving bribes by a PRC court.</li> </ol> <p><i>Decision</i></p> <ol style="list-style-type: none"> <li>3. Company A's listing application was rejected due to director's suitability concerns. The sponsor had not demonstrated that the director was able to meet the character and integrity standard requirements under the MB Rules even though the director had not been charged. Even if the director resigned from Company A, the director would continue to exert significant influence over Company A's operation and management since the director was a brother of one of the four executive directors and the director had worked with two out of three members of senior management of Company A for over 10 years.</li> </ol>
<p><b>Company B</b> (GEM applicant) (2016)</p> <p>Rule reference: GEM Rule 2.09; MB Chapter 11</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> <li>1. Company B was an exhibition organiser.</li> <li>2. Director B, one of Company B's directors, instructed Company B's subsidiaries to make two advances to third parties. The advances were significant to Company B, but were all unsecured, interest-free and with no fixed repayment terms. The advances exposed Company B to significant credit risks and were in violation of the relevant laws and regulations.</li> <li>3. Director B also failed to notify the relevant subsidiaries of Company B of the partial repayments received by him and deposited into his personal account.</li> <li>4. Further, Company B failed to comply with the relevant laws and regulations in six instances relating to its core business during the track record period. The systemic non-compliances were serious in nature and raised questions as to whether Company B's directors (including Director B) were suitable under GEM Rules 5.01 and 5.02.</li> </ol> <p><i>Decision</i></p> <ol style="list-style-type: none"> <li>5. Company B's listing application was rejected as Director B was not considered suitable under GEM Rules 5.01 and 5.02 taking into account:</li> </ol>

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	<ul style="list-style-type: none"> <li>(i) Director B's failure to fulfil his fiduciary duties as a director and to act in the interests of Company B in safeguarding its assets. It appeared that he was unaware of the outstanding balances of the relevant subsidiaries and failed to take any action to recover the long-outstanding balances. In addition, Director B only confirmed that he had received repayments during the preparation of Company B's listing which resulted in material misstatements in Company B's group audited accounts; and</li> <li>(ii) The systemic non-compliances related to Company B's core business and Company B had committed the same or similar non-compliances repeatedly during the track record period. Company B did not enhance its internal control to prevent reoccurrence of the systemic non-compliances until the Exchange raised query on them. In addition, Director B had over 25 years of experience in the exhibition industry and was expected to be familiar with the legal requirements related to Company B's business. As such, the occurrence of the non-compliances cast serious doubts on his competence and suitability in general.</li> </ul>
<p><b>Company C</b> (MB applicant) (2017)</p> <p>Rule reference: MB Rule 2.06; MB Chapter 8</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> <li>Company C was a PRC utility provider.</li> <li>During the track record period, a number of Company C's directors and senior management were dismissed, as they (i) had been convicted of bribery relating to Company C's construction contracts with imprisonment sentences of over 10 years or life imprisonment; or (ii) were being investigated for receiving bribes from contractors or misappropriating Company C's properties. The misconduct of these former directors and senior management clearly indicated material weaknesses and deficiencies in Company C's internal control systems. This also cast doubt on the suitability of Company C's directors who were responsible for overseeing Company C's internal control measures to ensure that Company C was operating in a fully compliant manner.</li> <li>Company C also failed to obtain the relevant construction permits before the commencement of construction/operation of the material plants.</li> </ol> <p><i>Decision</i></p> <ol style="list-style-type: none"> <li>Company C's listing application was rejected since its directors were not considered suitable in view of the misconduct and non-compliances.</li> </ol>
<p><b>Company D</b> (GEM applicant) (2019)</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> <li>Company D provided obstetrics and gynecology healthcare services in Hong Kong.</li> <li>Mr. X (Company D's controlling shareholder, founder, chairman, executive director and chief executive officer) had previously been investigated for tax evasion.</li> <li>Mr. X had reached a settlement with the tax authorities, but the authorities issued a letter stating that he had acted willfully with the intent to evade tax.</li> </ol>

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<p>Rule reference: GEM Rule 2.09; GEM Chapter 11</p>	<p><i>Decision</i></p> <ol style="list-style-type: none"> <li>4. Company D's listing application was rejected since Mr. X did not have the requisite level of honesty and integrity expected of an applicant's directors, having considered that:               <ol style="list-style-type: none"> <li>(i) The penalties levied on Mr. X represented 118% and 104% of the tax undercharged; and</li> <li>(ii) The tax audit spanned a period of five years, during which Mr. X was unable to substantiate to the tax authorities that he did not willfully intend to evade tax.</li> </ol> </li> </ol>
<p><b>Company E</b> (GEM applicant) (2019)</p> <p>Rule reference: GEM Rule 2.09; GEM Chapter 11</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> <li>1. Company E was a sub-contractor for foundation works in Hong Kong.</li> <li>2. Company E was jointly founded by Mr. Y and Mrs. Y in 1994. They collectively ran Company E until Mr. Y's retirement in 2014.</li> <li>3. After retirement, Mr. Y maintained directorships in two of Company E's operating subsidiaries and also served as a senior consultant to Company E.</li> <li>4. Over 20 years ago, Mr. Y was charged with over 10 counts of giving kick-backs to an employee of a customer to procure the award of construction contracts to the benefit of Company E. Mr. Y was convicted of bribery and imprisoned for one year.</li> </ol> <p><i>Decision</i></p> <ol style="list-style-type: none"> <li>5. Company E's listing application was rejected on the ground of directors' suitability, taking into account:               <ol style="list-style-type: none"> <li>(i) Mr. Y could exert significant influence over Company E's operations and management. Specifically:                   <ol style="list-style-type: none"> <li>(a) Mr. Y was the spouse of one of Company E's executive directors, a co-founder of Company E, the settlor of the family trust that held Company E's shares and a director of Company E's two major operating subsidiaries; and</li> <li>(b) Mr. Y had maintained a position as a member of senior management of Company E and had long-standing work history with other members of Company E's senior management; and</li> </ol> </li> <li>(ii) Notwithstanding that Mr. Y's conviction occurred over 20 years ago, the bribery incidents (which involved dishonesty and fraud) reflected negatively on Mr. Y's character and integrity and gave rise to grave concerns on his suitability to act as a director of a listed company. The Exchange assessed director's suitability based on specific facts and circumstances of the case and the lapse of time was not the only fact taken into account to assess Mr. Y's suitability to act as a director.</li> </ol> </li> </ol>

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	<p>6. Company E also failed to demonstrate that it had proper and effective internal control measures to prevent Mr. Y from exerting significant influence over Company E that were commensurate with precedent cases.</p>
<p><b>Company F</b> GEM applicant (2019)</p> <p>Rule reference: GEM Rule 2.09; GEM Chapter 11</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> <li>1. Company F provided port logistics services in Singapore.</li> <li>2. Mrs. Z was the founder, controlling shareholder, chairlady and executive director of Company F.</li> <li>3. Mr. Z was the founder of Company F's sole operating subsidiary (the "<b>Subsidiary</b>"). Mr. Z no longer had a role in the Subsidiary, but he had been a director for 15 years of and was authorised to sign payment vouchers and cheques for the Subsidiary.</li> <li>4. In 2010, Mr. Z was convicted of an offence of dishonesty involving the misappropriation of funds of another company.</li> </ol> <p><i>Decision</i></p> <ol style="list-style-type: none"> <li>5. Company F's listing application was rejected since Mr. Z was a person with significant interest given his prior roles in the Subsidiary and his relationship with Mrs. Z and other senior management, and Mr. Z's misconduct made him unsuitable to be a director.</li> </ol>
<p><b>Company G</b> (MB applicant) (2020)</p> <p>Rule reference: MB Rule 2.06; MB Chapter 8</p>	<p><i>Background</i></p> <ol style="list-style-type: none"> <li>1. Company G developed and sold residential properties in Mainland China.</li> <li>2. During the track record period, Company G created a number of short-term inter-company loans on which it subsequently defaulted. The inter-company lender then assigned such defaulted loans to a distressed asset lender ("<b>Distressed Asset Lender</b>") with no discount on the principal.</li> <li>3. The Distressed Asset Lender could only purchase distressed debt (i.e. debt for which default had already occurred) since it is a distressed asset lender. The financing arrangements with the Distressed Asset Lender accounted for substantially all of Company G's borrowings during the track record period.</li> <li>4. Company G submitted that it was only able to obtain financing from the Distressed Asset Lender when it commenced operations, but it failed to explain why it could not obtain financing from other financial institutions after it became more established. As borrowing from the other financial institutions did not require an associated default, there would be no adverse impact to Company G's credit in that respect.</li> <li>5. Company G could not demonstrate that the Distressed Asset Lender provided better terms than other commercial lenders nor that it was the only available lender. Loans from the Distressed Asset Lender incurred higher interest rates and additional financial advisory fees.</li> </ol>

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	<p><i>Decision</i></p> <p>6. Company G's listing application was rejected since it could not provide an explanation for the commercial reasons for its financing arrangements with the Distressed Asset Lender, which appeared to lack discernible benefit to Company G and seemed engineered to allow the Distressed Asset Lender to acquire the debts at the expense of Company G. These issues also gave rise to concerns on the suitability of the directors and whether they had acted in the best interests of Company G and its shareholders.</p>
<p><b>Companies H and I</b> (MB applicants) (2022)</p> <p>Rule reference: MB Rules 3.08; 3.09</p>	<p><i>Background</i></p> <p>Company H and Mr. H</p> <ol style="list-style-type: none"> <li>1. Mr. H was an executive director, the chairman and one of the founders and controlling shareholders of Company H.</li> <li>2. According to the court judgment issued shortly before filing of Company H's listing application, Mr. A (a former PRC government official) was convicted of receiving a bribe around ten years ago from Mr. H in exchange for his assistance in Company H's application for certain government funding.</li> <li>3. Mr. H was named as a witness, but was not prosecuted or convicted. However, the relevant court judgement stated that Mr. A's conviction was premised on the fact that Mr. A received a bribe from Mr. H.</li> </ol> <p>Company I and Mr. I</p> <ol style="list-style-type: none"> <li>4. Mr. I was a director and a co-founder of Company I and intended to continue to serve as a director of Company I after its listing.</li> <li>5. Mr. I was responsible for the overall management and strategic development of Company I's business.</li> <li>6. Mr. C (a former director of Company I) made gifts and payments to Mr. B (a former PRC government official) to facilitate the regulatory approval process of Company I's products. These incidents took place over a period of seven years with the most recent incident occurring around six years before Company I's intended listing application.</li> <li>7. According to the court judgment, Mr. B was convicted of receiving bribes from Mr. C. Mr. I and Mr. C were named as witnesses but were not prosecuted or convicted.</li> <li>8. Mr. I was aware of Mr. C's plan to give bribes to Mr. B.</li> </ol> <p><i>Decision</i></p> <ol style="list-style-type: none"> <li>9. The Exchange considered the following: <ol style="list-style-type: none"> <li>(i) The board of directors of an applicant was responsible for directing and supervising the applicant's affairs and hence, could affect how the applicant conducted its business;</li> </ol> </li> </ol>

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	<ul style="list-style-type: none"> <li>(ii) The board of directors was entrusted with public funds, so it was imperative that the directors must be suitable in terms of character, experience, integrity and competence;</li> <li>(iii) Bribery was 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;</li> <li>(iv) The relevant court judgments stated that (a) Mr. H gave a bribe; and (b) Mr. I was aware of his fellow director's plan to give a bribe. Mr. H's direct involvement in bribery and Mr. I's lack of expression of disagreement and lack of action against bribery had impugned their character and integrity. The retention of office by Mr. H and Mr. I would be prejudicial to the interests of the shareholders of Company H and Company I, respectively; and</li> <li>(v) Mr. H was capable of continuing to exert significant influence over the operation and management of Company H even if he resigned as a director and from all management roles of Company H.</li> </ul> <p>10. The Exchange determined that (i) Mr. H and Mr. I were not suitable to act as directors of an applicant under the Listing Rules; and (ii) given Mr. H's significant influence on Company H, Company H was not suitable for listing.</p>

See also Company B under **Annex A.9** for a listing decision on non-compliances.