

HKEX GUIDANCE LETTER
HKEX-GL99-18 (July 2018)

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| Subject | Guidance on assessment of a sponsor's independence |
| Listing Rules | Main Board Rule 3A.07 GEM Rule 6A.07 |
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Important note: *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Department on a confidential basis for an interpretation of the Listing Rules or this letter.*

Purpose

1. This letter provides guidance on assessment of a sponsor's independence.

Relevant Listing Rules

2. Main Board Rule 3A.07 (GEM Rule 6A.07) provides that at least one sponsor of a new applicant must be independent of it and requires the sponsor to declare its independence or lack of independence in accordance with the terms set out in Appendix 17 to Main Board Rules (Appendix 7K to GEM Rules). It also set forth circumstances where the sponsor is not independent.

Guidance

3. The role of sponsors is critical in maintaining market quality and this is reflected in the requirements of Chapter 3A of the Main Board Rules (Chapter 6A of the GEM Rules), which were the results of:
 - (a) the Consultation Conclusions on the Regulation of Sponsors and Independent Financial Advisers jointly published by the Exchange and the Securities and Futures Commission ("**SFC**") on 19 October 2004; and
 - (b) the Consultation Conclusions on the Regulation of IPO Sponsors published by the SFC in December 2012¹.
4. The assessment of independence is a fundamental responsibility of the sponsor, together with the directors of the listing applicant.

¹ The new sponsor regulation became effective on 1 October 2013.

5. In principle, the factors that a sponsor and an applicant should consider when determining whether the requirements of Main Board Rule 3A.07(9) (GEM Rule 6A.07(9)) are satisfied include, but are not limited to:
 - (a) the nature of the relationship among the parties involved;
 - (b) when the business relationship in question commenced;
 - (c) whether the parties in question were involved, directly or indirectly, in sourcing the engagement; and
 - (d) the nature and materiality of other relevant business relationships.
6. Many sponsor firms and financial institutions have invested considerable time and effort to establish comprehensive systems for reviewing conflicts of interest and assessing independence in various circumstances. However, the sponsor should not merely rely on the existence of such measures when assessing its independence, without taking into account other factors, including those in paragraph 5 above.
7. Certain sponsor firm is or had been the compliance adviser of a GEM listed issuer, and may be appointed as a sponsor when the GEM listed issuer applies for transfer of listing to the Main Board. If the proposed sponsor's role will involve, among other things, the review of the GEM listed issuer's compliance records during the period when it acted as the GEM listed issuer's compliance adviser, such relationship will reasonably give rise to a perception that it may not objectively assess the GEM listed issuer's compliance records. In such cases, the GEM listed issuer should appoint another sponsor acting as the primary channel of information under Main Board Rule 3A.10.
8. In the event a sponsor's controlling shareholder is a partnership, questions arise as to how the requirements under Main Board Rule 3A.07 (GEM Rule 6A.07) should be applied. The Exchange considers:
 - (a) for partnerships and other legally recognised entities that are not bodies corporate, the analysis should be based upon the legal characteristics of the entity in question. A basic partnership structure would likely 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. For more complex partnership arrangements involving limited partners and/ or other features, the partnership may be considered as analogous to a body corporate, and treated in a manner consistent with that of a "company" for purposes of the Rules;
 - (b) the legal characteristics of the partnership will also affect the determination of "associates" under the Rules. It is not accurate to equate such a review to each shareholder of a company because, unlike partners, shareholders generally have no liability beyond their equity investments and have no powers to bind the corporation; and
 - (c) a sponsor should consider the following factors, among others:

- (i) the current conflict declaration arrangements for partners and staff within the sponsor's global organisation;
- (ii) the systems and controls that currently exist for reviewing the independence obligations of the sponsor, the partnership and other related entities for purposes of ensuring compliance with legal, regulatory and professional standards; and
- (iii) 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 Rules.
