

HKEx LISTING DECISION

Cite as HKEx-LD54-2 (June 2006)

[Streamlined and incorporated into the Guide for New Listing Applicants in January 2024]

Summary	
Name of Party	Company A – a Main Board listed issuer and its subsidiaries (the ‘Group’)
Subject	Whether the requirement of management continuity under Listing Rule 8.05(1)(b) and Paragraph 2 of Practice Note 3 could be satisfied where the management function was largely vested in one dominant director throughout the track record period?
Listing Rule	Listing Rule 8.05(1)(b); Paragraph 2 of Practice Note 3
Decision	Based on the above facts and the circumstances of the case and the Exchange’s analysis of the Listing Rules, the Exchange determined that the requirement of management continuity under Listing Rule 8.05(1)(b) and Paragraph 2 of Practice Note 3 was satisfied.

SUMMARY OF FACTS

1. In the second financial year of the track record period, the Group was reorganised and Company A became the Group’s holding company. Throughout the track record period the principal business of the Group was carried out by Subsidiary B.
2. The composition of the respective boards of directors of Company A and Subsidiary B were as follows:

Company A – There were seven members on the board of directors at the time of listing, including two executive directors (that is Mr. X and Mr. Y), two non-executive directors and three independent non-executive directors. The Group’s management control was vested in the executive directors. However, only Mr. X remained on the board of directors throughout the track record period. Mr. Y joined the Group in the second financial year of the track record period.

Subsidiary B – Five members had been appointed to the board of directors of Subsidiary B during the track record period, including two executive directors, and three non-executive directors. While Mr. X and his wife remained as executive directors up to the time of listing, only one non-executive director remained on the board at the time of listing.

3. For the purpose of demonstrating management continuity under Listing Rule 8.05(1)(b) and Paragraph 2 of Practice Note 3, the sponsor of Company A submitted that management responsibilities for the Group had always been vested in Mr. X throughout the track record period and up to the time of listing based on the following facts :
 - a. Mr. X besides being the executive director of Company A was also the founding member, the chairman, legal representative and general manager of the Group throughout the track record period. Mr. X was therefore responsible for the overall management and the strategic development of the Group. Mr. Y assisted Mr. X in business development of the Group and was responsible for the discharge of the Group's finance and administrative functions;
 - b. At the level of Subsidiary B, only Mr. X and his wife were executive directors during the track record period up to the time of listing. The remaining three directors were non-executive directors. Two of the non-executive directors were respectively appointed by Mr. X's wife and by another close family member of Mr. X who acted as controlling shareholders. These non-executive directors were board representatives of the controlling shareholders and did not participate in the day-to-day management of Subsidiary B. One of them resigned during the track record period. The other non-executive director was appointed by a minority shareholder and resigned during the track record period.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether the requirement of management continuity under Listing Rule 8.05(1)(b) and Paragraph 2 of Practice Note 3 could be satisfied where the management function was largely vested in one dominant director throughout the track record period?

APPLICABLE LISTING RULES OR PRINCIPLES

5. Listing Rule 8.05(1)(b) provides that in order to meet the profit test, a new applicant must have an adequate trading record under substantially the same management and ownership. In particular, the issuer or its group must satisfy 'management continuity for at least the three preceding financial years.'
6. Paragraph 2 of Practice Note 3 of the Listing Rules gives further guidance on the interpretation of the requirement for substantially the same management as follow:

In all cases the trading record period of a new applicant must enable the Exchange and investors to make an informed

assessment of the management's ability to manage the applicant's business and the likely performance of that business in the future. In order to make this assessment the applicant must be able to satisfy the Exchange that its main business or businesses, as at the time of listing, have normally been managed by substantially the same persons throughout the period of the qualifying trading record and that such persons are the management of the new applicant.

7. Reference is made to Listing Decision HKEx-LD45-1 published in the First Quarter of 2005. Paragraphs 9-12 thereof set out the analysis of the Exchange over the question of management as follow:
 9. The Exchange ordinarily considers management continuity under Listing Rule 8.05(1)(b) and Paragraph 2 of Practice Note 3 to be a question of fact.
 10. In the Consultation Paper on Proposed Amendments to the Listing Rules Relating to Initial Listing Criteria and Continuing Eligibility published in July 2002 (the 'Consultation Paper'), paragraph 31 clearly stated that the Exchange has interpreted the management continuity requirement to mean that applicants must demonstrate that there has been no change in the majority of the applicant's board of directors and senior management of its principal operating subsidiaries during the three financial year track record period. Paragraph 2 of Practice Note 3 requires that management continuity must continue up to the date of listing.
 11. Based on this interpretation of the Listing Rules, when examining whether Company A and its predecessor satisfied the management continuity requirement, the Exchange followed the practice of concentrating on a review of the substance of the management, particularly considering whether:
 - a. an identifiable group of individuals most relevant and responsible for the track record results of a listing applicant remained in positions of responsibility with the enterprise under review throughout the relevant track record period; and
 - b. such group of individuals would form the core management of the applicant at the time of listing and thereafter.

12. When assessing the relevance of individual members of a management team to the track record results of Company A and its predecessor, the Exchange followed the practice of ordinarily attributing proportionately greater responsibility to officers with more senior positions than those with more junior positions. This practice is intended to reflect the formal responsibilities of senior officers in their corporate roles. In its determination process, the Exchange ordinarily considers special facts and circumstances of an individual case to enable appropriate adjustments to be made in its final conclusion.

THE ANALYSIS

8. In determining whether management continuity had been demonstrated in the present case, the Exchange adopted the approach as set out in Listing Decision HKEx-LD45-1 (First Quarter of 2005) above.
9. The Exchange's review therefore involved an assessment of the demonstrated importance of the responsibilities that were bestowed upon Mr. X with respect to the business operations of the Group in light of the management composition of Company A and Subsidiary B; and whether on the facts of the case the contributions from Mr. X had been proved to have continued throughout the track record period and up to the time of listing.

THE DECISION

10. Based on the above facts and the circumstances of the case and the Exchange's analysis of the Listing Rules, the Exchange determined that the requirement for management continuity under Listing Rule 8.05(1)(b) and Paragraph 2 of Practice Note 3 was satisfied.