

HKEx LISTING DECISION
Cite as HKEx-LD54-1 (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 and how the requirement of management continuity under Listing Rule 8.05(1)(b) and Paragraph 2 of Practice Note 3 could be satisfied in a case where the listing applicant is a group comprising a number of subsidiaries?
Listing Rules	Listing Rule 8.05(1)(b); Paragraph 2 of Practice Note 3 of the Listing Rules
Decision	The Exchange determined that the requirement of management continuity had been satisfied if the core management group most relevant to the trading record results of Company A had continued to serve on the board of directors and/or at the senior management level in Company A and its respective key operating subsidiaries throughout the three-year trading record period and up to the time of listing.

SUMMARY OF FACTS

1. Company A had been incorporated at the end of the trading record period. The controlling shareholder of Company A transferred to the Group, among other things, its assets and equity interests in subsidiaries that form the various divisions of Company A in a pre-listing reorganisation. When listed, the Group would comprise more than thirty subsidiaries.
2. Company A’s seven executive directors, six non-executive directors and three independent non-executive directors were appointed on the establishment of Company A.
3. The sponsor submitted the following evidence to demonstrate that the management continuity requirement had been satisfied:
 - a. Company A - Five of the seven executive directors of Company A had held senior management positions in or had managed the operations of key subsidiaries in the Group throughout the trading record period. In addition, substantially all of the individuals holding key positions in the senior management of Company A also held or had held key management

positions in or managed the operations of key subsidiaries in the Group throughout the trading record period.

- b. Principal operating subsidiaries - The directors had identified five key operating subsidiaries out of a group of thirty subsidiaries as the entities most significant to the results of the Group in terms of revenue, profits and assets. The management profiles of these five key operating subsidiaries were as follows:

Subsidiary A - Three of the four current executive directors of Subsidiary A were executive directors throughout the trading record period and the other current executive director had been the deputy manager of Subsidiary A responsible for overseeing the day-to-day operations prior to his promotion as executive director.

Subsidiary B - Two of the four current executive directors of Subsidiary B were executive directors throughout the trading record period. In addition, five of the six senior management staff continued to serve throughout the trading record period.

Subsidiary C - Two of the four current executive directors of Subsidiary C had been senior managers of Subsidiary C during the trading record period. In addition, the outgoing chief executive officer of Subsidiary C had assumed other senior management duties for other companies within the Group.

Subsidiary D - Prior to its incorporation in the last financial year of Company A's trading record period, Subsidiary D had not existed as an incorporated entity. However, all the executive directors had been senior management staff of Subsidiary D prior to its incorporation. In addition, three of the five managers of Subsidiary D continued to serve throughout the trading record period.

Subsidiary E - Two of the three current executive directors served as executive directors of Subsidiary E for more than nine years. The current chief executive officer and his current deputies had been appointed prior to the commencement of the trading record period.

- c. Information relating to experience and particulars of the individuals most relevant to the Group's performance during the trading record period in respect of Company A and key operating subsidiaries had been submitted to the Exchange for its review.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether and how the requirement of management continuity under Listing Rule 8.05(1)(b) and Paragraph 2 of Practice Note 3 could be satisfied in a case where the listing applicant is a group comprising a number of subsidiaries?

APPLICABLE LISTING RULES OR PRINCIPLE

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. This means that the new applicant or its group must, among other criteria, 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 follows:

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. The Listing Decision HKEx-LD45-1 (‘HKEx-LD45-1’) published in the First Quarter of 2005. Paragraphs 9-12 thereof set out the analysis of the Exchange concerning the question of management as follows:
 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. When assessing the relevance of individual members of a management team to the trading record results of a listing applicant, the Exchange followed the established practice as set out in HKEx-LD45-1 of attributing proportionately greater responsibility to more senior officers and those with responsibility at the group level and less responsibility to more junior corporate officials and those with responsibility at the operating subsidiary level with consideration given to the relative size of the companies at the operating subsidiary level. This practice is intended to reflect the formal responsibilities of the senior officers in their

corporate roles. In addition, the Exchange noted that its focus on the substance of a listing applicant's management when examining management continuity of a listing applicant meant that in some cases management continuity requirement could be satisfied where less than a majority of the board of directors and senior management continued to serve throughout the three financial year trading record period.

9. Following the above analysis and based on the factual circumstances of the case as submitted by the sponsor, the Exchange was satisfied that a majority of the executive directors and key members in the senior management of Company A and the key operating subsidiaries had continued to serve throughout the trading record period up to the time of listing for the purpose of Listing Rule 8.05(1)(b).

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 of management continuity had been satisfied if the core management group most relevant to the trading record results of Company A had continued to serve on the board of directors and/or at the senior management level in Company A and its respective key operating subsidiaries throughout the three-year trading record period and up to the time of listing.