

## HKEx LISTING DECISION

Cite as HKEx-LD51-4 (March 2006)

[\[Streamlined and incorporated into the Guide for New Listing Applicants in January 2024\]](#)

Summary	
<b>Names of Parties</b>	Company A – a Main Board listing applicant and its subsidiaries (the ‘Group’)  Subsidiary A- the principal operating subsidiary of Company A
<b>Subject</b>	Whether the requirement for ownership continuity and control for at least the most recent audited financial year under Listing Rule 8.05(1)(c) could be satisfied in light of the changes in the shareholding interests held by two separate groups of controlling shareholders during the last financial year of the track record period?
<b>Listing Rule</b>	Listing Rule 8.05(1)(c)
<b>Decision</b>	<p>The Exchange determined that:</p> <ul style="list-style-type: none"><li>• the two separate groups of controlling shareholders could be viewed as the controlling shareholders that exerted management influence on the operations of the Group for the purposes of Listing Rule 8.05(1)(c);</li><li>• as such, the management influence exerted by the controlling shareholders had in fact not been changed during the last financial year of the track record period; and</li><li>• given that both relevant shareholder groups had continued as controlling shareholders during the relevant time periods, the Exchange considered that Company A satisfied the ownership continuity and control requirement of Listing Rule 8.05(1)(c).</li></ul>

### SUMMARY OF FACTS

1. Company A became the holding company of the Group during the last financial year of the track record period pursuant to a reorganisation of the Group for the purpose of listing.
2. There were a number of changes in the shareholding structure of the principal operating subsidiary of the Group, Subsidiary A, during the last financial year of the track record period as follow:

## Shareholding changes in Subsidiary A

Shareholder	Shareholding percentages during the third year of the track record period		
	1 <sup>st</sup> year	2 <sup>nd</sup> year	3 <sup>rd</sup> year
Shareholder X	51%	50%	31%
Shareholder Y	49%	50%	34% *
Other shareholders	-	-	35% **
Total	100%	100%	100%

\* single largest shareholder at the time of listing

\*\* the other ten existing shareholders were independent third parties first brought into the Group in the last financial year of the track record period, and held their shares either directly or through their own investment holding vehicles.

3. Although there had been changes in the shareholdings of Subsidiary A in the third year of the track record period resulting in Shareholder Y being the single largest shareholder, there had been no change in the board composition of Subsidiary A in the last financial year of the track record period up to the time of the listing application. The Group had been managed by a single management team brought in by Shareholder X throughout the track record period.
4. Company A submitted that Shareholder X and Shareholder Y had been and were working closely together in the operations of Subsidiary A.

## THE ISSUE RAISED FOR CONSIDERATION

5. Whether the requirement for ownership continuity and control for at least the most recent audited financial year under Listing Rule 8.05(1)(c) could be satisfied in light of the changes in the shareholding interests held by two separate groups of controlling shareholders during the last financial year of the track record period?

## APPLICABLE LISTING RULE OR PRINCIPLE

6. Listing Rule 8.05(1)(c) 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 a new applicant or its group must, amongst other criteria, have 'ownership continuity and control for at least the most recent audited financial year'.

## THE ANALYSIS

7. The Exchange considers that the requirement for ownership continuity and control for at least the most recent audited financial year is in recognition of the high probability that dominating shareholder or shareholder groups can exert substantial influence on the management of the group seeking listing during the track record period. Furthermore, such interpretation would help prevent listing applicants from ‘packaging’ their business to meet the profit record requirement. ‘Ownership continuity and control’ is defined as the continuous ownership and control of the voting rights attaching to the shares by a controlling shareholder, or where there is no controlling shareholder, a single largest shareholder (see Listing Decision HKEx-LD42-4)
8. In determining whether ‘ownership continuity and control’ could be demonstrated in the present case, the Exchange took into account the following factual circumstances including:-
  - a. as at the beginning of the first financial year of the track record period, Shareholder X and Shareholder Y held 51% and 49% interests in Subsidiary A. Despite the fact that the aggregate shareholding percentage was reduced to 64% in the third year of the track record period, each of Shareholder X and Shareholder Y held more than 30% interest (that is, each was a controlling shareholder as defined in Listing Rule 1.01) in Subsidiary A throughout the third year of the track record period;
  - b. although there had been changes in the shareholdings of Subsidiary A in the third year of the track record period resulting in Shareholder Y being the single largest shareholder, there had been no change in the board composition of Subsidiary A in the third year of the track record period up to the time of the listing application; and
  - c. Shareholder X and Shareholder Y, each being a controlling shareholder of the Group, had been the only two parties who could exert influence over the management in the last financial year of the track record period.
9. Based on its review, the Exchange considered that both Shareholder X and Shareholder Y should be viewed as the controlling shareholders capable of exerting management influence over the management in the Group during the last financial year of the track record period for the purposes of Listing Rule 8.05(1)(c). As such, the Exchange was also satisfied that the express policy concern of ‘packaging’ did not exist in the present case.

## **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:
  - a. Shareholder X and Shareholder Y being two separate groups of controlling shareholders could be viewed as the controlling shareholders that exerted management influence on the operations of the Group for the purposes of Listing Rule 8.05(1)(c);
  - b. as such, the management influence exerted by the controlling shareholders had in fact not been changed during the last financial year of the track record period; and
  - c. given that both Shareholder X and Shareholder Y had continued as controlling shareholders during the relevant time periods, the Exchange considered that Company A satisfied that the ownership continuity and control requirement of Listing Rule 8.05(1)(c).