

Applicant	Background and Decision
<p data-bbox="164 324 331 461"><b>Company A</b> (MB applicant) (2004)</p> <p data-bbox="164 499 293 636">Rule reference: MB Rule 8.05(1)(c)</p>	<p data-bbox="357 324 512 353"><i>Background</i></p> <ol data-bbox="357 394 1452 1256" style="list-style-type: none"> <li>1. Subsidiary X was Company A's only operating subsidiary, which was owned as to approximately 50%, over 5% and over 40% by Owner A, Labour Union X and other shareholders, respectively, before the track record period.</li> <li>2. In the second financial year, Owner A entrusted over 45% interests in Subsidiary X (the "<b>Entrusted Shares</b>") in favour of Labour Union X. Under the entrustment agreement between Owner A and Labour Union X, Labour Union X was entitled to exercise all the shareholder rights in respect of the Entrusted Shares, including the right to exercise the voting powers associated therewith, except for the right to dispose of the Entrusted Shares. Labour Union X was entitled to receive all the dividends declared or benefits attributable to the Entrusted Shares in the form of a fee. Labour Union X was in a position to exercise all the rights of and control over the Entrusted Shares normally available to a shareholder in Subsidiary X.</li> <li>3. The entrustment arrangements were put in place because the PRC Company Law prohibited Owner A from transferring its shares during the first three years of incorporation. The PRC legal advisers confirmed that the entrustment arrangements were valid and did not violate any PRC laws and regulations. The entrustment arrangements were subsequently confirmed by the relevant PRC authorities.</li> <li>4. In the third financial year, Labour Union X was succeeded by Labour Union Successor (together with Labour Union X, "<b>Labour Union</b>"). The succession did not involve change in the underlying shareholding interests and was approved by the relevant PRC authorities. Shortly after the track record period, the legal title of the Entrusted Shares was transferred to Labour Union Successor.</li> </ol> <p data-bbox="357 1294 469 1323"><i>Decision</i></p> <ol data-bbox="357 1361 1452 1671" style="list-style-type: none"> <li>5. By aggregating the Entrusted Shares with its original 5% shareholding, as at the date of the signing of the entrustment agreement in the second financial year and since that date, Labour Union was able to exercise control over and all the rights of over 50% equity interest in Subsidiary X. Hence, Labour Union X and its successors had maintained ownership continuity and control for at least the most recent audited financial year under MB Rule 8.05. Further, the Exchange was not aware of any circumstances which might suggest that there had been packaging of businesses for seeking a listing. As such, the ownership continuity and control requirement under MB Rule 8.05(1)(c) was satisfied.</li> </ol>
<p data-bbox="164 1718 331 1854"><b>Company B</b> (MB applicant) (2005)</p> <p data-bbox="164 1892 293 2029">Rule reference: MB Rule 8.05(1)(c)</p>	<p data-bbox="357 1718 512 1747"><i>Background</i></p> <ol data-bbox="357 1787 1452 2060" style="list-style-type: none"> <li>1. Company B had two classes of shares. <ol data-bbox="416 1854 1452 2060" style="list-style-type: none"> <li>(i) Class A Shares were held by Company B's senior management and their business associates ("<b>Founding Individuals</b>"). Class A Shares accounted for 51% of the voting rights and 10% equity interest in Company B; and</li> <li>(ii) Class B Shares were held by three investors ("<b>Financial Investors</b>"), which accounted for 49% of the voting rights and 90% equity interest. Pursuant to a</li> </ol> </li> </ol>

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	<p>shareholders' agreement entered into between the Founding Individuals and Financial Investors in the second financial year, the Financial Investors were granted veto rights with regard to major corporate decisions of Company B.</p> <p>2. After additional investment and the conversion of Class A shares into Class B shares during the third financial year, the Founding Individuals' aggregated shareholdings increased to 60%. The shareholding changes were as follows:</p> <table border="1" data-bbox="403 521 1422 770"> <thead> <tr> <th colspan="2" rowspan="2">Shareholding/Voting Rights in Company B</th> <th colspan="2">Class A Shares</th> <th colspan="2">Class B Shares</th> <th rowspan="2">Total</th> </tr> <tr> <th>Founding Individuals</th> <th>Financial Investors</th> <th>Founding Individuals</th> <th>Financial Investors</th> </tr> </thead> <tbody> <tr> <td>Before</td> <td>Shareholding</td> <td>10%</td> <td>-</td> <td>-</td> <td>90%</td> <td>100%</td> </tr> <tr> <td>Year 3</td> <td>Voting rights</td> <td>51%</td> <td>-</td> <td>-</td> <td>49%</td> <td>100%</td> </tr> <tr> <td rowspan="2">During Year 3</td> <td>Shareholding</td> <td>-</td> <td>-</td> <td>60%</td> <td>40%</td> <td>100%</td> </tr> <tr> <td>Voting rights</td> <td>-</td> <td>-</td> <td>60%</td> <td>40%</td> <td>100%</td> </tr> </tbody> </table> <p>3. No individual member of the Founding Individuals or the Financial Investors held a controlling interest at any time during the track record period.</p> <p>4. Although the Founding Individuals did not have a shareholders' agreement, there was a reasonable basis to view the Founding Individuals as a group of controlling shareholders. They had a long term business relationship and had jointly invested in the Group for more than four years. They held regular meetings, reached consensus on key decisions and had unanimous voting patterns. None of them ever exercised his/her voting rights independently without the concurrence of other Founding Individuals.</p> <p>5. In contrast, the Financial Investors never acted as a group of controlling shareholders. Each of them was an independent private equity investor owned and managed separately. There had been no understanding or arrangement that their board representatives would vote in any coordinated manner. They were not parties acting in concert under the Takeovers Code. The Exchange found that the veto rights could be regarded as conferring on the Financial Investors some operational control over Company B, nonetheless, they had never exercised their veto rights and the day-to-day management of Company B was entrusted to the Founding Individuals.</p> <p><i>Decision</i></p> <p>6. The ownership continuity and control requirement under MB Rule 8.05(1)(c) was satisfied as the Founding Individuals were considered a group of controlling shareholders.</p>	Shareholding/Voting Rights in Company B		Class A Shares		Class B Shares		Total	Founding Individuals	Financial Investors	Founding Individuals	Financial Investors	Before	Shareholding	10%	-	-	90%	100%	Year 3	Voting rights	51%	-	-	49%	100%	During Year 3	Shareholding	-	-	60%	40%	100%	Voting rights	-	-	60%	40%	100%
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<p><b>Company C</b> (MB applicant) (2006)</p> <p>Rule reference: MB Rule 8.05(1)(c)</p>	<p><i>Background</i></p> <p>1. After the track record period, the controlling shareholder, Mr. X, transferred his shareholding to Holdco X which in turn was held by a professional trust company. Mr. X's wife and children (other than Mr. X himself) were the eligible beneficiaries of the family trust for which the said professional trust company acted as trustee.</p> <p>2. Mr. X was in actual control of the trust:</p>																																						

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	<p>(i) The eligible beneficiaries were associates of Mr. X and the trust was established for estate planning purpose; and</p> <p>(ii) Mr. X, as the appointer of the trust, had the power to remove the trust company and to appoint new trustee(s) in its place. In addition, exercise of powers by the trust company must be accompanied by a prior notice to Mr. X, even though Mr. X had no power to interfere with the trust company’s exercise of powers under the trust.</p> <p><i>Decision</i></p> <p>3. The ownership continuity and control requirement under MB Rule 8.05(1)(c) was satisfied because the shareholding structure did not constitute a replacement of Mr. X’s interest in Company C. The family trust was established for estate planning purpose and was not for the purpose of “packaging” the business to meet the profit requirement under the Listing Rules nor to circumvent any disclosure requirements under the SFO.</p>
<p><b>Company D</b> (GEM applicant) (2017)</p> <p>Rule reference: GEM Rule 2.09; GEM Chapter 11</p>	<p><i>Background</i></p> <p>1. After the most recent financial year, one of two controlling shareholders ceased to be a controlling shareholder and the management was no longer influenced by the same controlling shareholders.</p> <p>2. The sponsor failed to demonstrate that influence over the management by the remaining controlling shareholder was not materially different from that exerted by the two controlling shareholders. As such, an investor could not assess, based on the previous financial results, how Company D would be managed under the sole influence of the remaining controlling shareholder.</p> <p><i>Decision</i></p> <p>3. The listing application was rejected as Company D failed to meet the ownership continuity and control requirement under GEM Rule 11.12A(2) due to the change in the controlling shareholders after the most recent financial year.</p>
<p><b>Company E</b> (GEM applicant) (2018)</p> <p>Rule reference: GEM Rule 2.09; GEM Chapter 11</p>	<p><i>Background</i></p> <p>1. During the most recent financial year, one of three controlling shareholders ceased to be a controlling shareholder. The sponsor failed to demonstrate that the departing controlling shareholder was a passive shareholder during the relevant period.</p> <p>2. After the track record period, there was a material change in the voting interests between the two remaining controlling shareholders, who constituted a group of controlling shareholders.</p> <p><i>Decision</i></p> <p>3. The listing application was rejected as Company E failed to meet the ownership continuity and control requirement under GEM Rule 11.12A(2) due to the departure of a controlling shareholder and material change in the voting interests of the remaining controlling shareholders after the track record period.</p>