

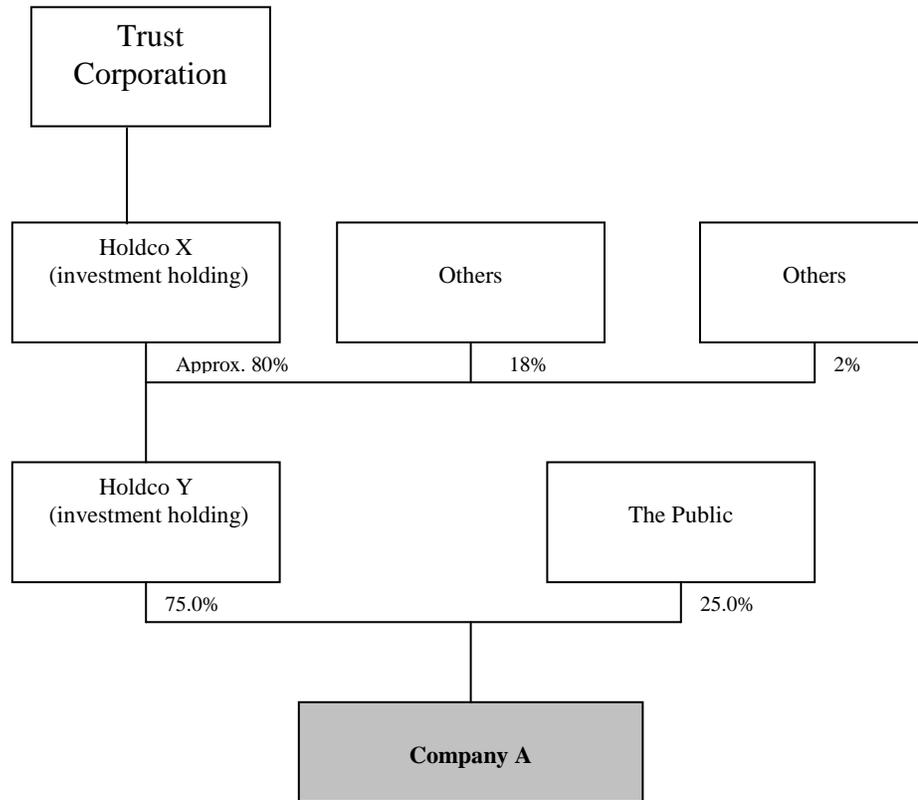
HKEx LISTING DECISION
Cite as HKEx-LD48-3 (December 2005)

Summary	
Name of Party	Company A - a Main Board listing applicant and its subsidiaries (the 'Group')
Subject	Whether the requirements for ownership continuity and control under Listing Rule 8.05(1)(c) were satisfied where the controlling shareholder disposed of his shareholdings to a discretionary trust benefiting members of the shareholder's family (other than himself) after the track record period?
Listing Rule	Listing Rule 8.05(1)(c)
Decision	The Exchange determined that Company A satisfied the requirements for ownership continuity under Listing Rule 8.05(1)(c).

SUMMARY OF FACTS

1. As part of its listing application, it was disclosed that after the end of the three financial year track record period, the controlling shareholder of Company A, Mr. X, contributed his shareholdings to Holdco X which in turn was held by a professional trust company, Trust Corporation, in its capacity as trustee for a discretionary trust benefiting members of Mr. X's family (other than Mr. X himself).

2. The Group' shareholding structure upon listing is illustrated as follows:



3. The sponsor of Company A submitted that the discretionary family trust was established for Mr. X's estate planning purposes, and did not constitute a replacement of Mr. X's interest in Company A. In particular, the sponsor highlighted that:

Mr. X was in actual control of the trust

- a. the eligible beneficiaries of the family trust, that is Mr. X wife and children, were associates of Mr. X according to the Listing Rules;
- b. Mr. X as the appointor of the trust had the power to remove the Trust Company and to appoint new trustee(s) in its place even though Mr. X had no power to interfere with the Trust Company's exercise of powers under the trust including (1) the power to administer and distribute the assets and the income thereof for the benefits of the eligible beneficiaries under the trust; (2) appoint additional eligible beneficiaries to the trust. However, any exercise of such powers must be accompanied by a prior notice to Mr. X;
- c. Mr. X and his wife were the directors of Holdco X. Mr. X was the sole director of Holdco Y, the immediate holding company of Company A.

The articles of association of both Holdco X and Holdco Y stipulated that business and affairs of the respective companies must be managed by their director(s). Under the present structure, the exercise of the voting powers at the shareholders' meeting of Holdco Y would be in the hands of Mr. X, instead of in the hands of the Trust Company. The Trust Company's voting powers as shareholder would, in practice, be limited to and stopped at the level of Holdco X;

No packaging of business

- d. the transfer of Mr. X's shareholding interest to Holdco X whose shares were being held by the Trust Company was for estate planning purposes and not for the purpose of 'packaging' the business of Company A to meet the profit requirements of the Listing Rules; and

No circumvention of any disclosure requirements

- e. under the Securities and Futures Ordinance, anyone who establishes a discretionary trust (i.e. the founder) is deemed to be interested in the shares of an issuer in which the trust has, and such a founder is required to report and disclose such interest, regardless of whether he himself is a beneficial under the trust or not. The shareholding structure involving the setting up of the Trust Company was not intended to circumvent any disclosure requirements.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether the requirements for ownership continuity and control under Listing Rule 8.05(1)(c) were satisfied where the controlling shareholder disposed of his shareholdings to set up a discretionary trust benefiting members of the shareholder's family (other than himself) after the track record period?

APPLICABLE LISTING RULE OR PRINCIPLES

5. Listing Rule 8.05(1)(c) provides that to meet the profit test, a new applicant must, amongst other criteria, have 'ownership continuity and control for at least the most recent audited financial year.'

THE ANALYSIS

6. *The Consultation Paper on Proposed Amendments to the Listing Rules relating to Initial Listing Criteria and Continuing Listing Obligations* published by the Exchange in July 2002 (the 'Consultation Paper') acknowledged that other

markets do not require a listing applicant to demonstrate that there is no change in their ownership at any time during the track record period. However, the situation in Hong Kong is unique, and the Exchange's intention is to prevent listing applicants from 'packaging' their businesses so as to meet the profit record requirement.

7. When considering the issue of packaging in the context of the present case, the Exchange took into consideration the following factors:
 - a. in substance, Mr. X retained the control of the family trust and Company A;
 - b. the beneficiaries of the family trust were the family members of Mr. X who were connected persons under the Listing Rules; and
 - c. the purpose of the family trust arrangement was understandably for estate duty purpose.
8. In light of the above, the Exchange determined that there was no 'packaging' of business in the present case.

THE DECISION

9. Based on the facts and circumstances of the case and the Exchange's analysis of the Listing Rules, the Exchange determined that Company A satisfied the requirements for ownership continuity under Listing Rule 8.05(1)(c).