

HKEx LISTING DECISION

Cite as HKEx-LD60-2 (May 2008)

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

Summary	
Name of Party	Company A - a Main Board listing applicant
Subject	Under what circumstances would the Exchange consider modifying the minimum public subscription requirement under Practice Note 18 of the Listing Rules ('PN 18 Waiver') in an IPO?
Listing Rules	Paragraphs 4.1 and 4.2 of Practice Note 18 of the Main Board Listing Rules ('PN 18'); Typical PN 18 Waiver described in HKEx-LD60-1
Decision	<p>Based on the facts and circumstances of Company's A case, the Exchange agreed to grant a PN 18 Waiver to Company A from strict compliance with the PN 18 requirements notwithstanding that the proposed offering structure would not at all times afford retail investors at least the same amount of shares as a Typical PN 18 Waiver would have afforded as illustrated in the chart at paragraph 9.</p> <p>The Exchange assesses every application for a waiver or modification of the Listing Rules on a case by case basis. The present decision of the Exchange was based on the specific facts and circumstances of the case and should not be treated as a binding precedent for future cases.</p>

SUMMARY OF FACTS

1. Company A proposed to list its shares by way of an international placing tranche and a Hong Kong public subscription tranche.
2. Company A applied for a modification of the application of PN18 (i.e. a PN 18 Waiver) on the basis of the following proposed offering structure:
 - a. at the time Company A applied for a PN 18 Waiver, the proposed total offering size was expected to be not less than HK\$10 billion, failing which Company A would fully comply with the clawback requirements of paragraph 4.2 of PN18; and
 - b. the clawback structure for allocation of shares to the public subscription tranche would be revised to: (i) 10% initially; (ii) 15% if the offer was oversubscribed between 15 and less than 50 times; (iii) 17.5% if

oversubscribed between 50 and less than 100 times, and (iv) 20% if oversubscribed by 100 or more times.

3. Company A submitted that the proposed offering structure was with regard to the then Exchange's practices in granting PN 18 Waivers as described in paragraph 7 below. A comparison of the clawback percentages between (a) PN 18; (b) Typical PN 18 Waiver, and (c) Company A's proposal is set out below:

Number of times (x) oversubscribed	Initial	15x to <50x	50x to <100x	>100 x
PN18	10%	30%	40%	50%
Typical PN 18 Waiver	5%	7.5%	10%	20%
Company A's case	10%	15%	17.5%	20%

THE ISSUE RAISED FOR CONSIDERATION

4. Under what circumstances would the Exchange consider modifying the minimum public subscription requirement under Practice Note 18 of the Listing Rules ('PN 18 Waiver') in an IPO?

APPLICABLE LISTING RULES OR PRINCIPLE

5. Paragraph 4.1 of Practice Note 18 of the Main Board Listing Rules states that:

Issuers are reminded that in accordance with paragraph 7.10 of the Exchange Listing Rules, the Exchange may not permit a new applicant to be listed by way of placing if there is likely to be significant public demand for the securities. A key factor the Exchange will consider in reaching such a determination is the size of the offering.

6. Paragraph 4.2 of Practice Note 18:-

Where an IPO includes both a placing tranche and a public subscription tranche, the minimum allocation of shares to the subscription tranche shall be as follows:

- an initial allocation of 10% of the shares offered in the IPO;
- a clawback mechanism that increases the number of shares to 30% when the total demand for shares in the subscription tranche is 15 times but less than 50 times the initial allocation;

- a clawback mechanism that increases the number of shares to 40% when the total demand for shares in the subscription tranche is 50 times but less than 100 times the initial allocation; and
- a clawback mechanism that increases the number of shares to 50% when the total demand for shares in the subscription tranche is 100 times or more the initial allocation.

Shares may be transferred from the subscription tranche to the placing tranche where there is insufficient demand in the subscription tranche to take up the initial allocation.

7. Listing Decision HKEx-LD60-1 published in May 2008 describes certain typical parameters underlying a grant of PN 18 Waiver ('Typical PN 18 Waiver') when the Exchange reviewed the application of the clawback mechanism under PN18 in October 2005 as follows:

- a. the size of an issuer's total offering (including any over-allotment option or sale of existing shares by shareholders) should be big. It was noted that the majority of the previous applications for PN 18 Waivers had been for offerings with a size of over HK\$10 billion; and
- b. where the size of offering was considered sufficiently big to warrant a modification of the PN 18 requirements, the following trigger points for oversubscription clawback, which had formed the basis of the majority cases of applications for of PN 18 waivers, had been accepted:-

	Number of times (x) of oversubscription in the public subscription tranche			
	Initial	15x to <50x	50x to <100x	>100x
Minimum share allocation % to public subscription tranche	5%	7.5%	10 %	20%

8. Listing Decision HKEx-LD60-1 also describes certain guidelines that the Exchange deliberated with respect to its stance on granting PN 18 Waivers as follows:

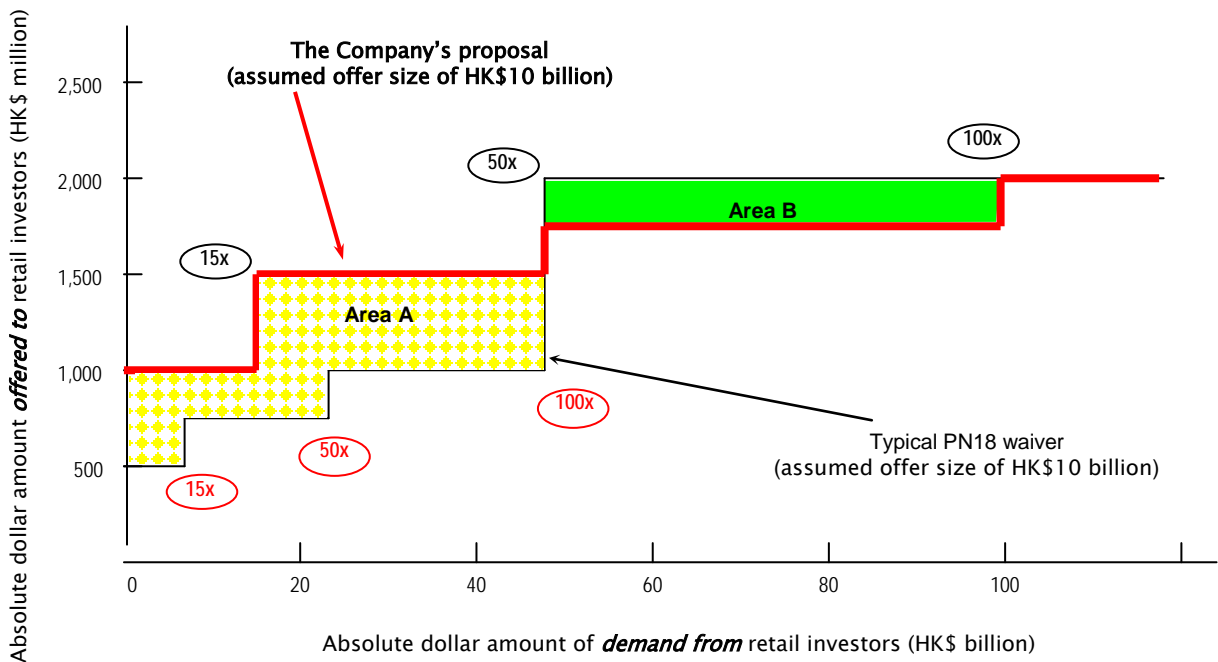
- a. Due regard must be had to the interest of local investors – when finalising the offering mechanism, the underwriters and listing applicants must give due regard to the interests of Hong Kong retail investors, given that it was

anticipated that there would be significant public demand for the applicant's securities.

- b. Availability of earlier trigger points for oversubscription clawback – the clawback mechanism should be brought in as early as possible, i.e. the trigger multiples for oversubscription clawback should be as low as possible.
- c. Availability of more share allocations to local retail investors than a Typical 18 Waiver – the number of shares that Hong Kong retail investors would obtain under the actual offering structure should not be less than the number of shares that they would have got under a Typical PN 18 Waiver.
- d. Understandability- the trigger points for oversubscription clawback should be easy to implement and easy for an average retail investor to understand.

THE ANALYSIS

9. The Exchange noted that Company A's proposed clawback percentages deviated from the previous considerations for granting a Typical PN 18 Waiver. Such deviation is diagrammatically illustrated as follows:



Less allocation to retail investors than Typical PN18 waiver at offer size of HK\$10 billion

10. As illustrated in the diagram above, the Exchange noted that:
 - a. the proposed initial allocation percentage to the public subscription tranche under Company A's proposal would be higher than that pursuant to a Typical PN18 Waiver (10% vs 5%);
 - b. where the demand at the public subscription tranche were less than 50 times of the initial allocation, Company A's proposal would have offered more shares to retail investors than would have been offered pursuant to a Typical PN 18 Waiver (see Area A);
 - c. where the demand at the public subscription tranche were between 50 times to less than 100 times the initial allocation, Company A's proposed allocation formulae would have offered less shares to retail investors than would have been offered pursuant to a Typical PN 18 Waiver (See Area B); and
 - d. Area A was bigger than Area B.
11. Based on the above, the Exchange noted that although there was a higher chance that retail investors under the public subscription tranche would be allocated more shares than would have been the case if a Typical PN 18 Waiver had been granted (Area A was bigger than Area B), Company A's proposal would not at all times afford retail investors at least the same amount of shares as would have been permitted under a Typical PN 18 Waiver, a factor which the Exchange noted when granting a PN 18 Waiver in the case described in HKEx-LD60-1.
12. The Exchange also took into account the following factors when considering whether to grant a PN18 Waiver to Company A:
 - a. the need to preserve some measure of discretion to deal with applications on a case by case basis when granting a Typical PN18 Waiver;
 - b. the prevailing market conditions at the time Company A submitted its application;
 - c. the allocation of shares between institutional and retail investors being essentially a commercial decision subject to the relevant Listing Rules; and
 - d. the previous PN 18 Waivers granted, including the guidelines for granting a PN 18 Waiver mentioned in HKEx-LD60-1.

THE DECISION

13. Based on the facts and circumstances of Company A's case, the Exchange agreed to grant a PN 18 Waiver to Company A from strict compliance with the PN 18 requirement notwithstanding that the proposed offering structure would not at all times afford retail investors at least the same amount of shares as a Typical PN 18 Waiver would have afforded.
14. The Exchange assesses every application for a waiver or modification of the Listing Rules on a case by case basis. The present decision of the Exchange was based on the specific facts and circumstances of Company A's case and should not be treated as a precedent for future cases.