

HKEx LISTING DECISION
HKEx-LD90-1 (Published in May 2010)

Summary	
Party	Company X – a Main Board H-Share listing applicant already listed on a Mainland stock exchange
Subject	Whether to allow Company X to allocate H-Shares under the placing tranche to its existing public A-Share holders
Listing Rules and Other Reference Materials	Rules 10.03(1) and (2); 10.04; Paragraph 5(2) of Appendix 6 of the Rules; HKEx-LD44-2
Decision	The Exchange allowed the existing public A-Share holders to subscribe for Company X’s H-Shares under the placing tranche subject to full disclosure in the prospectus

SUMMARY OF FACTS

1. Company X was seeking to list on the Main Board as an H-Share issuer. Its A-shares were already listed on a Mainland stock exchange. The proposed initial public offering (IPO) comprised a public offer tranche and a placing tranche.
2. Company X applied for the Exchange’s consent to allow it to allocate H-Shares under the placing tranche to its existing public A-Share holders.
3. In support of its application, Company X submitted that:
 - a. these public A-Share holders would not exert influence over Company X since:
 - (i) none of them was a pre-IPO shareholder in its A-Share listing;
 - (ii) none of them was or would be its connected person or associates; and
 - (iii) each of them held less than 1% of its issued A-Share capital before the issue of H-Shares;
 - b. these public A-Share holders would be subject to the same book building and share allocation process under the H-Share placing tranche as other places. Allocation would be based on whether a particular investor was likely to be a long term investor and its likely after-market behaviour, whether it had a track record of investing in the same or similar industries and how well investors understood the industry. No preference would be given to these investors in the allocation process because they were existing A-Share holders;

- c. allocation to these public A-Share holders would not affect its ability to satisfy the public float requirement; and
- d. allowing allocation to these public A-Share holders would contribute to the success of the offering.

THE ISSUE RAISED FOR CONSIDERATION

- 4. Whether to allow Company X to allocate H-Shares under the placing tranche to its existing public A-Share holders?

APPLICABLE LISTING RULES OR PRINCIPLES

- 5. Rule 2.03(2) provides the general principle that the issue and marketing of securities should be conducted in a fair and orderly manner.

- 6. Rule 10.04 provides that:

A person who is an existing shareholder of the issuer may only subscribe for or purchase any securities for which listing is sought which are being marketed by or on behalf of a new applicant either in his or its own name or through nominees if the conditions in rules 10.03(1) and (2) are fulfilled.

- 7. Rules 10.03(1) and (2) provide that:

Directors of the issuer and their close associates¹ may only subscribe for or purchase any securities for which listing is sought which are being marketed by or on behalf of a new applicant, whether in their own names or through nominees if the following conditions are met:

(1) that no securities are offered to them on a preferential basis and no preferential treatment is given to them in the allocation of the securities; and

(2) that the minimum prescribed percentage of public shareholders required by rule 8.08(1) is achieved.

- 8. Paragraph 5(2) of Appendix 6 to the Rules states that:

No allocations will be permitted to ... directors or existing shareholders of the applicant or their close associates¹, whether in their own names or through nominees unless the conditions set out in rules 10.03 and 10.04 are fulfilled; ... without the prior written consent of the Exchange.

- 9. HKEx-LD44-2 published in the First Quarter of 2005 sets out a decision where the Exchange gave consent to allocating IPO shares to an existing shareholder who was also a connected client of a distributor on the basis that:

¹ Rule amended in July 2014.

- a. the subscription by the existing shareholder/ connected client was in accordance with an anti-dilution provision in the articles of association of the applicant;
- b. the proposed placing of shares would be at the IPO price;
- c. the existing shareholder/ connected client would be subject to a lock-up requirement for three years; and
- d. all relevant information would be disclosed in both the prospectus and the allotment results announcement.

THE ANALYSIS

10. This was the first application for consent to allocate H-Shares to existing public A-Share holders under the placing tranche in an IPO case.
11. The rationale for Rule 10.04 and the Placing Guidelines in Appendix 6 is to ensure that existing shareholders are not allocated shares on a preferential basis.
12. In previous cases, allocations to existing shareholders were only permitted if the shares were not fully subscribed or if those allocations were to comply with anti-dilution provisions in pre-IPO agreements between the applicant and the pre-IPO investors (see HKEx-LD44-2). If the requests to waive Rule 10.04 involved pre-IPO investors or cornerstone investors² subscribing for further shares under the placing tranche, the Exchange would presume preferential treatment had been given to those investors due to their special status in the company. Unless a clear case could be demonstrated to the Exchange to dispel this presumption, no waiver would be granted.
13. The preferential treatment issue was considered in another case on the following facts:
 - a. Two investors, independent of the applicant and its controlling shareholder, had formed a consortium for a construction project for the applicant. The parties agreed that the consortium would be paid the applicant's shares at IPO price for their services. In addition, the consortium had subscribed for some convertible bonds issued by the applicant's group which would be mandatorily convertible into the applicant's shares upon its listing at IPO price. The shares taken up by the consortium would be subject to a six-month lock up from the date of listing.
 - b. The Exchange disallowed the consortium to further subscribe for shares under the placing tranche of the applicant's share offer because the Exchange was not convinced that there would be no preferential treatment to the consortium due to:
 - (i) the consortium's involvement in the applicant's business through the construction project; and

² A cornerstone investor generally refers to an investor who is allocated IPO shares under the placing tranche on an assured basis and who usually agrees to restrictions on share disposal. There is normally disclosure of the arrangement with cornerstone investors in the prospectus.

- (ii) the consortium being entitled to two seats on the applicant's board of directors.
- c. Nonetheless, the Exchange allowed some other minority convertible bond holders who subscribed for those securities on the same terms as the consortium to subscribe for additional shares under the placing tranche because:
 - (i) the issue of the convertible bonds was based on arm's length negotiations between the parties on commercial terms;
 - (ii) each of these convertible bond holders was an independent investor and each took up a small stake (each held no more than 2% of the applicant's enlarged issued share capital on its listing). Hence it would be unlikely that these holders could influence the share allocations; and
 - (iii) the sponsor confirmed that no preferential treatment would be available to these convertible bond holders beyond that available to other subscribers under the placing tranche.
- 14. In determining whether to grant Company X the requested consent, the Exchange took into account that Company had a widely dispersed shareholder profile and a large market capitalisation since it floated on the Mainland stock exchange. The Exchange was satisfied that the existing public A-Share holders, as described in paragraph 3a, could not possibly exert any influence on the share allocation. Hence, no preferential treatment could be given to them in the share allocation.

THE DECISION

- 15. The Exchange allowed the existing public A-Share holders to subscribe for Company X's H-Shares under the placing tranche subject to full disclosure in the prospectus.