

HKEx LISTING DECISION
Cite as HKEx-LD54-3 (June 2006)
(Withdrawn in April 2014; Superseded by GL75-14)

| Summary | |
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| Name of Parties | <p>Company A - a Main Board listing applicant</p> <p>Distributor - one of the sponsors and distributors in relation to the global offering of Company A's shares (the 'Shares')</p> <p>Distributor Parent – the parent company of the Distributor and also one of the distributors of the Shares (Distributor and the Distributor Parent hereinafter referred to as the 'Distributor Parent Group')</p> <p>Company W, Company X, Company Y and Company Z – companies within the Distributor Parent Group constituting 'connected clients' of the distributors for purposes of Paragraph 13 of Appendix 6 of the Listing Rules</p> |
| Subject | Whether and under what conditions consent would be given by the Exchange to enable connected clients of the distributors of the Shares to subscribe for and hold the allocation Shares? |
| Listing Rules | Paragraphs 5, 8 and 13 of Appendix 6 of the Listing Rules |
| Decision | <p>Consent would be given by the Exchange for the allocation of Shares to connected clients (that is, Company W, Company X, and Company Y) of the distributors (Distributor Parent Group) to hold such Shares for independent public investors subject to the conditions that:</p> <ul style="list-style-type: none"> • unless the global offering was not fully subscribed, the aggregate number of Shares allocated to the connected clients by the distributors would not be more than 5% of the total number of Shares allocated by such distributors; • the Shares would not be offered to the connected clients on a preferential basis; and • details of the allocation to the connected clients, including the number of Shares allocated, would be disclosed in the allocation announcement. |

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| | No consent would be given for any allocation of Shares to a connected client (Company Z) who would hold such Shares for its own house account. |
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SUMMARY OF FACTS

1. In connection with the listing application of Company A, the Distributor Parent Group applied to the Exchange for consent under Appendix 6 of the Listing Rules to enable them to allocate up to in aggregate 6% of the IPO Shares to be offered under the global offering at the IPO price to their affiliated companies, namely Company W, Company X, Company Y and Company Z.
2. Each of Company W, Company X, Company Y and Company Z was therefore a connected client in relation to the distributors of the Shares for the purposes of Paragraph 13 of Appendix 6 of the Listing Rules.
3. Company W, Company X and Company Y intended to apply for the Shares as agents for their respective clients' accounts. Company Z was an investment company and intended to apply for the Shares for its own account for long term investment purposes.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether and under what conditions consent would be given by the Exchange to enable connected clients of the distributors of the Shares to subscribe for and hold the allocation Shares?

APPLICABLE LISTING RULES AND PRINCIPLES

5. Appendix 6 of the Listing Rules sets out the placing guidelines for new listing applicants.
6. Paragraph 5(1) of Appendix 6 states that no allocations to 'connected clients' of an Exchange Participant ('the lead broker') or through a syndicate of the Exchange Participants ('distributors') will be permitted without the prior written consent of the Exchange.
7. Paragraph 8 of Appendix 6 of the Listing Rules states that:

Neither the lead broker nor any distributor may, under normal circumstances, retain any material amount of the securities being placed for their own account. Where there is a public demand, neither the lead broker nor any distributor may retain more than 5% of their respective shares of the total placing ...

8. Paragraph 13 of Appendix 6 sets out the various categories of persons that may be defined as a 'connected client' of an Exchange Participant. This includes:

"Connected client" in relation to an Exchange Participant means any client of such member who is a company which is a member of the same group of companies as such Exchange Participant.

9. Reference is made to Listing Decision HKEx-LD44-2 published in the First Quarter of 2005 where the Exchange gave consent for the allocation of IPO shares of a listing applicant at IPO price to a connected client of the distributor which was also a shareholder of the listing applicant.

THE ANALYSIS

10. The main regulatory rationale for the placing guidelines is to ensure that IPO shares are placed to independent and genuine investors, rather than 'related' parties of the lead brokers or the distributors, and also to avoid preferential treatment being given to such connected clients.
11. In determining whether to give the requested consent, the Exchange considered the following precedent cases where consent had been given to connected clients of the lead broker or its distributors:

Case 1

The Exchange gave consent to the allocation of IPO shares of a listing applicant of an amount equivalent to 1% of the global offering at the IPO price to a connected client of one of the book runners which was an insurance company on the basis that the proposed share allocation was immaterial and subject to the conditions that there would be sufficient public float and a full disclosure of that share allocation would be made in the allocation announcement.

Case 2

The Exchange gave consent to one of the co-managers for allocation of IPO shares of an amount slightly more than 5% of the global offering at the IPO price to certain funds held by its connected client on the basis that (a) the allocation shares would be held by such connected client for beneficiaries who were

independent public investors, (b) the proposed shares would not be allocated to such connected client on a preferential basis and (c) full disclosure would be made in the allocation announcement.

It was also decided that no consent would be given for the allocation of shares to a 'house fund' held by such connected client for its own account. Case 1 was distinguished on the facts that the placee in Case 1 was an insurance company which had a legitimate reason to invest in listed shares.

Case 3

The Exchange gave consent to one of the joint lead managers for the allocation of IPO shares of a listing applicant of an amount ranging approximately from 30% to 40% of the global offering (depending on the final offer price) at the IPO price to its connected client which would hold such shares for funds the beneficiaries of which were independent public investors subject to the conditions that:

- a. unless the global offer was not fully subscribed, the aggregate number of shares allocated to such connected client would not be more than 5% of the total number of shares allocated by such lead manager. This restriction aligned with the restriction under Paragraph 8 of Appendix 6 of the Listing Rules as applied to any lead broker or distributor who may not retain more than 5% of their respective shares of the total placing where there is a public demand.
- b. the shares would not be offered to such connected client on a preferential basis; and
- c. details of the allocation to such connected client, including the number of shares allocated, would be disclosed in the allocation announcement.

Case 4 (Listing Decision HKEx-LD44-2)

In the case of Listing Decision HKEx-LD44-2 published in the First Quarter of 2005, the Exchange gave consent to the allocation of IPO shares of a listing applicant at the IPO price to a connected client of one of the distributors which was an insurance company and also a shareholder the listing applicant on the basis that:

- a. the subscription by such connected client was in accordance with an anti-dilution provision in the existing provisions of the articles of association of the listing applicant;
- b. the proposed placing of shares would be at the IPO price;

- c. such connected person 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.
12. In light of the precedent cases in particular Case 3, the Exchange determined that it would, subject to appropriate conditions, give consent to the allocation of the Shares to Company W, Company X and Company Y but not to Company Z which would hold such Shares for its own house account.

THE DECISION

13. Based on the above facts and the circumstances of the case and with reference to the precedent cases, the Exchange decided that
- a. consent would be given by the Exchange to the allocation of Shares to connected clients (that is, Company W, Company X, and Company Y) of the Distributor Parent Group on the understanding that the allocation Shares would be held by the connected clients for independent public investors subject to the conditions that:
 - (i) unless the global offering was not fully subscribed, the aggregate number of Shares allocated to the connected clients by the relevant distributors would not be more than 5% of the total number of Shares allocated by such distributors;
 - (ii) the Shares would not be offered to the connected clients on a preferential basis; and
 - (iii) details of the allocation to the connected clients, including the number of Shares allocated, would be disclosed in the allocation announcement;
 - b. no consent would be given for any allocation of Shares to the connected client of Company Z who intended to hold such Shares for its own house account.