

Submitted via Qualtrics

Company/Organisation view

Question 1

Do you agree with the proposal to amend Chapter 17 to also govern share award schemes involving the grant of new shares of listed issuers?

Yes

Please provide reasons for your views.

As a matter of practice, we recommend that our clients comply with the applicable provisions of Chapter 17 when they adopt share award schemes even if share award schemes currently fall outside the remit of Chapter 17. Expanding the coverage of Chapter 17 to include share award schemes will help to clarify how the Listing Rules would apply to awards made pursuant to share award schemes.

Question 2

Do you agree with the proposed definition of eligible participants to include directors and employees of the issuer and its subsidiaries (including persons who are granted shares or options under the scheme as an inducement to enter into employment contracts with these companies)?

Yes

Please provide reasons for your views.

We agree with the proposed definition in principle but note that the definition of “Employee Participant” does not currently cover former employees or directors of the issuer group.

We have seen situations where an issuer may allow participants to keep their awards when their employment or engagement is terminated because they are considered “good leavers”. However, these individuals will no longer fall within the definition of an “Employee Participant” after they leave the issuer group. It is unclear whether the definition of “Employee Participant” will have an impact on this type of arrangement in the future – i.e. issuers permitting individuals who were Employee Participants at the time of the grant to continue to hold awards after they cease to fall to be Employee Participants. It would be helpful for the Stock Exchange to clarify this point.

Question 3

Do you agree with the proposal that eligible participants shall include Service Providers, subject to additional disclosure and approval by the remuneration committee?

Yes

Please provide reasons for your views.

We agree that the definition of eligible participants should include Service Providers but would request the Stock Exchange to clarify the level of detail which listed issuers are required to disclose when identifying the categories of Service Providers and the criteria for determining a person's eligibility in the scheme document.

Share awards are often used to incentivise and motivate Service Providers – they can form an important part of the compensation for Service Providers, particularly because Service Providers are usually not eligible for employment benefits. It would be helpful to allow listed issuers some flexibility in identifying the categories of Service Providers and the criteria for determining their eligibility given the other safeguards that are already in place.

Question 4

Do you agree with the proposal that eligible participants shall include Related Entity Participants, subject to additional disclosure and approval by the remuneration committee?

Yes

Please provide reasons for your views.

Question 5

Do you agree with the proposal to allow the scheme mandate to be refreshed once every three years by obtaining shareholders' approval?

No

Please provide reasons for your views.

We do not agree with the proposal to allow the scheme mandate to be refreshed once every three years by obtaining shareholders' approval.

This is because the 10% scheme mandate limit currently only applies to share option schemes, but under the proposal the scheme mandate limit would apply to share award schemes and share option schemes. Listed issuers should be given the flexibility to determine the appropriate time as to when to seek a refreshment of the scheme mandate and this should not be more stringent than the position under the current rules. We would suggest that the approach taken to the refreshment of the scheme mandate should align with the approach taken to the refreshment of the general share issuance mandate, i.e. listed issuers can refresh the scheme mandate at any time by obtaining shareholders'

approval, provided that any refreshment within any 12 month period would be subject to independent shareholders' approval.

In addition, some of our listed issuer clients would like to clarify whether, after their annual specific / advanced mandates for share award schemes (involving the issuance of new shares) expire at the AGM immediately subsequent to the proposed rules coming into effect, further issuance of share awards under such share award schemes will be "automatically" governed by the scheme mandate for share options obtained at listing and without the need to obtain any further shareholders' approval until the listed issuer decides to "refresh" such scheme mandate.

Question 6

Do you agree with the proposal to allow the scheme mandate to be refreshed within three years from the date of the last shareholders' approval by obtaining independent shareholders' approval?

No

Please provide reasons for your views.

Please see our response to question 5.

In addition, some of our listed issuer clients do not agree with the proposal on the basis that the proposed shareholders' approval requirement is more stringent than the position under the current rules. Furthermore, the proposed shareholders' approval requirement for such refreshment is even more stringent than the requirement of obtaining an annual scheme mandate for issuance of share awards to connected persons under the current rules. Such annual scheme mandate would only require shareholders with a material interest in the transaction to abstain from voting, instead of only allowing independent shareholders to vote on the resolution.

Question 7

Do you agree with the proposal to remove the 30% limit on outstanding options?

Yes

Please provide reasons for your views.

We agree with this proposal in view of the other safeguards which have been proposed.

Question 8

Do you agree with the proposal to require a sublimit on Share Grants to Service Providers?

No

Please provide reasons for your views.

We do not agree that there should be a separate sublimit on Share Grants to Service Providers. There is already a scheme mandate limit of 10% and listed issuers should have some flexibility to make grants to eligible participants, including Service Providers, within this general 10% limit. Since listed issuers have to give reasons for grants to Service Providers, there is already an appropriate safeguard in place to ensure such grants are in the interests of listed issuers.

Question 9

Do you agree with the proposal to require a minimum of 12-month vesting period?

No

Please provide reasons for your views.

We do not agree with this proposal. There are situations where a 12 month vesting period is not appropriate. For example, it is common for listed issuers to grant “make-whole” share awards to new joiners to replace the share awards they forfeited when they left their employment with their previous employer. In these circumstances, applying a minimum vesting period may not be justified or be appropriate. In addition, there are certain situations, such as termination of the participant’s employment due to his/her death or disability or occurrence of any change of control event, under which the vesting of awards may accelerate such that the actual vesting period is less than 12 months even if the vesting period is set to be longer than 12 months. As these are common provisions in the scheme rules, we would propose that the Stock Exchange allow a carve-out to anticipate for the above situations as appropriate.

We note that an exemption applies where the relevant grantees are specifically identified and the remuneration committee provides its views on why a shorter vesting period is justified. However, it is not clear what level of detail the Stock Exchange expects to see in the relevant disclosures and it would be helpful for the Stock Exchange to clarify what level of disclosure it expects to see. It should be noted that there may also be some commercial sensitivity in disclosing detailed reasons why a shorter vesting period is appropriate.

Question 10

Do you agree with the proposal that Share Grants to Employee Participants specifically identified by the issuer may vest within a shorter period or immediately if they are approved by the remuneration committee with the reasons and details disclosed?

No

Please provide reasons for your views.

Please see our response to question 9.

Question 11a

Do you agree with the proposed disclosure requirements relating to performance targets?

No

Please provide reasons for your views.

We do not agree with the proposed disclosure requirements relating to performance targets and clawback mechanism. There are situations where it may only make sense to apply clawback mechanisms but not performance targets (and vice versa). We would request that the Stock Exchange consider limiting the proposed amendment to Listing Rule 17.02(2)(b) so that listed issuers can determine at their discretion whether performance targets and/or clawback mechanisms apply (rather than for both requirements to apply).

The relevant disclosure requirements would also pose significant challenges to some listed issuers because of the commercial sensitivity of the information to be disclosed. Where the performance targets are based on, for example, target earnings-per-share, this might in itself be regarded as a profit forecast under the Listing Rules, which will trigger reporting requirements. Furthermore, it is not customary for Hong Kong listed issuers to include earnings guidance in their public disclosures.

Although we note that the Stock Exchange will allow issuers to apply for exemptions from disclosing commercially sensitive information on a case-by-case basis, our experience in applying for a waiver to permit redaction of commercially sensitive information has been difficult and time-consuming. For this reason, we are of the view that these disclosure requirements coupled with the practical difficulties of applying for a waiver could make it challenging for listed issuers to comply with the proposal.

Question 11b

Do you agree with the proposed disclosure requirements relating to clawback mechanism?

No

Please provide reasons for your views.

We do not agree with the proposed disclosure requirements relating to performance targets and clawback mechanism. There are situations where it may only make sense to apply clawback mechanisms but not performance targets (and vice versa). We would request that the Stock Exchange consider limiting the proposed amendment to Listing Rule 17.02(2)(b) so that listed issuers can determine at their discretion whether performance targets and/or clawback mechanisms apply (rather than for both requirements to apply).

The relevant disclosure requirements would also pose significant challenges to some listed issuers because of the commercial sensitivity of the information to be disclosed. Where the performance targets are based on, for example, target earnings-per-share, this might in itself be regarded as a profit forecast under the Listing Rules, which will trigger reporting requirements. Furthermore, it is not customary for Hong Kong listed issuers to include earnings guidance in their public disclosures.

Although we note that the Stock Exchange will allow issuers to apply for exemptions from disclosing commercially sensitive information on a case-by-case basis, our experience in applying for a waiver to permit redaction of commercially sensitive information has been difficult and time-consuming. For this reason, we are of the view that these disclosure requirements coupled with the practical difficulties of applying for a waiver could make it challenging for listed issuers to comply with the proposal.

Question 12

Do you agree that it is not necessary to impose a restriction on the grant price of shares under share award schemes?

Yes

Please provide reasons for your views.

Question 13

Do you agree with the proposal to apply the 1% Individual Limit to Share Grants (including grants of shares awards and share options) to an individual participant?

Yes

Please provide reasons for your views.

Question 14

Do you agree with the proposal to require approval from the remuneration committee instead of INEDs for all Share Grants to Connected Persons?

Yes

Please provide reasons for your views.

Question 15

Do you agree with the proposal to relax the current shareholder approval requirement for grants of share awards to a director (who is not an INED) or a chief executive set out in paragraph 65 of the Consultation Paper?

Yes

Please provide reasons for your views.

We agree with the proposal to relax the current shareholder approval for grants of share awards to a director (who is not an INED) or a chief executive by introducing a new de minimis exemption for grants of new share awards.

However, we do not agree with the 0.1% limit as the threshold for the de minimis exemption for grants of share awards to a director (who is not an INED) or a chief executive. Share awards are an increasingly important incentivisation tool – they have proven to be more effective than other forms of remuneration (such as cash payments) in terms of aligning executives' interests with those of shareholders. For this reason, share awards can often form a significant portion of executive's remuneration. We note from experience that a threshold of 0.1% will be easily triggered, particularly for senior executives where a larger portion of their remuneration will be share-based. The views of our listed issuer clients support this.

In effect, the proposal provides that for grants to a director (who is not an INED) or a chief executive, shareholders' approval would not be required if in any 12 month period (a) grants of share awards do not exceed 0.1% of the issued shares of the listed issuer and (b) grants of share options do not exceed 0.9% of the issued shares of the listed issuer. This is overly restrictive. Listed issuers should be given the flexibility and are in the best position to determine the mix of share awards and/or share options to be granted to a

director (who is not an INED) or a chief executive and there should not be different thresholds depending on whether it is a share award or a share option since in either instance, new shares will be issued by the listed issuer.

We would request the Stock Exchange to consider either (a) removing the 0.1% threshold entirely and relying on the overall 1% threshold beyond which independent shareholders' approval would be required for any grants of share awards and/or share options in any 12 month period or (b) increasing the threshold for grants of share awards to a director (who is not an INED) or a chief executive to 0.5% of the issued shares of the listed issuer in any 12 month period.

In addition, from the perspective of some of our listed issuer clients, the proposal is not a relaxation of the current shareholders' approval requirements as under the current rules, listed issuers can specifically obtain an annual mandate for an issuance of share awards to connected persons instead of having to obtain independent shareholders' approval each time the grant of share awards to the connected persons reach the 0.1% threshold. Furthermore, under the current rules, only shareholders with a material interest in the transaction are required to abstain from voting.

Question 16

Do you agree with the proposal to also relax the current shareholder approval requirement for grants of share awards to an INED or substantial shareholder of the issuer set out in paragraph 68 of the Consultation Paper?

Yes

Please provide reasons for your views.

Question 17

Do you agree with the proposal to relax the current shareholder approval requirement for grants of share awards to a controlling shareholder of the issuer set out in paragraph 69 of the Consultation Paper?

Yes

Please provide reasons for your views.

Question 18

Do you agree with the proposal to remove the HK\$5 million de minimis threshold for grants of options to an INED or substantial shareholder of the issuer?

Yes

Please provide reasons for your views.

Question 19

Do you agree with the proposals to require disclosure of Share Grants to Related Entity Participants or Service Providers on an individual basis if the grants to an individual Related Entity Participant or Service Provider exceed 0.1% of the issuer's issued shares over any 12-month period?

Yes

Please provide reasons for your views.

Question 20

Do you agree with the proposed disclosure requirement for the grant announcement?

Yes

Please provide reasons for your views.

We agree with this proposal subject to clarification from the Stock Exchange on the level disclosure required for certain matters (see the responses to questions 3, 9 and 11).

Question 21

Do you agree with the proposed disclosure requirements for Share Grants in an issuer's interim reports and annual reports?

Yes

Please provide reasons for your views.

We agree with this proposal subject to clarification from the Stock Exchange on the level disclosure required for certain matters (see the responses to questions 9 and 11).

Question 22

Do you agree with the proposal to require disclosure of matters reviewed by the remuneration committee during the reporting period in the Corporate Governance Report?

Yes

Please provide reasons for your views.

We agree with this proposal subject to clarification from the Stock Exchange on the level disclosure required for certain matters (see the responses to questions 9 and 11).

Question 23

Do you agree with the proposal to require changes to the terms of share award or option granted be approved by the remuneration committee and/or shareholders of the issuer if the initial grant of the award or option requires such approval?

Yes

Please provide reasons for your views.

Question 24

Do you agree with the proposal to provide a waiver for a transfer of share awards or options granted under Share Schemes as described in paragraph 86 of the Consultation Paper?

Yes

Please provide reasons for your views.

Question 25

Do you agree with the proposal to restrict the voting rights of unvested shares held by the trustee of a Share Scheme and require disclosure of the number of such unvested shares in monthly returns?

Yes

Please provide reasons for your views.

We understand that this proposal is to address concerns about undue influence over the exercise of voting rights of unvested shares by the issuer's management and we agree that the trustee's voting rights should be restricted in this regard. In practice, under the terms of the trust deed, the trustee would not be entitled to vote the shares held in the trust so the proposal would align with the existing practice.

Further, it is important to clarify the level of detail required for such disclosures. In particular, it would be helpful to understand whether it is sufficient for the issuer to simply disclose the number of unvested shares held by the trustee of the share plan without setting out the ultimate beneficiaries.

Question 26

Do you agree with the proposed disclosure requirements for Share Schemes funded by existing shares of listed issuers?

Yes

Please provide reasons for your views.

Question 27

Do you agree with the proposal to restrict the voting rights of unvested shares held by the trustee of a Share Scheme and require disclosure of the number of such unvested shares in monthly returns?

Yes

Please provide reasons for your views.

Please see our response to question 25.

Question 28

Do you agree with our proposal to amend Chapter 17 to also govern share award schemes funded by new or existing shares of subsidiaries of listed issuers?

Yes

Please provide reasons for your views.

We agree with this proposal. However, our view is that it is currently unclear which of the proposals in the Consultation Paper apply to issuers only and which apply to subsidiaries of issuers. The same applies to the provisions in Chapter 17 currently. One way of eliminating or reducing the confusion is to have a sub-chapter within Chapter 17 which sets out clearly the rules which apply to subsidiaries of issuers, and in particular those subsidiaries which are listed or proposed to be listed on an overseas stock exchange.

Question 29

Do you agree with the proposed exemption for Share Schemes of Insignificant Subsidiaries?

Yes

Please provide reasons for your views.

We agree with this proposal as this is in line with the exception provided for under Chapter 14A of the Listing Rules.

Question 30

Do you agree with our proposal to amend Chapter 17 to also govern Share Schemes involving grants of shares or options through trust or similar arrangements for the benefit of specified participants?

Yes

Please provide reasons for your views.

We agree this proposal and would suggest that the Stock Exchange make clear which specific provisions of Chapter 17 would apply to such schemes.

Question 31

Do you agree with our proposal to remove the recommended disclosure requirement for the fair value of options as if they have been granted prior to the approval of the scheme?

Yes

Please provide reasons for your views.

We agree with this proposal since in practice, listed issuers would explain in the circular why the fair value should not be disclosed.

Question 32

Do you agree with our proposals to amend the Rules described in paragraph 100 of the Consultation Paper?

Yes

Please provide reasons for your views.