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?

No

Please provide reasons for your views.

For the reasons explained throughout all of our responses herein, we do not agree with the Exchange's proposal to amend Chapter 17 to govern share award schemes.

The tech industry is generally unique to other mainstream industries in that it is extremely common for tech companies to flexibly adopt share award schemes and grant share awards as part of its remuneration packages to attract value-adding talents to contribute to its growth and success, which is something that the Exchange ought to consider when implementing the proposed amendments.

The proposal to extend the compliance requirements under Chapter 17 to share award schemes would inevitably cause undue burden on listed companies (especially listed tech companies) by drastically increasing the time and compliance costs when the existing regime under the Listing Rules already provides adequate protection to investors. It is also important to keep in mind that Hong Kong has always been one of the most preferred jurisdictions for the listing of companies, and over the past decade, there has been a drastic surge in the number of tech companies (which constitutes some of the largest IPOs in Hong Kong in terms of size during the past decade) opting to list in Hong Kong. For example, Kuaishou Technology (stock code: 1024) made one of the largest IPOs of 2021 raising approximately 41.28 billion Hong Kong dollars.

One of the main reasons which make Hong Kong an attractive jurisdiction to list at, is due to the Listing Rules' framework that balances the protection of public interests with the granting of autonomy to listed issuers to efficiently manage their business and allocate their resources according to their different business needs. Such framework allows the public to invest in Hong Kong's stock market with confidence and promotes the competitiveness of Hong Kong's financial market.

Compared to the Exchange's proposed amendments under Chapter 17, the United States provides a far less burdensome framework in regulating the disclosure of restricted stock units (RSUs). As such, it is highly likely that the proposed amendments will threaten the competitiveness of Hong Kong's financial market and deter companies (especially tech companies) from choosing to list in Hong Kong, which goes against the one of the primary objectives of the Basic Law (namely, Article 109) and government policies to 'provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre'.

We are therefore of the view that the existing position of share award schemes do not pose any issues to or prejudice a listed issuer's shareholders, and we do not find it necessary to amend Chapter 17 to govern share award schemes. However, should the Exchange decide to adopt any of its proposed amendments in this consultation paper, we ask for the proposed amendments to not have any retrospective applications on any existing share award schemes previously passed and adopted by listed issuers under the existing Listing Rules regime (including but not limited to any share awards granted or to be granted thereunder).

<u>Question 2</u>

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)?

No

Please provide reasons for your views.

We believe that issuers should be allowed to retain flexibility in determining 'eligible participants' depending on its commercial needs and the kinds of personnel and consultants who may bring value to the issuers.

Issuers differ from each other in terms of its industry, business strategies and business model, and therefore it should not be necessary to adopt a rigid definition of 'eligible participants'.

<u>Question 3</u>

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

No

Please provide reasons for your views.

While we agree that eligible participants should include Service Providers, we do not find it necessary for Service Providers to be subject to treatment different to other categories of eligible participants as this would lead to unnecessary and extra compliance cost through additional disclosure. We believe an issuer should retain flexibility and discretion in determining who should qualify as a Service Provider depending on its commercial needs and the kinds of personnel that may contribute value to the issuers.

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?

No

Please provide reasons for your views.

While we agree that eligible participants should include Related Entity Participants, we do not find it necessary for Related Entity Participants to be subject to treatment different to other categories of eligible participants for the same reasons as provided under Q3.

Question 5

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

Yes

Please provide reasons for your views.

This is similar to a general mandate to issue and repurchase shares which is also subject to a limit that is refreshable by obtaining shareholders' approval. We are of the view that refreshing the scheme mandate once every three years is a fair and reasonable time frame.

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.

We do not believe it is necessary to introduce a more stringent restriction than the current position which already safeguards the interests of shareholders by requiring shareholder's approval to refresh the 10% scheme limit. Instead of obtaining independent shareholders' approval, we propose that the shareholders' approval could be subject to a higher approval threshold such as the approval by at least 75% of the attending shareholders.

Question 7

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

Yes

Please provide reasons for your views.

While we do not find it necessary to amend the existing position for the refreshment of scheme mandate, we agree with the Exchange's proposal to remove the 30% limit.

Question 8

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

Yes

Please provide reasons for your views.

We agree with the Exchange's view on this proposal.

<u>Question 9</u>

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

No

Please provide reasons for your views.

How Share Grants vest should be dependent on the actual commercial needs and situation of the issuer instead of being subject to a rigid vesting restriction. It is important to bear in mind that the share prices of some issuers are highly volatile and therefore it is not uncommon for those issuers to allow for shorter vesting period in their Share Grants, such as monthly vesting instead of a 1-year vesting period.

Take for example an issuer who grants 24,000 share options as part of an eligible participant's compensation package to be vested over the course of 2 years. Due to the volatility in the share price of the issuer, the issuer should be given the flexibility to allow 1,000 share options to vest and become exercisable on a monthly basis over the course of 24 months instead of 50% being vested at the end of each 12-month period. The end result is essentially the same and does not prejudice the interest of shareholders.

<u>Question 10</u>

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.

For the reasons provided in Q9, we do not agree that Share Grants should be subject to a minimum vesting period at all, nor shall they be subject to additional disclosure obligation.

<u>Question 11a</u>

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

No

Please provide reasons for your views.

The proposal here only assumes that Share Grants are always performance related and are given by issuers as part of an incentive scheme to achieve certain performance targets, when in fact it is very common for issuers (especially tech companies) to combine share awards together with a lower cash component as part of an eligible participant's remuneration package.

For example, an employee's monthly remuneration might be HK$100,000 per month. Issuers who are low in liquid cash may decide that the most optimal remuneration package for the employee without compromising its financial position would be to pay the employee HK$60,000 as salary in cash and grant HK$40,000 equivalent value in share award each month. This gives issuers the flexibility to allocate its resources as efficiently as possible in the best of its shareholders.

In the above example given, paying the full HK$100,000 in cash to the employee on a monthly basis is far more burdensome on the issuer and potentially against the interests of the shareholders as a whole. Since Share Grants are not always tied with performance targets, we disagree with the proposed disclosure requirements relating to performance targets and clawback mechanisms.

Question 11b

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

No

Please provide reasons for your views.

For the same reasons provided in Q11a

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.

While we do not agree that the requirements under Chapter 17 should be extended to apply to share award schemes, we agree with the Exchange's view that it is not necessary to impose a restriction on the grant price of shares under share award schemes.

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?

No

Please provide reasons for your views.

It is very often the case where the success of an issuer would largely depend upon the competence and abilities of certain key individuals such as the chief executive officer (CEO), chief financial officer (CFO), chief operating officer (COO), etc.. Therefore, the issuer should be given the flexibility to make Share Grants based on the actual commercial needs and circumstances of the issuer instead of being subject to a rigid 1% Individual Limit.

<u>Question 14</u>

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.

We agree with the Exchange's view on its proposal to require approval from the remuneration committee instead of INEDs for all Share Grants to Connected Persons.

<u>Question 15</u>

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.

However, for the reasons provided in Q13, often the success of an issuer would largely depend upon the competence and abilities of certain key individuals, some of which may be a Connected Person. We are therefore of the view that the issuer should be given the flexibility to make Share Grants based on the actual commercial needs and circumstances of the issuer instead of being subject to a 0.1% Connected Person limit.

<u>Question 16</u>

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.

We agree with the Exchange's proposal to also relax the current shareholder approval requirement for grants of share awards to an INED or substantial shareholder of the issuer.

<u>Question 17</u>

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.

We agree with the Exchange's proposal to relax the current shareholder approval requirement for grants of share awards to a controlling shareholder of the issuer.

<u>Question 18</u>

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.

We agree with the Exchange's view on the Exchange's proposal to remove the HK$5 million de minimis threshold for grants of options to an INED or substantial shareholder of the issuer.

<u>Question 19</u>

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?

No

Please provide reasons for your views.

For the reasons provided in Q3 and Q4, we do not find it necessary for there to be additional disclosures and a different treatment for Related Entity Participants and Service Providers to other eligible participants. Such additional disclosure requirements would also be unduly burdensome on an issuer, especially tech companies.

<u>Question 20</u>

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

No

Please provide reasons for your views.

For the reasons provided in Q1 and Q11, we do not believe that a grant announcement should be required for a grant of share award. As for option grants, the current system for disclosure is already sufficient for the purpose of informing the public of its details and to protect the interests of shareholders. Additional disclosure in the grant announcement adds very little value to shareholders at great compliance and time costs for issuers, which would make it an overly burdensome obligation.

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 the Exchange's proposals for disclosure in interim and annual reports.

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?

No

Please provide reasons for your views.

We only agree with the need to disclose the matters reviewed by the remuneration committee on the proposed changes that we have agreed to in our responses herein, but not those which we disagree with.

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.

We agree with the Exchange's proposal in respect of its application to grants of share option only as we do not agree that the requirements under Chapter 17 should be extended to apply to share award schemes for the reasons provided under Q1 and in our responses herein as a whole.

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.

We agree with the Exchange's proposal in respect of its application to share options only as we do not agree that the requirements under Chapter 17 should be extended to apply to share award schemes for the reasons provided under Q1 and in our responses herein as a whole.

<u>Question 25</u>

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 agree with the Exchange's 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.

<u>Question 26</u>

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

No

Please provide reasons for your views.

The principal concern of the Exchange's proposals in this consultation paper is to address the dilutive impact that Share Schemes may have arising from the issuance of new shares. On-market purchases of existing shares, however, have no dilution effect on the issuer and essentially is no different from giving a cash remuneration/ bonus to an eligible participant to purchase his or her own shares from the market in which no additional disclosure would be required anyway.

<u>Question 27</u>

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 agree with the Exchange's 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.

<u>Question 28</u>

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?

No

Please provide reasons for your views.

For the reasons provided in Q1 and throughout our responses herein, we do not believe that the requirements under Chapter 17 should be extended to apply to share award schemes.

Question 29

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

Yes

Please provide reasons for your views.

However, we do not believe that the requirements under Chapter 17 should be extended to apply to share award schemes (including those of an issuer’s subsidiaries) for the reasons provided in Q1, Q28 and throughout our responses herein.

Should the Exchange decide to proceed with its proposed amendment herein, we further ask that the proposed amendment will not have any retrospective applications on any previous and existing share award schemes of Insignificant Subsidiaries already passed and adopted by listed issuers under the existing system (including any share awards granted or to be granted thereunder).

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?

No

Please provide reasons for your views.

For the reasons provided in Q1 and throughout our responses herein, we do not agree that the requirements under Chapter 17 should be extended to apply to share award 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 the Exchange’s 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.

Question 32

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

No

Please provide reasons for your views.

For the reasons provided in Q1 and throughout our responses herein, we do not agree that the requirements under Chapter 17 should be extended to apply to share award schemes.

However, should the Exchange decide to proceed with its proposed amendment herein, we agree with the Exchange's proposals to amend the Rules described in paragraph 100.