

**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 the leading share plan administration services provider in Hong Kong, we welcome the amendment of Chapter 17 to also govern share award schemes involving the grant of new shares of listed issuers as this provides the regulatory framework and guidance to industry participants on share award schemes involving new shares which was not previously present.

**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)?**

**Please provide reasons for your views.**

**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 with the proposal to include Service Providers as the eligible participants, subject to additional disclosure and approval by the remuneration committee, because this meets real business needs of issuers whose Service Providers contribute to the long-term growth of the issuer groups on a continuing and recurring basis. We believe this is in line with the current market practice where many Issuers have utilized employee share plans to motivate suitable Service Providers apart from employees and directors. We agree that inclusion of Service Providers as eligible participants should be subject to additional disclosure and approval requirements because the approval requirements and public scrutiny will allow less opportunity for abuse by issuers.

Have said that, other than the requirement that the Service Providers have to provide services to the issuer group on a continuing and recurring basis in its ordinary and usual course of business which are material to the long-term growth of the issuer group, we propose that the Listing Rules provide further guidance and actual examples on the kind of Service Providers allowed to participate for better implementation by market participants.

**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.**

We agree with the proposal that eligible participants may include Related Entity Participants, subject to additional disclosure and approval by remuneration committee because inclusion of Related Entity Participants is in line with market practice and requirements of some of the listed issuers who wishes to reward and incentivize the Related Entity Participants. Given that the long-term objectives and interests of Related Entity Participants may not exactly align with those of the issuer at all times, we agree that the inclusion of Related Entity Participants should be subject to additional disclosure requirements and approval by remuneration committee.

**Question 5**

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

**Please provide reasons for your views.**

**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?**

**Please provide reasons for your views.**

**Question 7**

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

**Please provide reasons for your views.**

**Question 8**

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

**Please provide reasons for your views.**

**Question 9**

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

Yes

**Please provide reasons for your views.**

We do not object to the requirement of a short time-based vesting period. The imposition of a 12-month time-based vesting period as a baseline minimum requirement appears to be in line with market practice based on our observations.

**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?**

**Please provide reasons for your views.**

**Question 11a**

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

No

**Please provide reasons for your views.**

First of all, we understand the regulatory objective to protect shareholder interests by placing performance target for Share Grants. However, we do not agree with the proposed disclosure requirements relating to performance targets. This is because we hold the fundamental belief that performance targets, if applicable, should only be applied to senior management and should not be applied across the board to all plan participants and as such, these should not be hailed as baseline default positions where deviations from or

absence of such requirements should be disclosed and explained by the remuneration committee.

We note that share option schemes are inherently performance-based awards as the share price has to increase for the grants to have value. This is the reason why stock options are typically only offered to senior executives and it goes to show that performance targets should be aligned to an individual's sphere of influence (i.e. the ability to contribute to achieving the target in the organization) and it should not apply to non-senior staff.

Based on our global industry experience and market observation, in respect of share award schemes, we propose that performance targets requirements, if applicable, should be applicable to a limited group of Eligible Participants only, i.e. senior executive team and/or employees who have tangible technical KPIs as a performance measurement and it should not be applied across the board to all Eligible Participants.

One of the key objectives for the Issuer to offer share-based compensation is for staff retention, for which applying a time-based vesting criterion will be sufficient to cater for this staff retention objective.

However, if subjective performance targets are set for all participants including non-senior staff, there will be a lot more uncertainties in relation to whether grants would actually be vested and the issuer's objective of staff retention may be clouded and hampered by the additional criterion of performance targets and it may devalue the benefit of offering share incentive plans to the wider employee base.

### **Question 11b**

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

No

**Please provide reasons for your views.**

First of all, we understand the regulatory objective to protect shareholder interests by placing clawback mechanism for Share Grants. However, we do not agree with the proposed disclosure requirements relating to clawback mechanisms. This is because we hold the fundamental belief that clawback mechanisms should not be applied to vested shares of share award schemes, and as such, these should not be hailed as baseline default positions where deviations from or absence of such requirements should be disclosed and explained by the remuneration committee.

We agree with the regulatory intent that the issuer should have the right to recoup executive compensation if it is later discovered that the executive concerned is involved in serious misconduct or a material mis-statement in the issuer's financial statements.

However, globally, we do not see clawback mechanisms on vested shares (in share awards schemes) being commonly adopted in the market. This is because once the shares have been vested, the plan participants have become the legal owners of the shares and they are free to transfer out or sell such shares immediately. To implement a clawback of vested shares from the legal owners may embroil the administrators in legal disputes with the plan participants. Therefore, it is advised that if the proposal is to be implemented, the Stock Exchange should also devise a regulatory framework to allow the issuers to directly implement a clawback with the relevant executive involved in serious misconduct or a material mis-statement in the issuer's financial statements (without involving the share plan administrators).

### **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.**

We agree that imposing a restriction on the grant price of shares under Share Award Scheme is not necessary because issuers mostly would like to reward and incentivize its employees and directors and setting a grant price (if high) may get in the way of fulfilling such objective. Also, since share option schemes have defined grant price (e.g. closing price on grant date), the fact that share awards schemes do not have a restriction on grant price gives issuers more flexibility on which type of scheme is suitable for their remuneration strategies. Besides, we believe this proposal of not imposing a restriction on grant price is in line with the current market practice where issuers generally do not prefer to impose a grant price of shares under Share Award Scheme.

### **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?**

**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?**

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?

Please provide reasons for your views.

**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?

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?

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?

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.**

We agree with the proposed disclosure requirements on 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. These proposed disclosure requirements ensure transparency, increases public scrutiny, provides reference for industry benchmarking and it also limits opportunities for abuse with respect to Share Grants to Related Entity Participants and Service Providers.

**Question 20**

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

Yes

**Please provide reasons for your views.**

We agree with the proposed disclosure requirements for the grant announcement. These proposed disclosure requirements ensure transparency, increases public scrutiny and provides reference for industry benchmarking.

**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 proposed disclosure requirements for Share Grants in an issuer's interim reports and annual reports as it ensures transparency, increases public scrutiny and it provides a snapshot summary to shareholders on the latest status in addition to movements during the reporting period. It also helps issuers improve its corporate governance in managing its remuneration strategies. The fair value disclosure may also help the shareholders review and assess how well the issuer's remuneration strategies are being executed.

**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?**

**Please provide reasons for your views.**

**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?**

**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.**

We agree with the proposal whereby the Stock Exchange may consider granting a waiver for a transfer of share awards or options granted under Share Schemes to a trust or other vehicles for the benefit of the grantee and his/her family members. From our observations, many senior executives of issuers have set up a family trust or other vehicles to hold and manage their assets and the options/awards granted under Share Schemes may constitute a large portion of their assets. Therefore, it is quite common in the market to allow such transfer of shares under Share Schemes to such family trust or other vehicles for estate planning or tax planning purposes provided that the incentive purpose of the scheme and vesting conditions can be met. In addition, the compulsory requirements on beneficiaries or ultimate beneficial owners in the proposal ensures the transparency and proper use of such arrangement and establishes the market standard to avoid any abuse.

**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 propose that Rule 17.05A be amended as follows:

"17.05A The trustee holding unvested shares of a share scheme, whether directly or indirectly, shall abstain from voting on matters that require shareholders' approval under the Listing Rules."



We agree with the proposal to restrict the voting rights of unvested shares held by the trustee of a Share Scheme. As a matter of general common law principle, no company can vote on its own shares. Also, we understand that if the trustee of a Share Scheme is asked to exercise voting rights on unvested shares, it is usually asked to take voting instructions from a certain person within the issuer. The integrity and purpose of the share schemes can be called into question if the issuer (through person(s) giving instructions to the trustee) retains control over the unvested shares.

From our observations, there are market participants who are currently operating in various trust structures. We have observed that one popular structure is that the unvested shares are not held by the trustee directly but are held by special vehicles held by the Trust. In other words, the trustee does not directly hold the unvested shares but hold in indirectly via a separate entity. In view of such market practice and to avoid ambiguities, we request that unvested shares held by (i) the trustee and/or (ii) any other entities held by or under the trust structure, should carry no voting rights.

Therefore, we propose that Rule 17.05A be amended as follows:

"17.05A The trustee holding unvested shares of a share scheme, whether directly or indirectly, shall abstain from voting on matters that require shareholders' approval under the Listing Rules."

### **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.**

We agree with the proposed disclosure requirements for Share Schemes funded by existing shares of listed issuers. This is because even though Share Schemes funded by existing shares do not have dilutive effect unlike the Share Schemes funded by new shares, the funding of such schemes often come from the listed issuers. Disclosure requirements should also be applicable to Share Schemes funded by existing shares because the shareholders could then assess the Company's effectiveness on its cashflows spent on the share award scheme and the execution of its remuneration strategies.

To our attention, paragraph 89 of the Consultation Paper makes a reference to existing shares that are purchased 'on-market' and further discusses the current state of regulation in relation to share schemes funded by existing shares purchased "on-market" . Having been in the Hong Kong share plan industry for years, we have seen schemes with various

sources of existing shares. These include donation or gift from founders or substantial shareholders or share purchase on-market via block trade (i.e. on-market manual trades) from designated person(s) or entities. We are not clear as to whether share schemes from these other existing shares sources are also subject to the proposed disclosure requirements. Therefore, we propose that clarification be made by the Stock Exchange on the coverage of the sort of existing shares that are purchased 'on-market' or a confirmation that all non-new-shares existing share schemes (regardless of the source) are subject to the proposed disclosure requirements.

### **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.**

We propose that Rule 17.05A be amended as follows:

“17.05A The trustee holding unvested shares of a share scheme, whether directly or indirectly, shall abstain from voting on matters that require shareholders’ approval under the Listing Rules. “

We agree with the proposal to restrict the voting rights of unvested shares held by the trustee of a Share Scheme funded by existing shares. As a matter of general common law principle, no company can vote on its own shares. Also, we have observed that if the trustee of a Share Scheme is asked to exercise voting rights on unvested shares, it is usually asked to take voting instructions from a certain person within the issuer. The integrity and purpose of the share schemes can be called into question if the issuer (through person(s) giving instructions to the trustee) retains control over the unvested shares.

From our observations, there are Hong Kong market participants who are currently operating in various trust structures. We have observed that one popular structure is that the unvested shares are not held by the trustee directly but are held by a special purpose vehicle held by the Trust. In other words, the trustee does not directly hold the unvested shares but hold them indirectly via a separate entity. In view of such market practice and to avoid ambiguities, we request that unvested shares held by (i) the trustee and/or (ii) any other entities held by the trustee or under the trust structure, should not carry voting rights.

Therefore, we propose that Rule 17.05A be amended as follows:

“17.05A The trustee holding unvested shares of a share scheme, whether directly or indirectly, shall abstain from voting on matters that require shareholders’ approval under the Listing Rules. “

**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?**

**Please provide reasons for your views.**

**Question 29**

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

**Please provide reasons for your views.**

**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 welcome the proposed changes because based on our market research on the Hong Kong listed issuers share schemes market, we have seen increasing popularity of Share Schemes involving grants of shares or options through trust or similar arrangements. Extending the Chapter 17 to trust or similar arrangements in the way discussed in the Consultation Paper (comments on which discussed in our responses to other questions) would provide clearer guidance to the market participants and enhance protection to shareholders.

**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?**

**Please provide reasons for your views.**

**Question 32**

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

**Please provide reasons for your views.**