HKEX 香港交易所

Frequently Asked Questions
FAQ13 – No.1-20

November 2020 (Last updated in ~~May~~ June 2024)

Share schemes

I. Share schemes funded by issuance of new shares or transfer of treasury shares of listed issuers

(a) Eligible participants

1. Can a part-time employee be included as an eligible employee participant?

MB Rule 17.03A(1) / GEM Rule 23.03A(1) does not differentiate between full-time employees and part-time employees. Listed issuers may define the scope of employee participants for their share schemes to include part-time employees, depending on their remuneration policies. This should be in line with the information relating to employees as disclosed by listed issuers under other Listing Rule requirements (e.g. Appendix D2 to the MB Rules / GEM Chapter 18).

MB Rule 17.03A(1)
GEM Rule 23.03A(1)
First released: July 2022; last updated: May 2024

2. Under MB Rule 17.03A(1) / GEM Rule 23.03A(1), eligible participants of share schemes do not include former employees of the listed issuer group. An individual was granted share options or awards as an eligible employee participant under a listed issuer's share scheme.

(a) Can such grantee continue to hold any outstanding options or awards upon termination of his/her employment with the listed issuer group (e.g. as a good leaver due to retirement, death or disability)?

Yes, if the terms of the scheme provide for it. Under MB Rule 17.03(12) / GEM Rule 23.03(12), the scheme document should set out the circumstances under which options or awards will automatically lapse.

(b) Can the listed issuer continue to make share grants if the individual continues to provide service to the group?

Yes, if the individual meets the definition of service provider under MB Rule 17.03A(1) / GEM Rule 23.03A(1) and the criteria set out in the scheme.

MB Rules 17.03A(1) and 17.03(12)
GEM Rules 23.03A(1) and 23.03(12)
First released: July 2022; last updated: May 2024

3. Are eligible service providers restricted only to natural persons (and not corporate entities)?

No. A service provider may be a natural person or corporate entity engaged by the listed issuer group to provide services.

MB Rule 17.03A(1)(c)
GEM Rule 23.03A(1)(c)
First released: July 2022; last updated: May 2024

4. MB Rule 17.03A(2) / GEM Rule 23.03A(2) requires the scheme document to clearly identify each category of service providers and the criteria for determining a person's eligibility under each category. What is the level of detail required to be disclosed by a listed issuer in this regard?

The listed issuer should clearly describe the types of services provided by service providers that would qualify them for the scheme, for example, insurance agents employed by an insurance company, advisory services provided on drugs under development, or persons providing services on a self-employed basis for specific projects. The listed issuer should also disclose the factors it applies to assess whether the person provides services on a continuing and recurring basis and in the listed issuer's ordinary and usual course of business.

The scheme document is subject to pre-vetting by the Exchange. Where necessary, the independent non-executive directors may be required to provide their views that the inclusion of these service providers as scheme participants aligns with the purpose of the scheme and the long term interests of the listed issuer and its shareholders (see note to MB Rule 17.02(2)(e) / GEM Rule 23.02(2)(e)).

MB Rules 17.02(2)(e) and 17.03A(2)
GEM Rules 23.02(2)(e) and 23.03A(2)
First released: July 2022; last updated: May 2024

5. Note to MB Rule 17.02(2)(e) / GEM Rule 23.02(2)(e) provides that where the scheme includes service providers and/or related entity participants as eligible participants, the Exchange may require the circular to include the views of the independent non-executive directors (INEDs) of the issuer on whether the inclusion of these participants aligns with the purpose of the scheme and the long term interests of the issuer and its shareholders.

(a) Is the listed issuer required to establish an independent board committee to form such views?

No. The listed issuer may obtain the views of its INEDs without establishing an independent board committee.

(b) Is the listed issuer required to appoint an independent financial adviser to advise the INEDs?

MB Rule 17.02(2)(e) / GEM Rule 23.02(2)(e) does not mandate a listed issuer to appoint an independent financial adviser to advise the INEDs. However, as provided under the Corporate Governance Code (CP C.5.6 of Appendix C1 to the MB Rules / Appendix C1 to the GEM Listing Rules), a listed issuer should, upon reasonable request, provide separate independent professional advice to its directors to assist them perform their duties to the listed issuer.

MB Rule 17.02(2)(e) and CP C.5.6 of AppC1
GEM Rule 23.02(2)(e) and CP C.5.6 of AppC1
First released: July 2022; last updated: May 2024

(b) Scheme mandate

6. Can a listed issuer adopt a share scheme that can be funded by either new shares issued by the listed issuer and/or existing shares purchased on market?

Yes.

MB Rule 17.01(1)
GEM Rule 23.01(1)
First released: July 2022; last updated: May 2024

7. Is the scheme mandate for grants of new shares under MB Chapter 17 / GEM Chapter 23 a separate mandate from the general mandate under MB Rule 13.36 / GEM Rule 17.39?

Yes.

MB Rules 13.36 and 17.03B
GEM Rules 17.39 and 23.03B
First released: July 2022; last updated: May 2024

8. Can a listed issuer grant new shares to a person for incentive purposes under a general or specific mandate under MB Rule 13.36 / GEM Rule 17.39 if the share grants fall outside the scope of share schemes under MB Chapter 17 / GEM Chapter 23?

Yes, for example, if the grantee does not meet the definition of eligible participant under MB Chapter 17/ GEM Chapter 23.

MB Rules 13.36 and 17.03B
GEM Rules 17.39 and 23.03B
First released: July 2022; last updated: May 2024

9. Will the Exchange grant waivers from scheme mandate limit of 10% and individual limit of 1% for schemes of issuers operating in businesses other than the internet technology sector? If so, what are the criteria?

The Exchange will consider waiver applications from listed issuers operating in businesses other than the internet technology sector on a case-by-case basis, taking into account factors such as the industry norm, the listed issuer's remuneration policy and its justification for requiring a higher limit.

MB Rules 17.03B, 17.03C and 17.03D
GEM Rules 23.03B, 23.03C and 23.03D
First released: July 2022; last updated: May 2024

10. Can an applicant adopt a post-IPO share scheme and issue new shares to the trustee of the share scheme before listing in order to fund future grants of awards and options to participants after listing?

No, since there are no specified participants when issuing new shares to the trustee.

Grants made to a trust or similar arrangement are allowed only if they are made for the benefit of specified participants. The Exchange would not grant listing approval for the issue of new shares under the proposed scheme which is not in compliance with MB Chapter 17 / GEM Chapter 23.

MB Rules 17.01(1) and 17.02(1)(b)
GEM Rules 23.01(1) and 23.02(1)(b)
First released: July 2022; last updated: May 2024

11. A listed issuer granted a certain amount of share awards to an employee who may, upon vesting, choose to receive new shares of the listed issuer and/or cash in accordance with the terms of the share scheme. If all or part of the awards are settled by cash (instead of new shares) upon vesting, would the listed issuer be required to deduct that portion from the scheme mandate limit?

No.

MB Rule 17.03B
GEM Rule 23.03B
First released: July 2022; last updated: May 2024

(c) Minimum vesting period

12. Under MB Rule 17.03F / GEM Rule 23.03F, a scheme document may set out the specific circumstances where options or awards may be granted to employee participants with a shorter (or no) vesting period. What would the Exchange consider as justifiable circumstances for a shorter (or no) vesting period?

The Exchange would consider factors such as the purpose of the schemes, the listed issuers' remuneration policies and the market practices. This review takes place during the pre-vetting of the shareholders' circular for the approval of the scheme. The following are examples of circumstances where the Exchange may consider to be justifiable:

(i) Grants of "make-whole" share awards to new joiners to replace the share awards they forfeited when leaving the previous employers;

(ii) Grants to a participant whose employment is terminated due to death or disability or occurrence of any out of control event. In those circumstances the vesting of share awards may accelerate;

(iii) Grants of options or awards with performance-based vesting conditions provided in the scheme document, in lieu of time-based vesting criteria;

(iv) Grants that are made in batches during a year for administrative and compliance reasons. They may include share awards that should have been granted earlier but had to wait for a subsequent batch. In such cases, the vesting periods may be shorter to reflect the time from which an award would have been granted;

(v) Grants of options or awards with a mixed or accelerated vesting schedule such as where the awards may vest evenly over a period of 12 months; and

(vi) Grants of options or awards with a total vesting and holding period of more than 12 months.

MB Rule 17.03F
GEM Rule 23.03F
First released: July 2022; last updated: May 2024

(d) Limits on granting options or awards to individual participants and connected persons

13. Do the limits on grants of options or awards to connected persons under MB Rule 17.04 / GEM Rule 23.04 apply to grants to persons connected at the subsidiary level?

No. The limits set out in the Rule apply to connected persons at the listed issuer level only.

MB Rule 17.04
GEM Rule 23.04
First released: July 2022; last updated: May 2024

14. A listed issuer proposes to grant share awards to an individual participant who is an associate of a director of the listed issuer. Would the listed issuer be required to aggregate the grants of awards to the individual participant with any grants to the director within a 12-month period for the purpose of calculating (i) the 1% individual limit; and (ii) the limit on grants to connected persons?

No. The grants are for the service of, and to incentivise each participant and as such, the listed issuer is not required to aggregate such options and awards with those granted to the director.

MB Rules 17.03D and 17.04
GEM Rules 23.03D and 23.04
First released: July 2022; last updated: May 2024

(e) Transfer of share awards or options

15. Under the note to MB Rule 17.03(17) / GEM Rule 23.03(17), the Exchange may consider granting a waiver to allow a transfer of options or awards to a vehicle (such as a trust or a private company) for the benefit of the participant and any family members of such participant (e.g. for estate planning or tax planning purposes) that would continue to meet the purpose of the scheme and comply with other requirements of MB Chapter 17 / GEM Chapter 23. What are the conditions for granting the waiver?

The listed issuer and the grantee must establish appropriate measures to ensure that after the transfer, the options or awards granted would continue to be for the benefit of the participant and any family members of such participant. These may include, among other, measures to restrict further transfers of the options or awards or changes in the beneficiaries of the trust upon the grant of the waiver.

MB Rules 17.03D, 17.04 and 17.03(17)
GEM Rules 23.03D, 23.04 and 23.03(17)
First released: July 2022; last updated: May 2024

(f) Adjustments to the exercise price of share options

16. MB Rule 17.03(13) / GEM Rule 23.03(13) permits adjustments to be made to the exercise or purchase price and/or the number of shares subject to share options or share awards granted under a share scheme in the event of certain corporate activities. Any adjustments must give a participant the same proportion of the equity capital as that to which that person was previously entitled.

How should a listed issuer calculate the adjustments in the event of (i) a capitalisation or bonus issue, (ii) rights issue or open offer, or (iii) subdivision or consolidation of shares?

See **Appendix 1** for further guidance and examples on how adjustments are calculated in the event of the corporate activities.

MB Rule 17.03(13)
GEM Rule 23.03(13)
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II. Share schemes of subsidiaries of listed issuers

17. A listed issuer has complied with the requirements of MB Chapter 14 / GEM Chapter 19 when its subsidiary (which is not a principal subsidiary) adopted a share scheme. Will the listed issuer be required to comply with the requirements of MB Chapter 17 / GEM Chapter 23 for the share scheme if the subsidiary subsequently became a principal subsidiary?

The requirements of MB Chapter 17 / GEM Chapter 23 will apply to the share scheme when the subsidiary proposes to refresh the scheme mandate limit or effect a material change to the terms of the subsidiary's scheme after it has become a principal subsidiary.

MB Rule 17.14
GEM Rule 23.14
First released: July 2022; last updated: May 2024

III. Implementation and transitional arrangements

18. The amended Rules relating to share schemes became effective on 1 January 2023. What are the transitional arrangements for existing share schemes of listed issuers and their subsidiaries adopted before the effective date of the Rule amendments?

See **Appendix 2** for details of the transitional arrangements.

MB Chapter 17
GEM Chapter 23
First released: July 2022; last updated: May 2024

19. A listed issuer has adopted (i) a share option scheme and (ii) a share award scheme involving issue of new shares under an advanced / general mandate before the effective date of the Rule amendments (ie before 1 January 2023). After the effective date of the Rule amendments, can the listed issuer refresh or seek a new scheme mandate for its share option scheme and share award scheme separately at different times?

No. As the scheme mandate limit of 10% applies to all schemes of the listed issuer, it must amend all its existing share schemes involving issue of new shares when it refreshes or seeks a new scheme mandate for any one share scheme.

MB Rule 17.03B
GEM Rule 23.03B
First released: July 2022; last updated: May 2024

20. Is a listed issuer required to seek shareholders' approval if it proposes to amend the terms of its existing share schemes to comply with MB Chapter 17 / GEM Chapter 23 as amended?

Yes. Any alterations to the terms and conditions of a share scheme which are of material nature must be approved by shareholders under MB Rule 17.03(18) / GEM Rule 23.03(18). However, as provided under the transitional arrangements, a listed issuer can continue to make grants to participants eligible under existing schemes until refreshment or expiry of the existing scheme mandate, upon which the listed issuer would be required to amend the terms of the schemes to comply with the amended MB Chapter 17 / GEM Chapter 23 and seek shareholders' approval for a new scheme mandate.

MB Rule 17.03(18)
GEM Rule 23.03(18)
First released: July 2022; last updated: May 2024

Appendix 1

Supplementary Guidance on MB Rule 17.03(13) / GEM Rule 23.03(13) and the Note to the Rule

Interpretation

The overriding principle is that no adjustments to the exercise price or number of shares should be made to the advantage of scheme participants without specific prior shareholders' approval. The adjustment should have a neutral impact or worse from the perspective of the scheme participants. Another way of looking at this is that no adjustments should be made that would increase the aggregate Intrinsic Value[1] of the outstanding options.

A straightforward proportionate adjustment should be made for a capitalisation issue, sub-division, consolidation or reduction in share capital. Generally, adjustments should also be made for transactions where there is a price-dilutive element e.g. a rights issue or open offer. (Although MB Rule 17.03(13) / GEM Rule 23.03(13) does not cover an open offer, the Exchange considers that an open offer should be subject to the requirement of such rule if there is a price-dilutive element). That adjustment should be based on a scrip factor similar to the one used in accounting standards in adjusting the earnings per share figures, to account for the bonus or price-dilutive element embedded in a rights issue (see Hong Kong Accounting Standards 33, Appendix A). No adjustment should be made for ~~an issue~~a transaction made at full consideration unless it also involves a capitalisation issue.

Set out below are examples for calculating the permitted adjustment to the exercise price of outstanding options for a capitalisation or bonus issue, rights issue or open offer and sub-division or consolidation of shares. These examples also apply to cases involving the calculation of adjustment to the purchase price of shares subject to share awards granted.

I. *Capitalisation or Bonus Issue and Rights Issue or Open Offer of Shares*

Adjustments follow the formula:

$$\text{New Number of Options} = \text{Existing Number of Options} \times F$$

$$\text{New Exercise Price} = \text{Existing Exercise Price} \times \frac{1}{F}$$

Where:

$$F = \frac{\text{CUM}}{\text{TEEP}}$$

CUM = Closing price as shown in Daily Quotation Sheet of the Exchange on the last trading day before going ex-entitlement to the offer (the cum-rights price)

$$\text{TEEP (Theoretical Ex Entitlement Price)} = \frac{\text{CUM} + [M \times R]}{1 + M}$$

M = Entitlement per Existing Share

[1] The Intrinsic Value is the difference between the market price (or theoretical ex-entitlement price) of shares under option and the exercise price (or revised exercise price) of the option.

R = Subscription Price

(a) Capitalisation or Bonus Issues

Example:

Existing shares in issue (excluding treasury shares) : 100m
Shares under Option : 10m (10% of the existing share capital (excluding treasury shares))
Existing market price of the Shares : $1.00
Existing Exercise Price of the Option : $1.00 per Share
Bonus issue ratio: 1 new Share for every ten Shares held

i.e. CUM = $1.00, R = $0 and M = 0.1

Therefore,

$$TEEP = \frac{CUM + [M \times R]}{1 + M}$$

$$= \$0.909$$

$$F = \frac{CUM}{TEEP}$$

$$= 1.1$$

New Number of Options = Existing Number of Options x F

= 11m

(Additional 1m Options will be allocated to the existing holder of Options in the proportion of 1 new Option for every 10 Options held by an Optionholder.)

$$\text{New Exercise Price} = \text{Existing Exercise Price} \times \frac{1}{F}$$

= $0.909

Intrinsic Value of Options immediately before the Bonus Issue = 10m x ($1.00 - $1.00)

= Zero

Intrinsic Value of Options immediately after the Bonus = 11m x ($0.909 - $0.909)

= Zero

The purpose of these adjustments is to ensure that, as far as possible, the intrinsic value of the Options remains unchanged before and after the corporate action.

(b) Rights Issue or Open Offer

Example:

Existing shares in issue (excluding treasury shares) : 100m
Shares under Option : 10m (10% of the existing share capital (excluding treasury shares))
Existing market price of the Shares : $1.00
Existing Exercise Price of the Option : $1.00 per Share
Rights issue (or open offer) price : $0.50
Rights issue (or open offer) ratio : 4 new Shares for each Share held

i.e. CUM = $1.00, R =$0.50 and M = 4

Therefore,

$$\text{TEEP} = \frac{\text{CUM} + [\text{M} \times \text{R}]}{1 + \text{M}}$$

$$= \$0.60$$

$$\text{F} = \frac{\text{CUM}}{\text{TEEP}}$$

$$= 1.667$$

New Number of Options = Existing Number of Options x F

= 16.67m

(Additional 6.67m Options will be allocated to the existing holders of Options in the proportion of 2 new Options for every 3 Options held by an Optionholder.)

$$\text{New Exercise Price} = \text{Existing Exercise Price} \times \frac{1}{\text{F}}$$

$$= \$0.60$$

Intrinsic Value of Options immediately before the Bonus Issue = 10m x ($1.00 - $1.00)

= Zero

Intrinsic Value of Options immediately after the Bonus = 16.67m x ($0.60 - $0.60)

= Zero

II. *Subdivision or Consolidation of Shares*

Adjustments follow the formula:

New Number of Options = Existing Number of Options x F

New Exercise Price = Existing Exercise Price x $\frac{1}{F}$

Where F = Subdivision or Consolidation Factor

(a) Share Sub-division

Example:

Existing shares in issue (excluding treasury shares) : 100m
Shares under Option : 10m (10% of the existing share capital (excluding treasury shares))
Existing market price of the Shares : $1.00
Existing Exercise Price of the Option : $1.00 per Share
Share Subdivision: subdivide 1 old Share into 5 new Shares

i.e. F = 5

Therefore,

New Number of Options = Existing Number of Options x F

= 50m

(Additional 40m Options will be allocated to the existing holder of Options in the proportion of 4 new Options for each Option held by an Optionholder.)

New Exercise Price = Existing Exercise Price x $\frac{1}{F}$

= $0.20

Intrinsic Value of Options immediately before the Bonus Issue = 10m x ($1.00 - $1.00)

= Zero

Intrinsic Value of Options immediately after the Bonus = 50m x ($0.20 - $0.20)

= Zero

(b) Share Consolidation

Example:

Existing shares in issue (excluding treasury shares) : 100m
Shares under Option : 10m (10% of the existing share capital (excluding treasury shares))
Existing market price of the Shares : $1.00
Existing Exercise Price of the Option : $1.00 per Share
Share Consolidation: consolidate 5 old Shares into 1 new Share

i.e. F = 1/5 = 0.20

Therefore,

New Number of Options = Existing Number of Options x F

= 2m

(The new 2m Options will be allocated to the existing holder of Options in the proportion of 1 new Option for every 5 old Options held by an Optionholder.)

New Exercise Price = Existing Exercise Price x $\frac{1}{F}$

= $5.00

Intrinsic Value of Options immediately before the Bonus Issue	=	10m x ($1.00 - $1.00)
	=	Zero
Intrinsic Value of Options immediately after the Bonus	=	2m x ($5.00 - $5.00)
	=	Zero

Appendix 2

Transitional arrangements for share schemes existing as at 1 January 2023

<table>
<tr><th rowspan="3"></th><th colspan="3">Listed issuer</th><th colspan="2">Principal subsidiary</th><th>Other subsidiaries</th></tr>
<tr><th rowspan="2">Share option scheme</th><th colspan="2">Share award scheme</th><th rowspan="2">Share option scheme</th><th rowspan="2">Share award scheme</th><th rowspan="2">Share option scheme / Share award scheme</th></tr>
<tr><th>With advanced mandate</th><th>Utilising general mandate</th></tr>
<tr><td>Disclosure in:-
- Announcement[2]
- Interim Report[3]
- Annual Report[4]</td><td colspan="5">From effective date (1 January 2023)</td><td rowspan="4"><u>Share option scheme that has complied with existing Chapter 17:</u>

The subsidiary may continue to grant share options under its scheme mandate

<u>Other existing or new share schemes:</u>

Grants of share awards or options must comply with MB Chapter 14 / GEM Chapter 19 (based on the size of the scheme mandate for future grants) and/or MB Chapter 14A / GEM Chapter 20</td></tr>
<tr><td>Share grants to eligible participants (amended definition)[5]</td><td colspan="5">New definition of eligible participants applies for financial years commencing on or after 1 January 2023</td></tr>
<tr><td>Scheme mandate[6]</td><td colspan="2">Listed issuers may continue to make share grants using existing scheme mandate</td><td>Listed issuers may grant shares under general mandate until the <u>second</u> AGM after 1 January 2023</td><td>Same as listed issuer</td><td>Listed issuers must comply with MB Chapter 14 / GEM Chapter 19 (based on the size of the scheme mandate for future grants) and/or MB Chapter 14A / GEM Chapter 20 before making share grants</td></tr>
<tr><td>Amendment of terms of scheme to comply with amended MB Chapter 17 / GEM Chapter 23</td><td colspan="5">On or before the refreshment of the scheme mandate limit / expiry of scheme mandate above or adoption of new share scheme</td></tr>
</table>

[2] See MB Rules 17.06A, 17.06B and 17.06C / GEM Rules 23.06A, 23.06B and 23.06C

[3] See MB Rules 17.07 and 17.09 / GEM Rules 23.07 and 23.09

[4] See footnote 3

[5] See MB Rule 17.03A / GEM Rule 23.03A

[6] See MB Rules 17.03B and 17.03C / GEM Rules 23.03B and 23.03C