

Whether the Exchange would approve the proposed changes to the terms of pre-IPO share option plan of the listed issuer

Facts

1. At the listing of a Main Board issuer (**Company A**), the Exchange approved the listing of, and permission to deal in, Company A's shares to be issued upon exercise of the options granted under a pre-IPO share option plan. This was conditional upon the following:
 - a. There would be no material change to the rules of the plan without prior shareholder approval.
 - b. Company A would promptly inform the Exchange of any modifications of the plan.
2. The options under the plan were granted to Company A's directors, other senior management and other employees. The plan contained the following material terms:
 - a. The purpose of the plan was to recognise the contribution to Company A by its employees and to retain those whose contributions were important to the company's long term growth and profitability.
 - b. The options could only be exercised in phases as set out in the plan.
 - c. The options were personal to the grantees and were not assignable.
 - d. The options should lapse automatically upon the grantee ceasing to be Company A's employee.
3. Company A proposed to amend the plan to allow them to transfer the options to persons independent of Company A and/or its connected persons before they became exercisable on condition that no transferees would be allowed to further transfer the options.

Relevant Listing Rules

4. Rule 17.01(1) states that:

The following provisions apply, with appropriate modifications, to all schemes involving the grant by a listed issuer or any of its subsidiaries of options over new shares or other new securities of the listed issuer or any of its subsidiaries to, or for the benefit of, specified participants of such schemes (and, for the purpose of this chapter, “participant” includes any discretionary object of a participant which is a discretionary trust). Any arrangement involving the grant of options to participants over new shares or other new securities of a listed issuer or any of its subsidiaries which, in the opinion of the Exchange, is analogous to a share option scheme as described in this rule 17.01 must comply with the requirements of this chapter.

5. Rule 17.02(1)(b) states that:

A scheme adopted by a new applicant does not need to be approved by its shareholders after listing. However, all the terms of the scheme must be clearly set out in the prospectus. Where the scheme does not comply with the provisions of this chapter, options granted before listing may continue to be valid after listing (subject to the Exchange granting approval for listing of the new applicant’s securities to be issued upon exercise of such options) but no further options may be granted under the scheme after listing. ...

Notes: (1) The Exchange reserves the right to review and consider these matters on a case-by-case basis.

(2) ...

6. Rule 17.03(17) states that the scheme document must include a provision on:

transferability of options; ...

Note: Options granted under the scheme must be personal to the respective grantee. No options may be transferred or assigned.

(Rules 17.01, 17.02(1)(b) and 17.03(17) were ~~amended~~revised on 1 January 2023. Rule 17.01 was further amended on 11 June 2024. See Notes 4 below.)

Analysis

7. At the time of Company A’s new listing application, the Exchange granted listing approval for shares to be issued under the pre-IPO plan. The plan did not need to comply with Chapter 17 as it was adopted before listing.
8. The purpose of the plan was to reward and retain employees making contributions to Company A. This was reflected in the conditions that the options (i) could only be exercised in phases; (ii) could not be transferred or otherwise disposed of; and (iii) would automatically lapse upon the grantee ceasing to be Company A’s employee or disposing of the options. The proposed amendments which permitted the transfer of the options and enabled the grantees to realise the benefit before they became exercisable would defeat the purpose of and fundamentally change the plan.

9. As a result of the proposed amendments, the circumstances under which the listing approval was granted would be fundamentally changed and the listing approval no longer valid.
10. The Exchange would not approve the proposed amendments to the pre-IPO plan because the amended plan would not comply with Chapter 17.
11. Company A failed to satisfy the Exchange that the proposed amendments would be in the interest of Company A and its shareholders as a whole. The amendments would only benefit the grantees.

Conclusion

12. The Exchange did not allow the proposed amendments.

Notes:

1. Chapter 17 was amended on 1 January 2023. Rules 17.01(1), 17.02(1)(b) and 17.03(17) were extended to cover share award schemes as follows:

Rule 17.01(1):

“(1) This Chapter deals with:

- (a) share schemes involving the grant by a listed issuer of (i) new shares of the listed issuer; or (ii) options over new shares of the listed issuer, to, or for the benefit of, specified participants of such schemes (which includes a grant of any such shares or options to a trust or similar arrangement for the benefit of a specified participant (see rules 17.02 to 17.11);*

...”

Rule 17.02(1)(b):

“A scheme adopted by a new applicant prior to its listing does not need to be approved by its shareholders after listing. However, all material terms of the scheme must be clearly set out in the prospectus. Where the scheme does not comply with the provisions of this chapter, options and awards granted to, or for the benefit of, specified participants before listing may continue to be valid after listing (subject to the Exchange granting approval for listing of the new applicant’s shares to be issued in respect of such options and awards) but no further options or awards may be granted under the scheme after listing...”

Notes: (1) The Exchange reserves the right to review and consider these matters on a case-by-case basis.

(2) ...”

Rule 17.03(17):

“The scheme document must include the following provisions and/or provisions as to the following (as the case may be):

...

(17) *transferability of options or awards;*

Note: Options or awards granted under the scheme must be personal to the respective grantee. No options or awards may be transferred or assigned...

...”

2. Chapter 17 was further amended on 11 June 2024 to treat a share scheme funded by treasury shares as a share scheme funded by new shares by adding Rule 17.01(4) as follows:

Rule 17.01(4):

“(4) In this chapter 17, references to new shares or new securities include treasury shares, and references to the issue of shares or securities include the transfer of treasury shares.”

3. ~~2.~~ The Rule amendments would not change the analysis and conclusions in this case.