

HKE_x LISTING DECISION

HKE_x-LD89-2015 (published in May 2015) (Updated in January 2023 (Rule amendments))

Party	Company A – a Main Board issuer
Issue	Whether Company A’s proposed issue of warrants to certain members of senior management was subject to the requirements of Chapter 17
Listing Rules	Main Board Rules 15.01 and 17.01
Decision	The requirements of Chapter 17 should apply

FACTS

1. Company A signed agreements with certain subscribers for issuing warrants to them at a nominal consideration. The subscribers were members of senior management of Company A. They would have the right to subscribe for new shares of Company A at the exercise price in accordance with the terms of warrants.
2. It was disclosed that the warrants were to be issued to the subscribers as an incentive and reward for their contribution to Company A’s business. Also Company A would receive additional funds from the exercise of the warrants for its business operations.
3. Company A submitted that the issue of warrants to the subscribers was an one-off transaction. It would comply with the requirements applicable to warrants under Chapter 15 and where the subscribers were connected persons, the connected transaction requirements under Chapter 14A.
4. There was an issue whether the requirements for share option schemes under Chapter 17 should apply to the warrant issue.

APPLICABLE LISTING RULES

5. Rule 15.01 states that:

“This section applies both to options, warrants and similar rights to subscribe or purchase equity securities of an issuer which are issued or granted on their own by that issuer or any of its subsidiaries ... but does not apply to any options which are granted under an employee or executive share scheme which complies with Chapter 17. ...”

6. Rule 17.01(1) states:

“The following provisions apply, with appropriate modification, 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 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.”

(Rule 17.01(1) was amended on 1 January 2023. See Note 1 below.)

ANALYSIS

7. Rule 17.01(4) expressly provides that any arrangement involving the grant of options over new shares of an issuer (or any of its subsidiaries) which, in the opinion of the Exchange, is analogous to a share option scheme must comply with the requirements of Chapter 17. This means that, among other things, the arrangement must be approved by shareholders in general meeting, the share options cannot be transferred to other persons, and the exercise price of the options cannot be set at a discount to the market price.

~~8. The existing Chapter 17 were introduced following the market consultations in 1999 and 2000. The 1999 consultation paper clearly explained the policy intent of Chapter 17. In particular, it stated that “in the past, a number of listed issuers have proposed to adopt certain arrangements for granting share options to employees using general mandate or specific shareholders’ approvals in order to circumvent the requirements of Chapter 17. It is the Exchange’s view that these arrangements should also be covered by Chapter 17. In light of this, the proposed Rule 17.01(1) would require that any arrangement which, in the opinion of the Exchange, is analogous to a share schemes as described in Rule 17.01(1) must comply with the requirements of Chapter 17. Options and securities subject to any such arrangement must be issued in accordance with the provisions of Chapter 17”.~~

~~9.8.~~ In this case, Company A proposed to issue the warrants, which were a form of share options, to certain members of senior management as incentive and reward for their contribution to Company A’s business. The Exchange was of the view that this arrangement was analogous to a share option scheme envisaged under Rule 17.01(1), which was in line with the policy intent of Chapter 17.

~~10.9.~~ Company A submitted that the purpose of Chapter 17 is to address issues relating to the on-going dilution effect on the interest of existing shareholders and the abuse of share option schemes by directors to remunerate themselves. In its case, the warrant issue was an one-off transaction. It was also subject to the shareholder approval requirement under Chapter 14A as some subscribers were connected persons. There was no need to apply Chapter 17.

~~11.10.~~ The Exchange disagreed with Company A. It was apparent that the purpose of the warrant issue was to provide incentive and reward to the management, and whether it was an one-off transaction or operated under a formal scheme was irrelevant. Under Chapter 17, the warrant issue would be subject to the shareholder approval requirement as well as other restrictions e.g. the warrants could not be transferred to other persons, and the exercise price of the warrants could not set at a discount to the market price.

CONCLUSION

~~12.11.~~ The requirements of Chapter 17 should apply to the proposed issue of warrants to the subscribers who were members of senior management of Company A.

Notes:

1. Chapter 17 was amended on 1 January 2023. Rule 17.01 was extended to cover share award schemes as follows:

“ (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);

(b) ...

(c) ...

(2) Any arrangement involving the grant of shares or other securities of a listed issuer or a principal subsidiary of the issuer (including options over any such shares or securities) which, in the opinion of the Exchange, is analogous to a share scheme as described in this rule 17.01 must comply with the requirements of this Chapter.

(3) ...”

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