

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.

We agree in principle with the proposal to amend Chapter 17 to also govern share award schemes involving the grant of new shares of listed issuers.

The principle reason for our view is that the issuance of new shares of listed issuers as employee share incentives should be subject to the same rules, irrespective of the legal form of the award.

The proposed language amending Rule 17.01(1) set forth in Appendix II (Draft Amendments to the Listing Rules) refers to all schemes involving the grant by a listed issuer or any of its subsidiaries of (i) “new shares of the listed issuer” or (ii) “new or existing shares” of any of its subsidiaries. In our submission, the reference to “existing shares” of subsidiaries should be clarified. If the intention is that only the provisions of Chapter 17 relating to disclosure in grant announcements and financial reports and prohibition on exercise of voting rights in respect of unvested scheme shares are applicable to Share Award Schemes relating to existing shares of subsidiaries purchased on-market, that should be made explicit in the proposed language consistent with the approach taken in proposed new Rule 17.01(2).

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)?

Yes

Please provide reasons for your views.

We agree with the proposed definition of eligible participants to include directors and employees of the issuer and its subsidiaries, Service Providers (subject to additional disclosure and approval by the remuneration committee) and Related Entity Participants (subject to additional disclosure and approval by the remuneration committee).

We consider that the proposed definition captures the principal categories of contributors to the long term growth of issuers and that the additional safeguards proposed for Service Providers and Related Entity Participants strike the right balance.

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.

Please refer to response to Question 2 above.

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.

Please refer to response to Question 2 above.

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.

Subject to the comment below, we agree with the proposal to allow schemes to be refreshed once every three years by obtaining shareholders' approval, together with the ability to seek specific shareholders' approval for grants that are specifically identified.

In connection with the proposal in paragraph 46 of the Consultation Paper regarding the possibility of granting waivers from the Scheme Mandate Limit, taking into account factors such as the necessity of the proposed mandate, industry norms and the criteria for granting shares under the mandate in our opinion this should be subject to more objective criteria (possibly requiring shareholders' approval) and should not be restricted to business sectors such as internet technology businesses or internet-based business models. It may be in shareholders' interests to grant equity incentives instead of cash awards and that flexibility should not be constrained by reference to the business sector in which the issuer is engaged. The relevant provisions should also be sufficiently flexible to deal with new business sectors emerging in future.

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?

Yes

Please provide reasons for your views.

We 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.

We believe this proposal provides sufficient protection against dilution for minority shareholders while also providing sufficient flexibility for issuers.

Question 7

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

Yes

Please provide reasons for your views.

We agree with the proposal to remove the 30% limit on outstanding options, as it is redundant in practice.

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 proposal to require a sublimit on Share Grants for Service Providers.

We believe this provides important protection against dilution for minority shareholders.

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 agree with the proposal to require a minimum 12-month vesting period, but with flexibility for a shorter vesting period, or immediate vesting, in specific instances approved by the remuneration committee with the reasons and details disclosed.

We consider that the proposal strikes a reasonable balance between incentivizing contributions to long term growth and accommodating exceptional cases where a shorter vesting period, or immediate vesting, is in the best interests of the issuer and its shareholders.

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?

Yes

Please provide reasons for your views.

Please refer to response to Question 9 above.

Question 11a

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

Yes

Please provide reasons for your views.

We agree with the disclosure requirements relating to performance targets and clawback mechanism, with the possibility of a waiver for confidential or commercially sensitive information.

This is consistent with international practice and accepted corporate governance standards.

Question 11b

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

Yes

Please provide reasons for your views.

Please refer to response to Question 11a above.

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 it is not necessary to impose a restriction on the grant price of shares under share award schemes, which is consistent with existing market practice.

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?

Yes

Please provide reasons for your views.

We agree with those proposals, in the interests of consistency and rationalizing the existing provisions.

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?

Yes

Please provide reasons for your views.

Please refer to response to Question 13 above.

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?

Yes

Please provide reasons for your views.

Please refer to response to Question 13 above.

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?

Yes

Please provide reasons for your views.

Please refer to response to Question 13 above.

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?

Yes

Please provide reasons for your views.

Please refer to response to Question 13 above.

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?

Yes

Please provide reasons for your views.

Please refer to response to Question 13 above.

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 proposal to require disclosure of Share Grants to a Related Entity Participant or Service Provider on an individual basis if the grants to the relevant Related Entity Participant or Service Provider exceed 0.1% of the issuer's shares in any 12-month period. We consider that this is material information for shareholders and, accordingly, should be publicly disclosed.

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, which provide the information necessary for shareholders to make an informed assessment.

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 and annual reports and with the proposal to require disclosure of matters reviewed by the remuneration committee in the Corporate Governance Report. We consider that the disclosures provide material information for shareholders and are consistent with accepted corporate governance standards.

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?

Yes

Please provide reasons for your views.

Please refer to response to Question 21 above.

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 proposal to require changes to the terms of share awards or options granted to be approved in accordance with the same approval requirement (remuneration committee or shareholders' approval) as applied to the initial grant of the relevant share award or option. Changes to the terms of share awards or options should be subject to the same approval and disclosure requirements as applied to the initial grant.

In our view, the approval requirements for any amendments should be the same as those applicable to the original grant. Imposing a more onerous threshold for an amendment does not, on the face of it, appear logical and could in any event be circumvented by cancelling the existing awards or options and granting replacement awards or options on the amended terms.

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.

A transfer of share awards or options in the circumstances described would be a reasonable accommodation, of benefit to grantees and would not prejudice minority shareholders.

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.

Restricting the voting rights of unvested shares held by the trustee and requiring monthly disclosure of the number of such unvested shares in monthly returns would be in the interests of transparency and avoid any perceived risk of undue influence in respect of the exercise of voting rights in respect of those shares.

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.

As referred to in our response to Q.1 above, it will be important that the language of the amended Chapter 17 makes clear the distinction between the provisions of Chapter 17 which apply to Share Schemes involving issuance of new shares and those which apply to Share Schemes involving the purchase of existing shares on-market funded by the issuer or its subsidiary. Share Schemes in the second category do not pose the same dilution risks for independent minority shareholders and should not be subject to the full extent of Chapter 17.

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.

Please refer to response to Question 25 above.

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?

Yes

Please provide reasons for your views.

We agree that Chapter 17 should also govern Share Award Schemes funded by new shares of subsidiaries of listed issuers. However, we have the following comments:

(a) Chapter 17 is applied to subsidiaries by the reference in Rule 17.01(1) that the provisions of Chapter 17 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.

(b) Chapter 17 does not explicitly deal with how its provisions should apply in respect of subsidiaries and the concept of “appropriate modifications” is imprecise.

(c) The lack of clarity is exacerbated in circumstances where the subsidiary is separately listed on an overseas exchange, subject to the overseas legal and regulatory regime governing incentive share awards and imposing legal duties owed to its own shareholders (including its own independent minority public shareholders).

(d) It is unclear whether Chapter 17 is to be applied “with appropriate modifications” to require remuneration committee approval at the subsidiary level, the listed issuer level or both. In circumstances where the listed subsidiary is a substantial company in its right, requiring individual share incentive awards to be approved by the remuneration committee of its Hong Kong listed parent seems impractical and overreaching. The application of the provisions of Chapter 17 to subsidiaries should be made more explicit. A distinction between unlisted subsidiaries and listed subsidiaries subject to recognized overseas legal and regulatory regimes would also be appropriate, in our view.

(e) Given that a listed parent and listed subsidiary which are both listed on the Exchange are each required to function independently and are each subject to the same regulatory regime, the requirement under Rule 17.01(4) for the subsidiary’s grants of share incentive awards to be subject to the same approvals at the parent level seems unnecessary and/or of limited value to independent minority shareholders of the subsidiary and the parent.

Question 29

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

Yes

Please provide reasons for your views.

We agree with the proposed exemption for Share Schemes of Insignificant Subsidiaries, on the basis that the grant of options and share awards under such Share Schemes would not be expected to have a material economic effect on independent minority shareholders of the parent company.

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 agree with the 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, on the basis that arrangements which are the same in substance should be regulated in the same way irrespective of differences in the legal forms of the arrangements.

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 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. The proposed alternative disclosure of the value of options and awards granted by issuers in their annual reports and interim reports, in line with the disclosure of share based payments under HKFRS2, would be more meaningful disclosure.

Question 32

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

Yes

Please provide reasons for your views.

We agree with the proposals to amend the Rules described in paragraph 100 of the Consultation Paper.