

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 with the proposal, provided that issuers will also retain the flexibility to issue share awards under general or specific mandate consistent with present arrangements.

We submit that the provisions of Listing Rule 13.36 governing the issuance of new shares for any purpose – including for the purposes of incentive schemes – already protect existing shareholders against the dilutive effect of new share issuances, and provide for suitable disclosure requirements. Accordingly, we do not agree that there is a necessity for further regulation in this area to the extent that it would constrain the ability of issuers to deal in their share capital.

If the Exchange proceeds with this proposal, we would be grateful for clarification on how the new regime will interact with existing rules. In particular:

(1) Can the Exchange clarify that shareholder approval of a share award scheme under Chapter 17 will satisfy the shareholder approval requirement in Listing Rule 13.36(1) for all issuances of shares under the scheme? A clarifying amendment or note to Listing Rule 13.36(1) may be helpful in this regard.

(2) We note that item (ii) in paragraph 38 of the Consultation Paper appears to contemplate Chapter 17 sitting alongside grants of shares under a general or specific mandate. Accordingly, it would seem to be the Exchange's intention that a board may decide to grant share awards, outside of any Chapter 17 scheme, using the general mandate. We should be grateful if the Exchange could clarify this point.

(3) Further to (2), our understanding is that the proposed rules similarly would not apply to the issuance of shares under general mandate – as opposed to under the proposed provisions of Chapter 17 as amended – to a trust or SPV for the purposes of a share scheme. We should be grateful if the Exchange could clarify this point.

(4) We should be grateful if the Exchange could clarify that Chapter 17 will not apply to schemes which involve only cash payments to participants such as “share appreciation rights schemes” or “phantom share schemes”, even where such schemes involve a trust purchasing shares on market to fund the cash portion of the scheme or hedge the share price risk associated with operating such scheme.

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)?

No

Please provide reasons for your views.

We consider the proposed definition of eligible participants to be too narrow. Issuers should be given the flexibility to award incentives to whichever parties they consider appropriate and to have made contributions to the company, subject to the review of the remuneration committee and appropriate disclosures. This will often extend beyond merely directors and employees, and indeed beyond service providers (as proposed to be defined), to include other business partners. See further our response to Question 3.

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, however we consider the proposed definition of “Service Providers” excessively narrow. Restricting the issuance of share incentives to “service providers” excludes many other categories of persons whom listed companies regularly seek to incentivize through such schemes.

Further, it is unclear why consultants providing professional services should be specifically excluded, per the note to proposed Rule 17A.03(1)(c). We submit that this note is self-contradictory: while the first sentence of the note contemplates independent contractors whose relationships with the issuer are “akin to those of employees” to be eligible participants, the second sentence specifically excludes consultants providing professional services. However, these types of consultants – for example I.T. professionals or legal counsel operating as “outsourced in-house counsel” – are precisely the type of independent contractors who should benefit from the accommodation in the first sentence of the note.

We therefore submit that the remuneration committee should have the flexibility to decide eligible participants without such narrow restrictions which limit a company’s ability to craft appropriate incentives. As a safeguard, particulars of such eligible participants, if material, could be appropriately disclosed for investors and shareholders’ information.

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.

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.

In addition, we would like to comment on the proposal in paragraph 42 of the Consultation Paper that a 10% scheme mandate limit apply to "all Share Schemes involving the issuance of new shares" in respect of which a specific question has not been asked in this questionnaire (proposal C(i) as reflected in proposed Listing Rule 17.03B(1)): We should be grateful if the Exchange could clarify that existing share schemes already approved by shareholders and currently in place would be grandfathered after the new rules come into effect. We are aware of a number of listed issuers which already have both share option schemes and share award schemes (which were not previously regulated) which in combination will exceed the proposed 10% limit. For example, issuers may have a currently-compliant share option scheme utilizing the full 10% limit as well as an additional share award scheme. It would be unfair to these companies and their employees for them to be forced to amend schemes that were fully compliant with prevailing Listing Rules at the time of listing and/or implementation of the schemes and upon which companies made long-term plans for incentivising their employees.

Separately we note that the term "scheme mandate limit" appears to be defined in both Listing Rules 17.03(3) and 17.03B(1), while the definition in Listing Rule 17.01A refers only to the former. We believe the definition in the latter may be an error, because if the duplicative definition is retained in 17.03B(1) then the definition would appear to become circular.

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.

Providing this additional flexibility, with the safeguard of independent shareholders' approval, is important 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.

Question 8

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

No

Please provide reasons for your views.

We do not agree that Share Grants to Service Providers should be subject to differentiated treatment compared to grants to other scheme participants. If the Exchange were to proceed with this proposal, we would disagree with any proposal to legislate a maximum on such sublimit.

Question 9

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

No

Please provide reasons for your views.

We consider that the remuneration committee should have the flexibility to decide whether to set a vesting period, with any vesting period being a matter for disclosure only.

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?

No

Please provide reasons for your views.

Please refer to our response to question 9 above. In the event that the proposal in question 9 is adopted, we consider that the flexibility afforded by the proposal in question 10 should

be afforded to the remuneration committee in respect of Share Grants to any scheme participants, and not be restricted to grants to Employee Participants only.

We also would like to reiterate our agreement with the position in paragraph 51 of the Consultation Paper that any public disclosure of such grants be by category only, and not on an individual named basis.

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 proposal provided that these requirements are a matter for disclosure only, and that performance targets and clawback mechanisms shall not be compulsory.

We would further observe that, in the case of share options, the performance target element of the award is built into the exercise price of the option: in combination with the rule prohibiting issue of options with an exercise price at discount to market price, share options only have value to the extent that the share price materially increases above the exercise price, which therefore acts as a de facto performance target for grantees. We would therefore suggest that the Exchange consider only explicitly requiring an explanation for lack of performance targets in respect of share awards and not share options.

Question 11b

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

Yes

Please provide reasons for your views.

We agree with the proposal provided that these requirements are a matter for disclosure only, and that performance targets and clawback mechanisms shall not be compulsory.

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.

It is an essential feature of grants under share award schemes that issuers may issue such awards at nil consideration.

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.

In relation to share awards, further to our response to question 1 above, we assume that separately the board may in the alternative opt to issue share awards under a general mandate consistent with existing practice.

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.

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.

This relaxation for grants of share awards to directors provides welcome flexibility for issuers.

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.

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.

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.

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?

No

Please provide reasons for your views.

We do not consider Related Entity Participants or Service Providers to be qualitatively different from other participants in terms of their entitlement to Share Grants. We therefore submit that they should be subject to the same 1% threshold for individual disclosure as other participants.

Question 20

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

Yes

Please provide reasons for your views.

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.

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.

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.

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.

This provides helpful flexibility for issuers. We understand that such waivers would be granted on an individual case-by-case basis. We should be grateful if the Exchange could clarify whether such waivers might also be considered on a bulk basis for a group or class of grant recipients.

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 agree with the proposal provided that the proposal applies only to unvested new shares issued under a Share Scheme. See our comments in response to question 27 in relation to existing shares.

Question 26

Do you agree with the proposed disclosure requirements for Share Schemes funded by existing shares of listed issuers?

No

Please provide reasons for your views.

We disagree with the proposals in the Consultation Paper to the extent that they extend the regulatory regime to cover Share Schemes involving existing shares. We note the Exchange's argument (in paragraph 90) that these schemes "serve a similar purpose" to those funded by new shares, however we do not consider that the purpose is the relevant consideration: rather, the key consideration should be the impact of such schemes on the issuer and shareholders. Share schemes involving existing shares are funded with cash resources of the issuer, which amounts are then properly recorded as a compensation expense on the accounts of the issuer. There is no dilution or other impact on shareholders beyond this cash expense. It is immaterial to shareholders whether that cash is paid directly to employees or used to purchase existing shares for the purposes of a share scheme. Accordingly, we would submit that any further disclosure or regulation is unnecessary.

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?

No

Please provide reasons for your views.

See our response to question 26 in relation to the extension of Chapter 17 to schemes involving existing shares.

In addition, we would like the Exchange to confirm that, per proposed Listing Rule 17.01(1) as amended, the provisions of Chapter 17 would only apply where a scheme involves the grant "by a listed issuer", and will not apply to incentive schemes or trusts or similar arrangements in relation to existing shares put in place by an existing shareholder (such as a controlling shareholder or founder). Founders/controllers often donate a portion of their shareholding to a trust arrangement to incentivize employees or other business partners. As this is the private arrangement of such shareholder, this should be beyond the scope of Chapter 17. In particular, if the proposed restriction on voting of existing shares held in trust applied to such arrangements, this would discourage such shareholders from donating some of their shares for the benefit of employees and other grant recipients as it would require the shareholder to surrender voting power over those shares.

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 with the proposal to the extent the schemes apply to new shares only, and would suggest that an exemption be provided for subsidiaries which are also listed on the Exchange, on the basis that their schemes will in any event comply with the requirements of Chapter 17.

Question 29

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

Yes

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?

No

Please provide reasons for your views.

To the extent the proposal is to cover schemes involving the issuance of new shares issued into trust structures, we agree with the proposal. However, it is unclear whether it is the Exchange's intention that Listing Rule 17.01(1) would extend to a situation where an issuer funds a trust with cash, which then makes on-market purchases for the purposes of an award scheme using existing shares. The proposed wording in the amended rule – "includes a grant of any such share or options to a trust" – arguably does not include this situation, as there is no "grant" by the listed issuer of either new or existing shares to a trust, but merely a settlement of a cash sum which the trust then deploys to purchase shares. In any event, we would submit that this circumstance should not be covered by Chapter 17. If any form of trust scheme involves only cash expenses for the issuer without any issuance of new shares (and corresponding dilution to existing shareholders), we submit such scheme should fall outside the scope of Chapter 17. We should be grateful for the Exchange to clarify this point.

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.

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.

In addition, we should be grateful for the Exchange to clarify two additional matters:

1. We note that, while the proposed Listing Rule 17.01A defines “share schemes” to include “share option schemes” and “share award schemes”, there does not appear to be any separate definition of these latter two terms in the Listing Rules. We submit that a clear definition is necessary, in particular of the latter term “share award schemes”, to facilitate listed issuers and their advisors assessing whether any particular arrangement is a scheme subject to the new rules. We would hope that any definition would also subsume -- or be contained in -- proposed Listing Rule 17.01(1) (as amended) so that the scope of the defined terms and Chapter 17 itself is clear.

2. In relation to the interpretation of Listing Rule 17.03(14): The Note to Listing Rule 17.03(14) (as amended) states that where a listed issuer cancels options and issues new options to the same participant, the options cancelled cannot be added back to replenish the scheme mandate. We note that the rule does not specify that options cannot be added back to replenish the scheme mandate in the case of:

- (1) options lapsed (as opposed to cancelled); and
- (2) options/awards cancelled where no new options/awards are issued to replace those cancelled (for example, options/awards cancelled pursuant to clawback arrangements contemplated by proposed Listing Rule 17.03(19)).

Our understanding is that, in the above two situations, the lapsed or cancelled options/awards (as the case may be) may be added back to replenish the scheme mandate. In relation to lapsed options/awards, this would appear to be consistent with the Note 1 to proposed Listing Rule 17.03B(1). We should be grateful if the Exchange could confirm or clarify the position.

In addition, if the above interpretation is correct in relation to cancelled options not replaced with new options, we should be grateful if the Exchange could clarify the circumstances in which new options may be issued to the same participant after the cancelled options have been added back into the option pool. For example, after the

options have been cancelled and returned to the option pool, would the Exchange permit new options to be issued to the same participant after an appropriate period of time (for example, 12 months) has elapsed following the cancellation, or in a number that is some smaller proportion (for example, 50%) than the number of options cancelled.