

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?

Please provide reasons for your views.

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)?

Please provide reasons for your views.

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.

It is common practice in certain sectors, such as insurance, for companies to grant share options or awards to external insurance agents who bring in new customers on a continuing or recurring basis and whose services are material to the long-term growth of the company. We agree with the proposal as long as the definition of "Service Providers" in the final version of Rule 17.03A(1) is broad enough to cover insurance agents and provided that the note to this rule does not specifically exclude insurance agents.

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?

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

Question 7

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

Please provide reasons for your views.

Question 8

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

Please provide reasons for your views.

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 generally agree with the proposal, but would suggest that it would be helpful if an exception could be provided in the rules for a shorter vesting period for "buyout" incentive awards on recruitment. For example, where a listed issuer is "buying out" incentive awards forfeited by a new recruit as a result of leaving their former employer, the vesting period should reflect the proportion of the vesting period on the original (forfeited) award that was

left to run, which may be less than 12 months. We submit that this scenario should be expressly identified in the rules as a permitted exception to the minimum 12-month vesting period requirement.

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?

Please provide reasons for your views.

Question 11a

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

No

Please provide reasons for your views.

In our experience, performance targets and clawback mechanisms are not a common feature for share participation plans where the plan participants acquire their shares following vesting by paying a significant percentage of the market value of the shares at the time of the grant of the option, as the spirit of such plans is to foster a sense of partnership between the listed issuer and the plan participants, rather than for remuneration purposes. These share participation plans tend to be relatively broad-based in nature (i.e. they are deliberately designed with the aim that more than just those in management roles in the company will participate – whole bands or categories of employee will commonly be invited to join these plans) and deliver, looked at in the round, relatively low values of benefit to participants. An example of such a plan, the UK SIP, is summarised in our response to Question 27. The requirement for the remuneration committee to explain the absence of performance targets and a clawback mechanism in such plans in the circular for approving the plan and in each grant announcement would be administratively burdensome and would not seem to serve any substantial purpose. We would recommend that this requirement be waived as a general matter for any share participation plan and that the proposed wording under Rule 17.02(2)(b) and Rule 17.06B(7) be amended as follows:

- 1) Rule 17.02(2)(b) should be amended to read: "... If the scheme allows grants of options and awards without performance targets and/or a clawback mechanism, the issuer must disclose the remuneration committee's view on why performance targets and/or a clawback mechanism is/are not necessary and how the grants serve the purpose of the

scheme. The requirement for the remuneration committee's views to be disclosed is waived where it is not common practice to include performance targets and/or a clawback mechanism in the scheme, for example, "participation schemes" in which participants purchase shares by paying a significant percentage (i.e., at least [75%]) of the market value of the shares determined at the time of grant of the option or award (as opposed to "remuneration schemes" in which participants receive shares from the listed issuer for free or for a nominal value)."

2) Rule 17.06B(7) should be amended to read: "...If any options or awards are granted without performance targets, the announcement must contain the remuneration committee's views on why performance targets are not necessary and how the grant serves the purpose of the scheme. The requirement for the remuneration committee's views to be disclosed is waived where it is not common practice to include performance targets and/or a clawback mechanism in the scheme, for example, "participation schemes" in which participants purchase shares by paying a significant percentage (i.e., at least [75%]) of the market value of the shares determined at the time of grant of the option or award (as opposed to "remuneration schemes" in which participants receive shares from the listed issuer for free or for a nominal value)."

Please also refer to our responses to Q20 and Q21 below regarding the disclosure of performance targets in the grant announcement and the listed issuer's annual / interim report.

Question 11b

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

No

Please provide reasons for your views.

Please refer to our response to Q11a.

Question 12

Do you agree that it is not necessary to impose a restriction on the grant price of shares under share award schemes?

Please provide reasons for your views.

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?

Please provide reasons for your views.

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.

We agree with the proposal, but note that it is not clear from the draft rules whether a listed issuer's remuneration committee may delegate its authority. We submit that the rules be clarified to make it clear that references to the remuneration committee include (i) the remuneration committee at the listed company level as well as (ii) any remuneration committee at a country/subsidiary/business unit/management level which has delegated authority for the operation of the share schemes at the relevant level.

It is common commercial practice of large listed groups to delegate authority for the regular day-to-day operations of their share schemes to the business level, whilst the "group remuneration committee" maintains an overarching oversight role, in particular in respect of key issues of concern to shareholders, such as overall shareholder dilution as a result of the company's employee incentive arrangements. For example, a company may have a three-tier remuneration committee structure comprising a remuneration committee at the listed issuer level, a management level remuneration committee and country level / business unit remuneration committees. In our case, a number of our share plans are operated by country level / business unit remuneration committees rather than the remuneration committee at the listed issuer level, given the large size of our group, the fact that certain of our share plans are country-specific and the fact that the business unit remuneration committees have more direct oversight of the participant population for which a particular plan is intended, thereby being able to tailor the terms of awards more precisely to deliver the plan's aims of employee incentivisation and retention. The activities of business unit remuneration committees are then reported back to the remuneration committee periodically. We submit that it would be appropriate for country level / business unit remuneration committees to approve share grants made under the share plans which they have delegated responsibility for and that this be clarified in the rules.

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?

Please provide reasons for your views.

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?

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?

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?

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?

Please provide reasons for your views.

Question 20

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

No

Please provide reasons for your views.

The HKSE has proposed that the grant announcement contain a narrative description of the performance targets attached to share grants (including the target levels and performance-related measures, such as earnings per share or total shareholder return). We wish to seek further clarification from the HKSE on how quantitative or specific the HKSE would expect the disclosure of target levels and performance-related measures to be.

More specifically, for the insurance industry, we consider that the following information would be too sensitive to disclose, for example:

- 1) the duration of the relevant service contract of a Service Provider (such as an insurance agent – as this would disclose the operating business model of the company to its competitors and expose the company to the risk of its insurance agents being “poached”); and
- 2) the specific target metric for a grant to employees who are not board directors or otherwise are not very senior executives. Frequently, these awards will be subject to targets based on the company’s or business unit’s revenue and/or operating profit performance measured over an assessment period, commonly set at three years. Disclosure of these targets would provide to the company’s competitors an insight into the company’s projections for this commercially sensitive financial data (for a period of up to three years in the future).

These specific metrics are often regarded as sensitive and confidential information both from a business/commercial perspective and from an employment perspective. Under the equivalent rules in the UK applicable to executive directors, for example, a listed issuer is not required to disclose commercially sensitive or confidential information, which would include specific target metrics, on grant. For example, where the specific target metric is “a 10% growth in earnings per share”, the disclosure in the grant announcement would be that “the grant is subject to a performance condition related to earnings per share”. The specific target metric would only be disclosed when the target is no longer considered sensitive and no longer needs to remain confidential.

Whilst we recognise that, under the proposed regime, certain types of participant will only be required to be disclosed on a “by band” basis, we have concerns (from both a commercial and an employee data protection perspective) that this may not in practice deliver the anonymity for participants, which we assume is the intent of the proposed approach.

As an example, the company will be required to disclose awards made to individuals on recruitment (perhaps as a result of the individual having forfeited awards as a result of leaving their former employer). Given the relatively small number of recruitments in any given quarter (which may be as few as one in a particular band), the proposed disclosures would allow the market and competitors to see the level of variable pay being offered to relatively junior employees. It is worth bearing in mind in this regard that all directors’ awards would be disclosed on an individual basis and this is the company’s existing practice.

Although the HKSE has stated that it may grant a waiver on a case-by-case basis to issuers which have concerns about disclosing any specific details which are confidential and commercially sensitive, we would recommend that the proposed disclosure requirements set out in Rule 17.06B(1a)(a) and Rule 17.06B(7) be amended as follows to include an express caveat for commercial sensitivity:

1) Rule 17.06B(1a)(a) should be amended to read “the name of the grantee (and where the grantee is not a natural person, the name of its ultimate beneficial owner), the relationship between the grantee and the issuer. Where the grantee is a related entity participant or service provider, the nature of services provided to the issuer and for a service provider, the duration of the relevant service contract with the issuer and for a service provider, the duration of the relevant service contract with the issuer, unless the [listed issuer/remuneration committee] is of the view that any such information is commercially sensitive information, the disclosure of which would not be in the best interests of the listed issuer”; and

2) Rule 17.06B(7) should be amended to read “a description of the performance targets attached to the options or awards granted (including the target levels and performance-related measures), the rationale for adopting the performance targets and the method for assessing whether they are satisfied, unless the [listed issuer/remuneration committee] is of the view that any such information is commercially sensitive information the disclosure of which would not be in the best interests of the listed issuer, provided that the listed issuer discloses such information to shareholders once it is no longer commercially sensitive”.

We would submit that a disclosure such as “the grant is subject to a performance condition related to earnings per share” would constitute meaningful disclosure in the grant announcement.

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 generally agree with the proposal for performance targets for options and awards granted during the year / period to be disclosed in an issuer’s interim reports and annual reports.

However, it is submitted that the disclosure of performance targets should not extend to “other employees participants, related entity participants and service providers by category”. We agree with the spirit of encouraging transparency and submit that this aim would be achieved through the disclosure of information related to grants to key individuals (including members of senior management) or more sizeable grants. Many listed issuers operate in a competitive industry environment, and it would be potentially damaging to have to disclose the performance targets which apply to grants to participants of a more junior level as such information may be commercially sensitive.

We would recommend that Rule 17.07 be amended as shown below to read: “In relation to each scheme of a listed issuer or any of its subsidiaries, the listed issuer must disclose in its annual report and interim report the following information in relation to: (i) each of the directors, chief executive or substantial shareholders of the listed issuer, or their respective associates; (ii) each participant with options and awards granted in excess of the 1% individual limit; and (iii) each related entity participant or service provider with options and awards granted and to be granted in any 12-month period exceeding 0.1% of the relevant class of shares in issue”.

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?

No

Please provide reasons for your views.

In light of our suggestion in Q14 in relation to the remuneration committee, we submit that the disclosure of matters reviewed by the remuneration committee in the Corporate Governance Report should be either (1) confined to the remuneration committee of the listed issuer or (2) if disclosure is required in relation to 'lower tier' remuneration committees, by each lower tier remuneration committees in the company's group providing a high-level summary of their areas of activity during the relevant financial year. More extensive disclosure would otherwise be administratively burdensome and would be of limited benefit to shareholders, given the seniority of individuals subject to the ambit of remuneration committees below the group remuneration committee level.

We submit that the disclosure of the remuneration committee's work in the Corporate Governance Report should exclude the disclosure of commercially sensitive information and that the proposed wording under paragraph E(d)(ii) of Appendix 14 be amended as follows to read "... and reviewing and/or approving matters relating to share schemes under chapter 17 (see rule 17.07A), performed by the remuneration committee (unless [the listed issuer/remuneration committee] is of the view that such disclosure would require the disclosure of commercially sensitive information which is not in the best interests of the listed issuer)".

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?

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

Question 26

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

Please provide reasons for your views.

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.

We understand that the term “Share Scheme” in this question includes share schemes funded by market purchases of existing shares of listed issuers.

We would highlight that a trustee may be legally required to exercise voting rights over unvested shares (for example, pursuant to the legislation governing tax-approved share incentive plans in the United Kingdom, which a number of listed issuers (such as HSBC and Prudential) operate). Under a UK share incentive plan (“UK SIP”), plan participants can use part of their salary to purchase (so-called) “partnership” shares in the listed issuer (up to GBP1,800 a year or, if lower, 10% of salary) through the UK SIP, or may have ‘free’ shares granted to them (capped at an annual value of GBP3,600), or may be granted ‘matching’ shares (no more than two for each partnership share purchased) which vest after a period of between 3 and 5 years. All such shares are required by law to be held within a trust. All shares within the trust entitle the participants to direct the trustee (which is the legal/registered owner of the shares) as to how to vote their shares (even if those shares are unvested at the relevant time).

To resolve the conflict identified above, we submit that an exemption should be provided where the trust is legally required to exercise voting rights over unvested shares. We submit that the proposed wording under Rule 17.05A should be amended as follows to read “The trustee holding unvested shares of a share scheme shall abstain from voting on matters that require shareholders’ approval under the Listing Rules, unless otherwise required by law.”

We understand that the policy rationale behind this proposal is to prevent the trustees of a trust operating in conjunction with the company's directors to sway the outcome of shareholder votes through the use of voting rights in respect of shares where an employee does not have an underlying economic interest (a policy objective which we support). However, we do not see the commercial rationale for requiring disclosure of the number of shares held by such trusts when the proportion of shares held will not (in all likelihood) affect the outcome of a shareholder vote. Disclosing trustee shareholdings which are unlikely to impact shareholders' voting powers would be an academic (and administratively costly) exercise. We would therefore propose that the disclosure requirement is subject to some form of de minimis threshold of the company's voting share capital, below which the monthly disclosure requirements do not apply. As a benchmark, UK institutional shareholders only view holdings by trustees exceeding 5% of the company's share capital as a matter of concern (Investment Association Principles on Executive Remuneration 2021).

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?

Please provide reasons for your views.

Question 29

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

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?

Please provide reasons for your views.

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?

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?

Please provide reasons for your views.