

Hong Kong: Stock Exchange updates the Listing Rules to govern share award schemes

In brief

On 29 July 2022, The Stock Exchange of Hong Kong Limited ("**Exchange**") published its [consultation conclusions](#) on the proposed amendments to the Listing Rules relating to share schemes of listed issuers. Share award schemes are increasingly popular among listed issuers in compensating, among others, their employees. Chapter 17 of the Main Board Listing Rules provides a framework that governs share option schemes, and the rule amendments will bring share award schemes under the governance of Chapter 17 as well.

The revised Listing Rules will come into effect on 1 January 2023. Issuers may adopt the revised rules for their share option schemes and/or share award schemes before the effective date.

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In more detail

1. Share schemes funded by issuance of new shares of listed issuers

Current requirements	New requirements
a. Scope of application	
Chapter 17 governs share option schemes, but not share award schemes.	The amended Chapter 17 will be extended to govern all share schemes funded by an issue of new shares by listed issuers, in addition to the share options on new shares of the listed issuers. Issuers may award new shares utilizing a general or specific mandate under Rule 13.36 if the share grants fall outside the scope of Chapter 17 (e.g., the grantees do not fall within the definition of eligible participants under the amended Chapter 17).
b. Eligible participants	
There are no restrictions on the categories of eligible participants.	<ul style="list-style-type: none"> • The following three categories of eligible participants of share schemes will be introduced: <ol style="list-style-type: none"> (a) Employee participants – These are directors and employees of the issuer or any of its subsidiaries (including persons who are granted options or awards under the scheme as an inducement to enter into employment contracts with these companies). (b) Related entity participants – These are directors and employees of the holding companies, fellow subsidiaries or associated companies of the issuer; and (c) Service providers – These are persons who provide services to the issuer group — in the interest of the long-term growth of the group — on a continuing and recurring basis in their ordinary and usual course of business. <p>The following persons are excluded from the definition of "service providers": (i) placing agents; (ii) financial</p>



	<p>advisors providing fundraising or M&A services; and (iii) professional service providers who provide assurance or are required to perform their services with impartiality and objectivity (e.g., auditors and valuers).</p> <ul style="list-style-type: none"> The scheme document must clearly identify each category of service providers and the criteria for determining a person's eligibility under each category. Where the scheme includes service providers and/or related entity participants as eligible participants, the Exchange may require the circular to include the views of the independent non-executive directors of the issuer on whether the inclusion of these participants aligns with the purpose of the scheme and the long-term interests of the issuer and its shareholders.
<p>c. Scheme mandate</p>	
<ul style="list-style-type: none"> Share options from all share option schemes of an issuer must not exceed 10% of the issuer's total issued shares ("10% Scheme Mandate Limit"). The outstanding options must not exceed 30% of the issued shares ("30% Overall Limit"). 	<ul style="list-style-type: none"> The 10% Scheme Mandate Limit will apply to all share schemes. The mandate may be refreshed by shareholders once every three years. Refreshments within a three-year period must be approved by independent shareholders of the issuer, i.e., the controlling shareholders of the issuer (or if there is no controlling shareholder, the executive directors and non-executive directors and chief executive of the issuer), and their respective associates must abstain from voting. Within the 10% Scheme Mandate Limit, a sublimit on the total number of shares that may be issued in respect of all options and awards to be granted to service providers must be set and separately voted on by shareholders in general meeting ("Service Provider Sublimit"). The 30% Overall Limit will be removed.
<p>d. Vesting period</p>	
<p>There is no minimum vesting period.</p>	<ul style="list-style-type: none"> The minimum vesting period for options or awards will be 12 months. However, grants to employee participants may be subject to a shorter vesting period under the specific circumstances permitted under the scheme document. The circular for the adoption of the scheme must disclose any specific circumstances where options or awards may be granted to employee participants with a shorter vesting period and provide an explanation by the issuer's board of directors (or the remuneration committee where the arrangements relate to grants of options or awards to the issuer's directors and/or senior managers) as to why the arrangements are appropriate and how the grants align with the purpose of the scheme. The grant announcement must disclose the relevant circumstances permitted by the scheme and, where the grants are made to the issuer's directors and/or senior managers, the remuneration committee's views on why a shorter vesting period is appropriate.
<p>e. Performance targets and clawback mechanism</p>	
<p>The scheme document must include the performance targets attached to the grants, if any, or a negative statement.</p> <p>There is no specific disclosure requirement relating to a clawback mechanism where an issuer may recover or withhold any shares or options granted to a participant in the event of serious misconduct, a material misstatement in the issuer's financial statements, or other special circumstances.</p>	<ul style="list-style-type: none"> The scheme document must include the following: <ol style="list-style-type: none"> A description of the performance targets (which may be qualitative) attached to awards or options to be granted under the scheme, if any, or a negative statement to that effect. A description of the clawback mechanism to recover or withhold the remuneration, which may include any awards or options to be granted to any participants, if any, or a negative statement to that effect. The grant announcement must include a description of the performance targets (which may be qualitative) and clawback mechanisms, if any. Where options or awards are granted to the issuer's directors and/or senior management without performance targets and/or clawback mechanism, the grant announcement must disclose the remuneration committee's views on why they are not required and how the grants align with the purpose of the scheme.



f. Exercise price or share grant price	
<p>The exercise price of share options must not be less than the market price of the shares at the time of grant.</p>	<ul style="list-style-type: none"> • There is no restriction on the share grant price for grants of new shares under share award scheme. • There is no change to the current requirement on the exercise price of share options.
g. Limits on granting options or awards to individual participants and connected persons	
<p><i>Individual participants</i></p> <ul style="list-style-type: none"> • Share option scheme: Shareholders' approval for grants of options in excess of 1% of issued shares over a 12-month period. • Share award scheme: No specific limit for grant of awards under general mandate or specific mandate. 	<ul style="list-style-type: none"> • All share schemes: Shareholders' approval will be required if the grants of awards and options in aggregate exceed 1% of issued shares over any 12-month period ("1% Individual Limit"). The grantee and his/her close associates (or associates if the grantee is a connected person) must abstain from voting.
<p><i>Grant to a director (other than an INED) or chief executive of the issuer, or any of their respective associates</i></p> <ul style="list-style-type: none"> • Share option scheme: Approval by INEDs of the issuer. • Share award scheme: There is no specific requirement although any grant of share awards is subject to the applicable requirements under Chapter 14A of the Listing Rules. 	<ul style="list-style-type: none"> • All share schemes: A grant of awards or options must be approved by the INEDs of the issuer. • Share award schemes: Independent shareholders' approval will be required if a grant of share awards will cause the shares issued and to be issued in respect of all awards granted to such person to exceed 0.1% of the issuer's issued shares over any 12-month period. The grantee, his/her associates and all core connected persons of the listed issuer must abstain from voting in favour at such general meeting.
<p><i>Grant to a substantial shareholder or INED of the issuer, or any of their respective associates</i></p> <ul style="list-style-type: none"> • Share option scheme: Approval by INEDs (excluding any INED who is the grantee). • Share option scheme: Independent shareholders' approval for grants of options in excess of 0.1% of issued shares and HKD 5 million ("HKD 5 million de minimis threshold") over a 12-month period. • Share award scheme: There is no specific requirement although any grant of share awards is subject to the applicable requirements under Chapter 14A of the Listing Rules. 	<ul style="list-style-type: none"> • All share schemes: A grant of awards or options must be approved by the INEDs of the issuer (excluding any INED who is the grantee). • All share schemes: Independent shareholders' approval will be required if a grant of share awards or options will cause the shares issued and to be issued in respect of all awards and options granted to such person to exceed 0.1% of the issuer's issued shares over any 12-month period. The grantee, his/her associates and all core connected persons of the listed issuer must abstain from voting in favour at such general meeting. • The HKD 5 million de minimis threshold will be removed.
h. Disclosure in grant announcements	
<p>An issuer must disclose details of option grants by way of announcement, and disclosure of a grant to a director, chief executive or substantial shareholder of the issuer, or any of their respective associates, must be made on an individual basis.</p>	<ul style="list-style-type: none"> • Disclosure of details of a grant of share awards and options to the following participants must be made on an individual basis in the grant announcement: <ol style="list-style-type: none"> (a) A director, chief executive or substantial shareholder of the issuer or any of their respective associates; (b) A related entity participant or service provider with awards and options granted and to be granted in excess of 0.1% of the issuer's issued shares over any 12-month period; and (c) Any other participant with grants in excess of the 1% Individual Limit. • Grants to other participants can be disclosed in aggregate by category, but the Exchange may require the issuer to submit a list of grantees. • A grant announcement must include, among others, the number of shares available for future grant under the scheme mandate and the Service Provider Sublimit; details of the vesting period of the options and awards; a description of the performance targets and clawback mechanism; and arrangements for the issuer group to provide financial assistance to the grantee.
i. Disclosure in annual and interim reports	
<p>An issuer must disclose in its annual and interim reports details of grants under share option schemes and their movements during the reporting period. A summary of each share option scheme must be disclosed in its annual reports.</p>	<ul style="list-style-type: none"> • The disclosure requirement applicable to share option schemes will be extended to share award schemes. • Disclosure of details of grants of share awards and options to the following participants must be made on an individual basis in the issuer's annual and interim reports:



	<ul style="list-style-type: none"> (a) A director, chief executive or substantial shareholder of the issuer or any of their respective associates; (b) A related entity participant or service provider with awards and options granted and to be granted in excess of 0.1% of the issuer's issued shares over any 12-month period; and (c) Any other participant with grants in excess of the 1% Individual Limit. <p>Grants to other participants can be disclosed in aggregate by category.</p> <ul style="list-style-type: none"> • In addition to the details of grants to the participants and their movements during the reporting period, the following information must be disclosed: <ul style="list-style-type: none"> (a) Name of the grantee or a description of each of the categories of grantees; (b) For awards and options granted during the reporting period, their fair value at the time of grant and the accounting standard and policy adopted; (c) The number of shares that are available for grant under the scheme mandate (and the Service Provider Sublimit, if applicable) at the beginning and the end of the reporting period; and (d) The number of shares that may be issued in respect of options and awards granted during the reporting period divided by the weighted average number of issued shares for the period.
<p>An issuer must disclose in its Corporate Governance Report a summary of the work performed by the remuneration committee during the year, including the committee's work on determining the remuneration policy for executive directors, assessing their performance, and approving the terms of their service contracts.</p>	<p>An issuer must disclose in its Remuneration Report or the Corporate Governance Report a summary of material matters relating to share schemes reviewed by the remuneration committee during the financial year.</p>
<p>j. Approval for changes to terms of share award or option granted</p>	
<p>An issuer must seek shareholders' approval for any changes to the terms of option granted.</p>	<p>Changes to the terms of share award or option granted will be approved by the approving authority making the initial grant, i.e., the board, the remuneration committee, the INEDs and/or shareholders of the issuer, as the case may be.</p>
<p>k. Transfer of share awards or options</p>	
<p>No share options may be transferred or assigned.</p>	<p>The Exchange may consider granting a waiver to allow a transfer to a vehicle (e.g., a trust or a private company) for the benefit of the participant and any family members of such participant (e.g., for estate planning or tax planning purposes) that would continue to meet the purpose of the scheme and comply with other requirements of Chapter 17.</p> <p>The issuer will be required to disclose the beneficiaries of the trust or the ultimate beneficial owners of the transferee vehicle upon the waiver being granted.</p>
<p>l. Voting rights of unvested shares held by trustee</p>	
<p>There is no specific requirement.</p>	<p>The trustee holding unvested shares of a share scheme, whether directly or indirectly, must abstain from voting on matters that require shareholders' approval under the Listing Rules, unless otherwise required by law to vote in accordance with the beneficial owner's direction and such a direction is given.</p>

2. Share schemes funded by existing shares of listed issuers

<p>a. Disclosure in annual and interim reports</p>	
<p>There is no specific requirement.</p>	<p>An issuer must disclose the following in its annual reports:</p> <ul style="list-style-type: none"> (a) Details of grants of existing shares in line with those applicable to share schemes funded by issuance of new shares. Such details will be required to be disclosed against (i) each director of the issuer on an individual basis; (ii) the five highest paid individuals on an



	aggregated basis; and (iii) other grantees on an aggregate basis.
	(b) A summary of each share scheme.
b. Voting rights of unvested shares held by trustee	
There is no specific requirement.	The trustee holding unvested shares of a share scheme, whether directly or indirectly, must abstain from voting on matters that require shareholders' approval under the Listing Rules, unless otherwise required by law to vote in accordance with the beneficial owner's direction and such a direction is given.

3. Share schemes of subsidiaries of listed issuers

a. Subsidiaries' share award schemes	
Chapter 17 applies to share option schemes of an issuer's subsidiaries.	<ul style="list-style-type: none"> The amended Chapter 17 will govern share schemes that are funded by new or existing shares of a principal subsidiary of an issuer, i.e., a subsidiary whose revenue, profits or total assets accounted for 75% or more of that of the issuer under the percentage ratios in any of the latest three financial years. For a share scheme of other subsidiaries, Chapter 14 will apply to a disposal or deemed disposal of the issuer's interests in the subsidiary resulting from the grant of existing or new shares of the subsidiary under the share scheme. Chapter 14A will apply to grants of share awards and options over existing or new shares of the subsidiary to a connected person.

4. Effective date and transitional arrangements

The rule amendments will come into effect on 1 January 2023. The transitional arrangements for existing share schemes as at the effective date are set out in the table below:

	Listed issuer		Principal subsidiary		Other subsidiaries	
	Share option scheme	Share award scheme		Share option scheme	Share award scheme	Share option scheme/ share award scheme
		With advanced mandate	Utilising general mandate			
Disclosure requirements in relation to grant announcement, annual reports and interim reports	Effective from 1 January 2023				<i>Share option scheme that has complied with existing Chapter 17: The subsidiary may continue to grant share options under its scheme mandate.</i>	
Grants of share options or awards	Only eligible participants as defined in the amended Chapter 17 may be granted share options or awards from the financial year commencing on or after 1 January 2023.				<i>Other existing or new share schemes: Grants of share awards or options after 1 January 2023 must comply with Chapter 14 and/or Chapter 14A.</i>	
Scheme mandate	Issuers may continue to grant share options or awards using existing scheme mandate.	In relation to existing share award schemes involving grants of new shares under general mandate, an issuer may continue to grant share awards to eligible participants up to the earlier of: (i) the second AGM after 1 January 2023; or (ii) the adoption of a new scheme mandate or amendments of the	Same as listed issuer	Issuers must comply with Chapter 14 and/or Chapter 14A before making any grant.		



		terms of any existing schemes to comply with the amended Chapter 17.			
Amendment of terms of scheme to comply with amended Chapter 17	<p>Issuers may adopt the amended Chapter 17 for their share schemes before the effective date. In any event, they must comply with the amended Chapter 17 and amend the terms of its existing share schemes on or before the refreshment of the scheme mandate limit or upon expiry of the scheme mandate.</p> <p>For existing share award schemes with advanced mandates, the issuer is not allowed to further refresh the scheme mandate.</p>				



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