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Amendments to Listing Rules Relating to Share Schemes of Hong Kong Listed Issuers

The requirements under Chapter 17 of the Listing Rules applicable to share option schemes will also govern share award schemes under the amendments that will become effective 1 January 2023.

Both share option schemes (which grant options to subscribe for new shares) and share award schemes (which grant shares or equivalent units) serve to reward and incentivise employees to continue to contribute to the growth of the listed issuer and to ensure that their interests are aligned with those of the listed issuer and shareholders. The existing Chapter 17 of The Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the Listing Rules) currently only governs share option schemes.

The main effect of The Consultation Conclusions on Proposed Amendments to Listing Rules Relating to Share Schemes of Listed Issuers and Housekeeping Rule Amendment (the Consultation Conclusion) is to extend the Chapter 17 requirements to share award schemes. There are also amendments to the requirements which apply to both share option and share award schemes, with the objective of monitoring dilution of listed shares, ensuring disclosure of relevant information and maintaining high investor protection standards.

This Client Alert discusses the key amendments and outlines the new requirements that issuers should be aware of.

Share Schemes Funded by Issuance of New Shares

The key amendments under the Consultation Conclusion are as follows:

- **Scope:** Extend Chapter 17 requirements to govern all share schemes involving grants of share awards in addition to grants of options to acquire new shares.
- **Eligible Participants:** Define “Eligible Participants” to include:
 - Employee Participants: Directors and employees of the issuer or any of the subsidiaries (including persons who are granted shares or options under the scheme as an inducement to enter into employment contracts with these companies)

- Related Entity Participants: Directors and employees of the holding companies, fellow subsidiaries, or associated companies of the issuer
- Service Providers: Persons who provide services to the issuer group on a continuing or recurring basis in its ordinary and usual course of business that are in the interests of the long-term growth of the issuer group
- **Scheme Mandate:** The total number of shares which may be issued in respect of all options and awards to be granted under all schemes (Scheme Mandate Limit) must not exceed 10% of the relevant class of shares in issue. The Scheme Mandate Limit can be refreshed by shareholders' approval once every three years, and requires independent shareholders' approval for refreshment within a three-year period. The amended rules removed the existing requirement that the number of outstanding options must not exceed 30% of the issued shares.
- **Service Provider Sublimit:** An issuer is required to set a sublimit for service provider within the Scheme Mandate Limit to the extent that it participates in the scheme, and disclose the basis for determining the sublimit in its circular. The shareholders of the issuer will approve such sublimit in the general meeting separately.
- **Minimum Vesting Period:** The vesting period for options or awards shall not be less than 12 months. However, options or awards granted to employee participants may be subject to a shorter vesting period under specific circumstances set out in the scheme document, and require the board of directors (and the remuneration committee if it relates to grant to the directors and/or senior managers) to explain why the arrangements are appropriate and how the grants align with the purpose of the scheme. The Stock Exchange of Hong Kong Limited (the Stock Exchange) will consider factors such as the purpose of the schemes, remuneration policies, and market practices in determining whether a shorter vesting period is justifiable. Examples of such circumstances include:
 - Grants of "make-whole" share awards to new joiners to replace the share awards they forfeited when leaving the previous employers
 - Grants to a participant whose employment is terminated due to death or disability or occurrence of any out of control event
 - Grants of options or awards with performance-based vesting conditions provided in the scheme document, in lieu of time-based vesting criteria
 - Grants that are made in batches during a year for administrative and compliance reasons
 - Grants of options or awards with a mixed or accelerated vesting schedule such as where the awards may vest evenly over a period of 12 months
 - Grants of options or awards with a total vesting and holding period of more than 12 months

However, an issuer is not allowed to grant options or awards with a shorter vesting period to non-employee participants.

- **Performance Targets and Clawback Mechanism:** An issuer is required to disclose the performance targets (which may be qualitative) and clawback mechanism (if any) or, if none, a negative statement to that effect in the grant announcement and the scheme document. If options or awards are granted

to the issuer's directors and/or senior managers without performance targets and/or clawback mechanism, disclosure of the remuneration committee's view on how such arrangement aligns with the purpose of the scheme is required in the grant announcement.

- **Matters That Require Shareholders' Approval:**

Matters that require shareholders' approval	
Scheme mandate limit	<ul style="list-style-type: none"> • Shareholders' approval for refreshment once every three years • Independent shareholders' approval for refreshment within a three-year period
Service provider sublimit	<ul style="list-style-type: none"> • Shareholders' approval • Shareholders' approval for refreshment once every three years • Independent shareholders' approval for refreshment within a three-year period
Limit on large share grants to individual participants	<ul style="list-style-type: none"> • Shareholders' approval for share grants to an individual participant in excess of the 1% individual limit
Limits on share grants to connected persons	<ul style="list-style-type: none"> • Grants to a director (other than an independent non-executive director, or INED) or the chief executive: Independent shareholders' approval for grants of share awards in excess of 0.1% of the issued shares over any 12-month period • Grants to an INED or substantial shareholder: Independent shareholders' approval for share grants (including grants of share awards and share options) in excess of 0.1% of the issued shares over any 12-month period

Disclosure Requirements of Share Grants

Disclosure of share grants		Announcement	Annual and interim reports	Remuneration report or Corporate governance report
(1) General	<p>Disclosure of following information <u>by category of participants</u>:</p> <ul style="list-style-type: none"> • Details of share grants (e.g., description of grantees, date of grant, number of options/ awards granted, vesting period, description of the performance target (which may be qualitative), clawback mechanism) • Movement of share awards and options granted during the reporting period • Fair value of share awards and options at the time of grant and the accounting policy adopted • Number of share awards and options granted divided by the weighted average number of issued shares for the reporting period 	√	√ √ √ √	
(2) Grants to any participant in excess of the 1% Individual limit	<ul style="list-style-type: none"> • Disclosure of information in item (1) above on an individual basis 	√	√	
(3) Grants to connected persons	<ul style="list-style-type: none"> • Disclosure of information in item (1) above on an individual basis • In the case of a shorter vesting period for grants to directors and/or senior managers, the remuneration committee's views on why a shorter vesting period is appropriate 	√ √	√	√

Disclosure of share grants		Announcement	Annual and interim reports	Remuneration report or Corporate governance report
	<ul style="list-style-type: none"> If options or awards are granted to directors and/or senior managers without a performance target and/or clawback mechanism, the views of the remuneration committee on why a performance target and/or a clawback mechanism is/are not necessary, and how the grants align with the purpose of the scheme 	√		√
(4) Grants to service providers	<ul style="list-style-type: none"> Disclosure of information in item (1) above on <u>an individual basis</u> if share grants to a service provider exceed 0.1% of issued shares over any 12-month period The reasons for the grant and the views of the board on how the grant aligns with the purpose of the scheme 	√ √	√	
(5) Grants to related entity participants	<ul style="list-style-type: none"> Disclosure of information in item (1) above on <u>an individual basis</u> if share grants to a related entity participant exceed 0.1% of issued shares over any 12-month period The reasons for the grant and the views of the board on how the grant aligns with the purpose of the scheme 	√ √	√	
(6) Grants to employee participants with a vesting period less than 12 months	<ul style="list-style-type: none"> Disclosure of information in item (1) above <u>by category of participants</u> In the case of grants with a shorter vesting period, the relevant circumstances that are specifically permitted by the scheme 	√ √	√	

Disclosure of share grants		Announcement	Annual and interim reports	Remuneration report or Corporate governance report
	<ul style="list-style-type: none"> If options or awards are granted to directors and/or senior managers with a vesting period less than 12 months, the remuneration committee's views, and explanations in the corporate governance report or remuneration report as to why it was appropriate to approve those matters, the factors it took into account, and how the grants align with the purpose of the scheme 	√		√
(7) Grants to participants without performance targets and/or clawback mechanism	<ul style="list-style-type: none"> Disclosure of information in item (1) above by <u>category of participants</u> If options or awards are granted to directors and/or senior managers without a performance target and/or clawback mechanism, the views of the remuneration committee in the announcement, and explanations in the corporate governance report or remuneration report as to why it was appropriate to approve those matters, the factors it took into account, and how the grants align with the purpose of the scheme 	√ √	√	√

Share Schemes Funded by Existing Shares of Listed Issuers

As share award schemes funded by existing shares of listed issuers do not involve issue of new shares, they are not subject to shareholders' approval requirement. However, the amended Listing Rules require disclosure in annual reports in respect of grants of options and awards involving existing shares to (i) each director of the issuer on an individual basis; (ii) the five highest paid individuals in aggregate; and (iii) other grantees in aggregate.

Share Schemes of Subsidiaries of Listed Issuers

The revised Chapter 17 requirements will cover the share schemes of 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 (a Principal Subsidiary), and not other subsidiaries.

Transitional Arrangement

The new requirements will take effect on 1 January 2023. In order to take into account the operational issues that issuers may need to deal with regarding implementation of the above amendment, the following transitional arrangement will be provided:

For share schemes of listed issuers involving issuers of new shares:

- Disclosures must be made in grant announcements and in interim and annual reports effective 1 January 2023.
- Share grants may only be made to eligible participants for financial years commencing on or after 1 January 2023.
- For existing share option schemes, when the issuer refreshes the scheme mandate of existing schemes, it must follow the amended Chapter 17 and when appropriate, amend the terms of its existing schemes.
- For existing share award schemes involving a grant of new shares under a general mandate, the issuer may continue to grant share awards to eligible participants up to the earlier of (i) the second annual general meeting after 1 January 2023, or (ii) the adoption of a new scheme mandate or amendments of the terms of any existing schemes to comply with the amended Chapter 17.
- For existing share award schemes with advanced mandates, the issuer is not allowed to further refresh the scheme mandate.

For share schemes of subsidiaries:

- For existing share option schemes of Principal Subsidiaries, the transitional arrangement applicable to the issuer's existing share option schemes apply.
- For existing share award schemes of Principal Subsidiaries, a grant of share awards after the 1 January 2023 must be subject to Chapter 14 and 14A.
- For existing share option schemes of other subsidiaries that have complied with the existing Chapter 17, the subsidiary can continue to grant share options under its scheme mandate.
- For other existing or new share schemes of other subsidiaries, grants of share awards or options after 1 January 2023 must comply with Chapter 14 and/or Chapter 14A.

Nevertheless, the issuer and new applicants are welcomed to adopt the amended requirements for the share schemes before 1 January 2023.

	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 in: <ul style="list-style-type: none"> • Announcement • Interim report • Annual report 	From 1 January 2023					<u>Share option scheme that has complied with existing Chapter 17:</u> The subsidiary may continue to grant share options under its scheme mandate <u>Other existing or new share schemes:</u> Grants of share awards or options must comply with Chapter 14 (based on the size of the scheme mandate for future grants) and/or Chapter 14A before making share grants
Share grants to eligible participants (amended definition)	New definition of eligible participants applies for financial years commencing on or after 1 January 2023					
Scheme mandate	Issuers may continue to make share grants using existing scheme mandate	Issuers may grant shares under general mandate until the <u>second</u> AGM after 1 January 2023	Same as listed issuer	Issuers must comply with Chapter 14 (based on the size of the scheme mandate for future grants) and/or Chapter 14A before making share grants		
Amendment of terms of scheme to comply with amended Chapter 17	On or before the refreshment of the scheme mandate limit/expiry of scheme mandate above or adoption of new share scheme					

Conclusion

Issuers who are considering adopting new share schemes should take note of the new requirements pursuant to the Consultation Conclusions. With regard to existing share schemes, issuers may continue to make grants to participants eligible under the amended Chapter 17 under existing schemes until refreshment or expiry of the existing scheme mandate, upon which the issuer would be required to amend the terms of the schemes in order to comply with the amended Chapter 17 and seek shareholders' approval for a new scheme mandate. Therefore, issuers may start to consider timing of seeking

shareholders' approval to alter the terms of their existing share schemes in order to comply with the revised Chapter 17 requirements.

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