

Sept/Oct 2021 Legal and Regulatory Update

Top stories

HKEX consultation on revision of share schemes rules

On 29 Oct 2021, **HKEX published a consultation paper** on proposed amendments to Listing Rules relating to share schemes. The consultation period will **close after 31 December**. ([Press release](#); [full document](#))

Firstly, it seeks to **extend Chapter 17** of the rules to **share award schemes involving issuance of new shares**. **Currently**, it governs **share option schemes only**. For **share award schemes**, issuers currently need to seek shareholders' approval for each grant of new shares at a general meeting, or issue new shares under a general mandate. It is also proposed to extend the rules to share schemes of **subsidiaries**.

Secondly, it proposes **changes to specific Chapter 17 requirements**. E.g. define "**eligible participants**" (*currently no restrictions*), revise scheme mandate **refreshments**, and improve **disclosure**.

The proposals aim to (i) provide issuers the **flexibility** to grant share awards and options, (ii) protect shareholders from **excessive dilution**.

Key proposals are summarised below. Please refer to the consultation paper for technical details (*definitions (P.1)*; *disclosure requirements (Appendix 1)*).

- **Extend Chapter 17** to cover **ALL share award schemes funded by issuance of new shares**
- **Define "eligible participants"**
 - Include **directors and employees** of the **issuer** or any **subsidiary**
 - (i) "**employee participants**"; (ii) "**related entity participants**" (*directors and employees of holding companies, fellow subsidiaries or associated companies*); (iii) "**service providers**"
 - Grant to (ii) or (iii) must be approved by **remuneration committee**
- **Scheme mandate limit**
 - **Limit for all share schemes** with issuance of **new shares**: not exceeding **10%** of issued shares
 - **Refreshment**: may be refreshed by **shareholders once every 3 years**; **additional refreshments** must be approved by **independent shareholders**
 - Set (*and disclose*) a "**service provider**" **sublimit**
 - **Remove limit re: outstanding options** (up to 30% issued shares)

- **Terms of grant**
 - **Minimum vesting period: 12 months, unless approved by remuneration committee**
 - Require **performance targets + clawback mechanism; disclose** in grant announcements
 - *(If made **without the above**) disclose remuneration committee’s views*
- **Limits on grant size: individuals or “connected persons”**
 - *(Retain) Individual participants: shareholder approval* if shares issued/issuable per relevant share schemes granted in any 12-month period is **above 1%** of issued shares
 - **“Connected persons”** *(director, chief executive or substantial shareholder of the issuer or an associate of any of them)*
 - (i) general: **remuneration committee approval** *(now: independent directors)*
 - (ii) grant of share awards to **director** *(not independent director)* or **chief executive: independent shareholder approval** if above **0.1%** over any **12-month period**
 - (iii) grant of share options/share awards to **independent director** or **substantial shareholder: independent shareholder approval** if above **0.1%** over any **12-month period**
- **Disclosure: grant announcements, interim/annual reports**
 - Disclosure on an **individual basis** in some cases
 - E.g. grants to “connected persons”
- Disclosure of **work by remuneration committee** *(in corporate governance report)*
- **Extended to subsidiaries**
 - Covers **share options, share award schemes funded by new or existing shares**
 - Exemption: **“insignificant subsidiaries”** *(subject to approval by remuneration committee)*
 - Whose total assets, profits and revenue compared to that of the issuer group are less than:
 - (i) **10%** under the percentage ratios for **each of the latest 3 financial years**; or
 - (ii) **5%** under the percentage ratios for the **latest financial year**
- Share Schemes funded by **existing shares** *(i.e. no issuance of new shares)*
 - **Disclosure** rules would apply
- HKEX acknowledges that some issuers make large share grants as part of **remuneration strategy** to incentivize and retain talents *(e.g. **internet-technology sector**)*
 - May consider granting **waivers** from the scheme mandate limit

What you should do:

- Note the **consultation period**, for making responses as appropriate
- **Update your board** and relevant **teams** on the broad proposals, after **management's initial assessment** of the impact including in light of the significance of share schemes on your group's **remuneration strategy**
- **Factors** to be considered (*e.g. whether your group has share options and/or share award schemes; impact of proposed overall limit; impact of proposed individual limits (particularly if independent shareholder approval needed); check if any subsidiary has share options and/or share award schemes and assess impact of proposals*)
- For ongoing review of board committee/processes, note the increased responsibilities of **remuneration committee**, as well as disclosure of work done

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