

We thank you for your time spent taking this survey.
Your response has been recorded.

Below is a summary of your responses

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Thank you for taking the time to respond to the Consultation Paper on Proposed Amendments to Listing Rules relating to Shares Schemes of Listed Issuers ("Consultation Paper")

Please state whether your response represents the view of your company/organisation or your personal view

- Company/Organisation view**
 Personal view

Company/Organisation name*:

Jeffrey Mak Law Firm

Company/Organisation type*:

- Accounting Firm
- Corporate Finance Firm / Bank
- HKEX Participant
- Investment Manager
- Law Firm**
- Listed Company
- Professional Body / Industry Association
- Other

If "Other" is selected, please specify the company/organisation type

Contact Person*:

- Mr.**
- Ms.
- Mrs.

Name*:

Job Title:

Phone Number*:

Email Address*:

jeffrey.mak@jmaklegal.com

Important note: All fields marked with an asterisk (*) are mandatory. HKEX may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.

Disclosure of identity

HKEX may publish your identity together with your response. Respondents who do NOT wish their identities to be published should tick the box below, otherwise please click "Next":

I/We do NOT wish to disclose my/our identity to the members of the public.

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
 No

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)?

- Yes
 No

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
 No

Please provide reasons for your views.

Suggestion: it should be subject to approval by a remuneration committee meeting attended by directors with a majority being independent non-executive directors. The bottom line should be that the independent review should be performed at a session with a majority of independent non-executive directors but not otherwise.

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

No

Please provide reasons for your views.

Suggestion: it should be subject to approval by a remuneration committee meeting attended by directors with a majority being independent non-executive directors. The bottom line should be that the independent review should be performed at a session with a majority of independent non-executive directors but not otherwise.

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

No

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?

Yes

No

Please provide reasons for your views.

Question 7

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

Yes

No

Please provide reasons for your views.

The 30% limit has been in place in Hong Kong for so long that public investors may have a legitimate expectation that their interests would not be diluted by share options beyond such limit. It is arguably a hallmark feature of Chapter 17, and actually it may be one of few minority protection safeguards Hong Kong can boast of. A listed issuer can easily accumulate 30% outstanding share options over a few years. From time to time we see delinquent issuers in the market. So far it is uncommon to notice an overhang of 30% outstanding options because of this existing limit. The 30% limit provides comfort to many public investors who may not be frequently checking the level of share options of an issuer. In an appropriate case, an investor prejudiced by the rule change might be able to establish a claim against the Exchange when an issuer accumulates over 30% share options in the future.

Question 8

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

Yes

No

Please provide reasons for your views.

Question 9

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

- Yes
 No

Please provide reasons for your views.

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?

- Yes
 No

Please provide reasons for your views.

Suggestion: it should be subject to approval by a remuneration committee meeting attended by directors with a majority being independent non-executive directors. The bottom line should be that the independent review should be performed at a session with a majority of independent non-executive directors but not otherwise. The reasons and details should be disclosed.

Question 11a

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

- Yes
 No

Please provide reasons for your views.

Question 11b

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

Yes

No

Please provide reasons for your views.

Clawback mechanism is useful and sometimes necessary to strike the right balance in the remuneration equation.

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

No

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?

Yes

No

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

No

Please provide reasons for your views.

By switching from approval by an independent board committee (all members being independent non-executive directors) to approval by a remuneration committee (some members are not independent non-executive directors), the independent review function would be weakened, especially where the review could be led and dominated by an executive director. However, if the mechanism can ensure that the review is actually conducted by a meeting of the remuneration committee consisting of a majority of independent non-executive directors, we would agree to the proposal.

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

No

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?

Yes

No

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

No

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

No

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?

Yes

No

Please provide reasons for your views.

Question 20

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

- Yes
 No

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
 No

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
 No

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**
 No

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**
 No

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?

- Yes**
 No

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?

Yes

No

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?

Yes

No

Please provide reasons for your views.

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

No

Please provide reasons for your views.

Question 29

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

Yes

No

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?

Yes

No

Please provide reasons for your views.

Agreed subject to a caveat: share options are “personal” to the grantees under the existing rules because such incentives are regarded as related to a grantee’s personal contribution to the listed company. If this principle is to be loosened by potential waivers, specific guidance should be provided on the conditions to be imposed when a waiver is granted. In particular, upon a waiver being granted, there should be restriction against further transfers, or else a loophole may be opened so that grantees may request vesting of shares in companies or trusts associated with them, to be followed by further transfers of interests in the underlying shares to third parties. An unconditional waiver would seem to go against the general principle of limiting share incentives to be granted to employees and other persons making recognized / material contribution to the issuer (either directly or through related entities).

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
 No

Please provide reasons for your views.

Having such disclosure in annual and interim reports is in line with the disclosure of share based payments under HKFRS2.

Question 32

Do you agree with our proposals to amend the Rules described in paragraph 100 of the Consultation Paper?

- Yes
 No

Please provide reasons for your views.

You can access the Consultation Paper [here](#)

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