

Amendments to Hong Kong Listing Rules Governing Incentive Share Schemes to take effect from 1 January 2023



On 29 July 2022, the Stock Exchange of Hong Kong (the “**Exchange**”) has published the conclusion paper to its 2021 consultation on “Proposed Amendments to Listing Rules relating to Share Schemes of Listed Issuers” (the “**Consultation Paper**”) setting out its renewed position on the requirements which will apply to listed companies when granting share options or share awards under equity-based incentive schemes.

This alert sets out an overview of the amended Listing Rules (with transitional arrangements) which will take effect on 1 January 2023 (“**Amended Listing Rules**”), as well as the major changes made to the existing Listing Rules.



Highlights

- Expanded Chapter 17 of the Hong Kong Main Board Listing Rules (“**Chapter 17**”) to cover both share option schemes and share award schemes involving issuance of new shares (collectively known as “**Share Schemes**”), to ensure a consistent regulatory approach.
- Schemes funded by existing shares or cash-settled incentive plans (such as phantom share plans and share appreciation rights) adopted by Hong Kong listed companies will be subject to less compliance requirements when compared to schemes funded by new shares.
- To reduce the dilutive impact on shareholders, a stricter scheme mandate limit of 10% will be applied to all Share Schemes of listed companies.
- A minimum vesting period of 12 months will be required, unless additional board approval and enhanced disclosure requirements have been met.
- Expanded Chapter 17 to govern Share Schemes of “principal subsidiaries” of Hong Kong listed companies and covering plans funded by either new shares or existing shares.
- Listed companies may continue to make share grants using existing scheme mandates depending on the type and coverage of shareholders’ approval obtained at the time of adoption of the existing plans.
- Listed companies are reminded to revisit all existing equity incentive plans and beware of situations requiring (i) confirmation and approval from the remuneration committee, (ii) general or independent shareholders’ approval and (iii) enhanced announcement and periodic reporting requirements under the amended Chapter 17.
- Companies with Hong Kong listing plan are recommended to consider the implications of the Amended Listing Rules on the current and post-IPO Share Schemes and their impact on the overall remuneration structure.

For details, please refer to Table 2 of this alert which contains a comparison of current regime and new regime.



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Transitional Arrangements

The transitional arrangements for existing Share Schemes of listed companies and their subsidiaries adopted before the effective date of the amendments are summarised below:

- 1. Disclosure:** the new disclosure requirements (covering disclosure in grant announcements, interim reports and annual reports) will take effect from 1 January 2023 for all existing Share Schemes.
- 2. Share Grants:** listed companies may only make grants under existing schemes to the newly defined **eligible participants** under the amended Chapter 17 for financial years commencing on or after 1 January 2023.
- 3. Scheme Mandate Limits:**
 - Listed companies are expected to follow the amended Chapter 17 and update the terms of existing schemes when refreshing the scheme mandate limits of existing share option schemes.
 - For existing share award schemes with grants of new shares to be made under general mandate, listed companies may continue to grant share awards to eligible participants until the earlier of:
 - (i) the second annual general meeting after 1 January 2023, or
 - (ii) the adoption of a new scheme mandate limit or amendments of the terms of any existing schemes to comply with the amended Chapter 17.

- For share award schemes with advanced specific mandates for granting new shares under such schemes, no further refreshment of the scheme mandate limit is allowed after 1 January 2023.
- As regards the transitional arrangement for Share Schemes of subsidiaries of listed companies, the position for Principal Subsidiaries are distinguished from other subsidiaries in terms of the applicable chapter of the Listing Rules. For details, please see Table 1 below.

Takeaways for Listed Companies

Listed companies should start to review and plan for necessary amendments to their existing schemes, paying attention to the new scope of Chapter 17 and its definition of eligible participants, the requirements for scheme mandate refreshments and the disclosure requirements. It shall also be noted that the remuneration committee is playing a less decisive role as her oversight merely applies to the approval of share grants to directors or senior management.

Full text of the Consultation Conclusion is available [here](#).

Table 1: Details of transitional arrangements:

	Listed Company			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">AnnouncementInterim ReportAnnual Report	From effective date (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
Share grants to eligible participants (amended definition)	New definition of eligible participants applies for financial years commencing on or after 1 January 2023					<u>Other existing or new share schemes:</u> Depending on the size of the scheme mandate limit, future grants of share awards or options must comply with Chapter 14 and/or Chapter 14A
Scheme mandate limit	Listed companies may continue to make share grants using existing scheme mandate	Listed companies may grant shares under general mandate until the <u>second</u> AGM after 1 January 2023	Same as listed companies	Depending on the size of the scheme mandate limit for future grants, listed companies must comply with Chapter 14 (setting out compliance requirements for notifiable transactions) and/or Chapter 14A (setting out connected transactions compliance requirements)		
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					

Source: Adopted from Section 207 of the Consultation Conclusion published by the Exchange

Table 2: Comparison of current regime and the new regime for listed companies in respect of the key changes pursuant to the Amended Listing Rules:

	Current regime	New regime (effective from 1 January 2023)
I. Share Schemes Funded by Issuance of New Shares of Listed Companies		
Scope	<ul style="list-style-type: none"> Chapter 17 currently applies only to share option schemes, but not share award schemes. 	<ul style="list-style-type: none"> Extend Chapter 17 to cover all Share Schemes.
Eligible participants	<ul style="list-style-type: none"> No restriction on the categories of eligible participants. 	<ul style="list-style-type: none"> Categories of eligible participants of Share Schemes will be imposed:- <ul style="list-style-type: none"> ➤ Employee participants - directors and full- or part-time employees of the listed company 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). ➤ Related entity participants - directors and employees of the holding companies, fellow subsidiaries or associated companies of the listed company. ➤ Service providers - entities who provide services to the listed company's group on a continuing and recurring basis in its ordinary and usual course of business which are in the interests of the long-term growth of the listed group.
Scheme mandate	<ul style="list-style-type: none"> Grants of share options from all share option schemes of a listed company limited to 10% of its total issued shares. A listed company may seek approval from shareholders to refresh the scheme mandate at any time, subject to the overall limit that share options outstanding do not exceed the 30% of the issued shares. 	<ul style="list-style-type: none"> A scheme mandate limit of not exceeding 10% of a listed company's issued shares to share grants under all Share Schemes of the listed company is applied ("Scheme Mandate Limit"), which may be refreshed by shareholders' approval once every three years (for refreshment of scheme mandate within the three-year period, independent shareholders' approval is required). A listed company is also required to set a service provider sublimit within the Scheme Mandate Limit and disclose the basis for determining the sublimit in its circular to shareholders. The current 30% limit on outstanding options is removed.

Table 2: Comparison of current regime and the new regime for listed companies in respect of the key changes pursuant to the Amended Listing Rules (cont'd):

	Current regime	New regime (effective from 1 January 2023)
I. Share Schemes Funded by Issuance of New Shares of Listed Companies		
Minimum vesting period for share grants	<ul style="list-style-type: none"> No specific requirements on vesting period. 	<ul style="list-style-type: none"> A minimum vesting period of 12 months is required. The board of directors of the listed company (the “Board”) retains discretion to make share grants to employee participants with a shorter vesting period, provided that the scheme document shall set out the specific circumstances where the vesting period can be shortened and an explanation by the Board (and the remuneration committee on grants to directors and senior management) on why the arrangements are appropriate and how the grants align with the purpose of the scheme. Such arrangement shall also be clearly disclosed in the circular for the adoption of the scheme.
Performance targets and clawback mechanism	<ul style="list-style-type: none"> A listed company is required to set out in the scheme documents any performance targets attached to the grants or a negative statement (whichever applicable). No specific disclosure requirement relating to a clawback mechanism. 	<ul style="list-style-type: none"> Qualitative disclosure of the performance targets and the clawback mechanism (if any) for share grants is required in the scheme document and in grant announcements, and if none, negative statements shall be made to that effect. On share grants to directors and senior management, if there are no performance targets and/or clawback mechanisms, a negative statement shall be made with disclosure of an explanation by the remuneration committee in the grant announcement as to why the above is/are not necessary.
Exercise price or share grant price	<ul style="list-style-type: none"> The exercise price must be at least the higher of: (i) the closing price of the securities as stated in the Exchange's daily quotations sheet on the date of grant, which must be a business day; and (ii) the average closing price of the securities as stated in the Exchange's daily quotations sheets for the five business days immediately preceding the date of grant. 	<ul style="list-style-type: none"> The current restriction on the exercise price of share options is retained. No restriction on share grant price is imposed for the grant of shares.

Table 2: Comparison of current regime and the new regime for listed companies in respect of the key changes pursuant to the Amended Listing Rules (cont'd):

	Current regime	New regime (effective from 1 January 2023)
I. Share Schemes Funded by Issuance of New Shares of Listed Companies		
Limit on large share grants to individual participants	<ul style="list-style-type: none"> Grants of share options to an individual participant are subject to shareholders' approval if the number of shares covered by the grants exceed 1% of the shares in issue over any 12-month period (the "Individual Limit"). 	<ul style="list-style-type: none"> Shareholders' approval for share grants to an individual eligible participant is required in excess of the 1% Individual Limit.
Limits on share grants to connected persons	<ul style="list-style-type: none"> Grants of share options to an INED or a substantial shareholder of a listed company (or their associate(s)) exceeding 0.1% of issued shares and HK\$5 million in value over a 12-month period require shareholders' approval. Any grant of share awards to a connected person (regardless of size) constitutes a connected transaction subject to independent shareholders' approval. 	<ul style="list-style-type: none"> A <i>de minimis</i> exemption for share grants to connected persons will be adopted and independent shareholders' approval is required where: (i) the grantee is a director (other than an INED) or the chief executive of the listed company for grants of share awards in excess of 0.1% of the issued shares of the listed company over any 12-month period; and (ii) where the grantee is an INED or a substantial shareholder of the listed company for share grants (including grants of share awards and share options) in excess of 0.1% of the issued shares of the listed company over any 12-month period. The HK\$5 million threshold for grants of share options is removed.
Announcements of share grants	<ul style="list-style-type: none"> A listed company must disclose details of share option grants by way of announcements, and disclosure of grants to a connected person must be made on an individual basis. Upon the granting by the listed company of an option under the scheme, the listed company must publish an announcement in accordance with rule 2.07C setting out the following details: <ul style="list-style-type: none"> i. date of grant; ii. exercise price of options granted; iii. number of options granted; iv. market price of its securities on the date of grant; v. where any of the grantees is a director, chief executive or substantial shareholder of the listed company, or an associate of any of them, the names of such grantees and the number of options granted to each of them; and vi. validity period of the options. 	<ul style="list-style-type: none"> Require the disclosure of details of share grants by the listed company to the following participants to be made on an individual basis: (i) a connected person; (ii) a participant with share grants in excess of the 1% Individual Limit; (iii) a related entity participant or service provider with share grants in excess of 0.1% of the listed company's issued shares over any 12-month period. For other employee participants, related entity participants and service providers, the disclosure can be made by category basis. Regarding the details of the share grants, it requires the information to be disclosed in tabular format and the following additional information:

Table 2: Comparison of current regime and the new regime for listed companies in respect of the key changes pursuant to the Amended Listing Rules (cont'd):

	Current regime	New regime (effective from 1 January 2023)
I. Share Schemes Funded by Issuance of New Shares of Listed Companies		
Announcements of share grants		<ul style="list-style-type: none"> i. vesting period of share grants. If vesting period is less than 12 months, circumstances permitted by the scheme and remuneration committee's views on why a shorter vesting period is appropriate, where applicable; ii. description (which may be qualitative) of performance targets and the clawback mechanism; iii. reasons for the grant and views of the Board on how the grant aligns with the purpose of the scheme if share grants are made to service provider or a related entity participant; iv. arrangements, if any, for the listed company or any of its subsidiaries to provide financial assistance to the grantees to facilitate the purchase of shares; and v. disclosure of the number of shares available for future grant under the Scheme Mandate and the service provider sub-limit is required (if applicable).

Table 2: Comparison of current regime and the new regime for listed companies in respect of the key changes pursuant to the Amended Listing Rules (cont'd):

	Current regime	New regime (effective from 1 January 2023)
I. Share Schemes Funded by Issuance of New Shares of Listed Companies		
Disclosure in interim reports and annual reports	<ul style="list-style-type: none"> In relation to each share option scheme, the listed company must disclose in its annual report and interim report the details and movement of the share options in relation to: <ul style="list-style-type: none"> i. each of the directors, chief executive or substantial shareholders of the listed company, or their respective associates; ii. each participant with options granted exceeding the individual limit; iii. aggregate figures for employees working under “continuous contracts” under the Employment Ordinance; iv. aggregate figures for suppliers of goods or services; and v. all other participants as an aggregate whole. The listed company must also include in its annual report a summary of each share option scheme approved by its shareholders. 	<ul style="list-style-type: none"> Require the disclosure of details and movements of share grants by the listed company to the following participants to be made on an individual basis: (i) a connected person; (ii) a participant with share grants in excess of the 1% Individual Limit; (iii) a related entity participant or service provider with share grants in excess of 0.1% of the listed company's issued shares over any 12-month period. For other employee participants, related entity participants and service providers, the disclosure can be made by category basis. Regarding the details of the share grants, it requires the information to be disclosed in tabular format and the following additional information: <ul style="list-style-type: none"> i. for share options and share awards granted during the reporting period, the performance target (if any), and their fair value at the time of grant and the accounting policy adopted; ii. the number of shares that are available for future grant under the scheme mandate (and the service provider sublimit, if applicable) at the beginning and the end of the reporting period; and iii. the number of share options and share awards granted during the reporting period divided by the weighted average number of issued shares for the period. A summary of each share scheme (for annual reports only).
Disclosure of work performed by the remuneration committee	<ul style="list-style-type: none"> A listed company is required to disclose in its corporate governance report a summary of the work performed by the remuneration committee during the year, covering the determination of the remuneration policy for executive directors, assessment of their performance and approval of the terms of service contracts. 	<ul style="list-style-type: none"> Disclosure of a summary of material matters relating to Share Schemes reviewed and/or approved by the remuneration committee during the financial year shall be made in the corporate governance report or remuneration report.

Table 2: Comparison of current regime and the new regime for listed companies in respect of the key changes pursuant to the Amended Listing Rules (cont'd):

	Current regime	New regime (effective from 1 January 2023)
I. Share Schemes Funded by Issuance of New Shares of Listed Companies		
Approval for changes to terms of share awards or share options granted	<ul style="list-style-type: none"> Shareholders' approval is required for any changes to the terms of share options granted. 	<ul style="list-style-type: none"> Changes to the terms of share awards or share options granted must be approved by the remuneration committee and/or shareholders of the listed company if the initial grant of the share awards or share options requires such approval.
Transfer of share awards or share options	<ul style="list-style-type: none"> Share options may not be transferred by the grantee to other persons. 	<ul style="list-style-type: none"> A waiver is provided for a transfer of share awards or share options to a vehicle (including a trust or a private company) for the benefit of the grantee and his/her family members (e.g. for estate planning or tax planning purposes), provided that such transfer would continue to meet the purpose of the scheme and other requirements of Chapter 17.
Voting rights of unvested shares	<ul style="list-style-type: none"> No specific requirement. 	<ul style="list-style-type: none"> The trustee holding unvested shares of a share scheme, whether directly or indirectly, shall 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.

Table 2: Comparison of current regime and the new regime for listed companies in respect of the key changes pursuant to the Amended Listing Rules (cont'd):

	Current regime	New regime (effective from 1 January 2023)
II. Share Schemes Funded by Existing Shares of Listed Companies		
Disclosure in financial reports	<ul style="list-style-type: none"> No specific disclosure requirement of the terms of the scheme and details of the grants of existing shares. 	<ul style="list-style-type: none"> Require disclosure in annual reports the grants of existing shares to: <ol style="list-style-type: none"> each director of the listed company on an individual basis; the five highest paid individuals on an aggregated basis; and other grantees on an aggregate basis. Require disclosure of a summary of each share scheme in annual reports.
Voting rights of unvested scheme shares	<ul style="list-style-type: none"> No specified requirement. 	<ul style="list-style-type: none"> The trustee holding unvested shares of a Share Scheme, whether directly or indirectly (e.g. through special purpose vehicles), shall 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 when such direction is given.

Table 2: Comparison of current regime and the new regime for listed companies in respect of the key changes pursuant to the Amended Listing Rules (cont'd):

	Current regime	New regime (effective from 1 January 2023)
III. Share Schemes of Subsidiaries of Listed Companies		
Subsidiaries' share award schemes	<ul style="list-style-type: none"> Chapter 17 currently governs the share option schemes of listed companies' subsidiaries but not the share award schemes. 	<ul style="list-style-type: none"> Extend Chapter 17 to govern Share Schemes of a principal subsidiary* of the listed companies that are funded by new or existing shares of the principal subsidiary. <p>*A "principal subsidiary" refers to a subsidiary whose revenue, profits or total assets accounted for 75% (or more) of that of the listed company under the percentage ratios in any of the latest three financial years.</p> <ul style="list-style-type: none"> Other than the principal subsidiary, Chapter 14 is applied to address dilution of subsidiary's interest resulting from share grants under subsidiary Share Schemes: <ol style="list-style-type: none"> Any disposal (grants of existing shares of the subsidiary held by the listed company) and deemed disposals (grants of new shares or options over new shares by the subsidiary) would be subject to disclosure (if any percentage ratio based on the size of the scheme mandate is over 5%) and shareholder's approval (if any percentage ratio is over 25%) under Chapter 14. Listed companies will be required to disclose the major terms of the scheme in the announcements and/or shareholders' circulars; and Share Grants to a connected person would be subject to disclosure and/or independent shareholders' approval if grant to such person in a 12-month period exceeds the de minimis thresholds under Chapter 14A.

Table 2: Comparison of current regime and the new regime for listed companies in respect of the key changes pursuant to the Amended Listing Rules (cont'd):

	Current regime	New regime (effective from 1 January 2023)
IV. Other Listing Rules relating to Share Schemes		
Trust arrangements	<ul style="list-style-type: none"> No specified rule governing the application of Chapter 17 for trust arrangements. 	<ul style="list-style-type: none"> Clarify that Chapter 17 applies to Share Schemes involving grants of shares or options to trust or similar arrangements for the benefit of specified eligible participants.
Disclosure of fair value of options in circular relating to adoption of new share option scheme	<ul style="list-style-type: none"> Recommended disclosure in the circular for the fair value of all share options that can be granted under the share option scheme as if they had been granted at the latest practicable date prior to the approval of the share option scheme. Reason for non-disclosure is required if the listed company considers that such disclosure as inappropriate. 	<ul style="list-style-type: none"> Remove the recommended disclosure requirement in the circular.



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