

**Frequently Asked Questions No. 083-2022 to 101-2022 (Released on 29 July 2022)**

**Amendments to Listing Rules relating to Share Schemes of Listed Issuers (effective on 1 January 2023)**

**Status of “Frequently Asked Questions”**

The following frequently asked questions (FAQs) are designed to help issuers to understand and comply with the amended Listing Rule relating to share schemes of listed issuers (effective on 1 January 2023), particularly in situations not explicitly set out in the Rules or where further clarification may be desirable.

Users of the FAQs should refer to the Listing Rules themselves and, if necessary, seek qualified professional advice. The FAQs are not a substitute for the Listing Rules. If there is any discrepancy between the FAQs and the Listing Rules, the Listing Rules prevail. Defined terms used herein have the same meaning as ascribed to them in the relevant Rules and guidance.

In formulating our “responses”, we may have assumed certain underlying facts, selectively summarised the Listing Rules or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be given to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Please contact the Listing Division at the earliest opportunity with any queries.

No.	Release Date	Main Board Rules	GEM Rules	FAQ No.	Query	Response
<b>A. Share schemes funded by issuance of new shares of listed issuers</b>						
<b>Eligible participants</b>						
1	29/7/2022	17.03A(1)	23.03A(1)	083-2022	Can a part-time employee be included as an eligible employee participant?	The Rule does not differentiate between full-time employees and part-time employees. Issuers may define the scope of employee participants for their share schemes to include part-time employees, depending on their remuneration policies. This should be in line with the information relating to employees as disclosed by the issuers under other Rule requirements (e.g. Appendix 16 to the Main Board Rules (GEM Chapter 18)).
2	29/7/2022	17.03A(1), 17.03(12)	23.03A(1), 23.03(12)	084-2022	Under Main Board Rule 17.03A(1) (GEM Rule 23.03A(1)), eligible participants of share schemes do not include former employees of the issuer group.  An individual was granted share options or awards as an eligible employee participant under an issuer's share scheme. Can such grantee continue to hold any outstanding options or awards upon termination of his/her employment with the issuer group (e.g. as a good leaver due to retirement, death or	Yes, if the terms of the scheme provide for it. Under Main Board Rule 17.03(12) (GEM Rule 23.03(12)), the scheme document should set out the circumstances under which options or awards will automatically lapse.  The issuer may continue to make share grants to this individual if he/ she meets the definition of service provider under Main Board Rule 17.03A(1) (GEM Rule 23.03A(1) (i.e. on a continuing and recurring basis in its ordinary and usual course of business) and the criteria set out in the issuers' scheme.

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					disability)? Can the issuer continue to make share grants if the individual continues to provide service to the group?	
3	29/7/2022	17.03A(1)(c)	23.03A(1)(c)	085-2022	Are eligible service providers restricted only to natural persons (and not corporate entities)?	No. A service provider may be a natural person or corporate entity engaged by the issuer group to provide services.
4	29/7/2022	17.03A(2)	23.03A(2)	086-2022	Main Board Rule 17.03A(2) (GEM Rule 23.03A(2)) requires the scheme document to clearly identify each category of service providers and the criteria for determining a person's eligibility under each category. What is the level of detail required to be disclosed by issuers in this regard?	<p>The issuer should clearly describe the types of services provided by service providers that would qualify them for the scheme, for example, insurance agents employed by an insurance company, advisory services provided on drugs under development, or persons providing services on a self-employed basis for specific projects. The issuer should also disclose the factors it applies to assess whether the person provides services on a continuing and recurring basis and in the issuer's ordinary and usual course of business.</p> <p>The scheme document is subject to pre-vetting by the Exchange. Where necessary, the INEDs may be required to provide their views that the inclusion of these service providers as scheme participants fits the purpose of the scheme and is in the interests of the</p>

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						issuer and its shareholders (see note to Main Board Rule 17.02(2)(e) (GEM Rule 23.02(2)(e))).
5	29/7/2022	17.02(2)(e)	23.02(2)(e)	087-2022	<p>Note to Main Board Rule 17.02(2)(e) (GEM Rule 23.02(2)(e)) provides that 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 INEDs 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> <p>(a) Is the issuer required to establish an independent board committee to form such views?</p> <p>(b) Is the issuer required to appoint an independent financial adviser to advise the INEDs?</p>	<p>(a) No. The issuer may obtain the views of its INEDs without establishing an independent board committee.</p> <p>(b) The rule does not mandate an issuer to appoint an independent financial adviser to advise the INEDs. However, as provided under the Corporate Governance Code (CP C.5.6 of Appendix 14 to the Main Board Rules/ Appendix 15 to the GEM Listing Rules), an issuer should, upon reasonable request, provide separate independent professional advice to its directors to assist them perform their duties to the issuer.</p>
<b>Scheme mandate</b>						
6	29/7/2022	13.36, 17.03B	17.39, 23.03B	088-2022	Is the scheme mandate for grants of new shares under Main Board Chapter 17 (GEM Chapter 23) a separate mandate from the general mandate under Main Board Rule 13.36 (GEM Rule 17.39)?	Yes.

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7	29/7/2022	13.36, 17.03B	17.39, 23.03B	089-2022	Can an issuer grant new shares to a person for incentive purposes under a general or specific mandate under Main Board Rule 13.36 (GEM Rule 17.39) if the share grants fall outside the scope of share schemes under Main Board Chapter 17 (GEM Chapter 23)?	Yes, for example, if the grantee does not meet the definition of eligible participant under the Main Board Chapter 17 (GEM Chapter 23).
8	29/7/2022	17.03B, 17.03C, 17.03D	23.03B, 23.03C, 23.03D	090-2022	<p>HKEX guidance letter GL97-18 “Guidance for new applicants in the internet technology sector or that have internet based business models” states that the Exchange would consider favourably granting waivers from, among others, the scheme mandate limit of 10% and individual limit of 1% for schemes of issuers operating in those business sectors.</p> <p>Would the Exchange consider waiver applications from issuers operating other businesses? If yes, what are the criteria for granting these waivers?</p>	The Exchange would consider waiver applications from issuers (including but not limited to technology companies) on a case by case basis, taking into account factors such as the industry norm, the issuer’s remuneration policy and its explanation as to why a higher limit is required.
9	29/7/2022	17.01(1), 17.02(1)(b)	23.01(1), 23.02(1)(b)	091-2022	A new applicant proposes to adopt a post-IPO share scheme and intends to issue new shares to the trustee of the share scheme before	No, as there are no specified participants when the new shares are issued to the trustee. Under Main Board Rule 17.01(1) (GEM Rule 23.01(1)), grants of

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					listing to fund future grants of awards and options to participants after listing. Does the proposal meet the requirements of Main Board Chapter 17 (GEM Chapter 23)?	new shares, or options over new shares, by an issuer must be made to, or for the benefit of, specified participants. Grants to a trust or similar arrangement are allowed only if they are made for the benefit of specified participants. The Exchange would not grant listing approval for the issue of new shares under the proposed scheme which is not in compliance with Main Board Chapter 17 (GEM Chapter 23).
<b>Minimum vesting period</b>						
10	29/7/2022	17.03F	23.03F	092-2022	<p>Under Main Board Rule 17.03F (GEM Rule 23.03F), a scheme document may set out the specific circumstances where options or awards may be granted to employee participants with a shorter (or no) vesting period.</p> <p>What would the Exchange consider as justifiable circumstances for a shorter (or no) vesting period?</p>	<p>The Exchange would consider factors such as the purpose of the schemes, the issuers' remuneration policies and the market practices. This review takes place during the pre-vetting of the shareholders' circular for the approval of the scheme. The following are examples of circumstances where the Exchange may consider to be justifiable:</p> <ul style="list-style-type: none"> <li>(i) Grants of "make-whole" share awards to new joiners to replace the share awards they forfeited when leaving the previous employers;</li> <li>(ii) Grants to a participant whose employment is terminated due to death or disability or occurrence of</li> </ul>

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						<p>any out of control event. In those circumstances the vesting of share awards may accelerate;</p> <p>(iii) Grants of options or awards with performance-based vesting conditions provided in the scheme document, in lieu of time-based vesting criteria;</p> <p>(iv) Grants that are made in batches during a year for administrative and compliance reasons. They may include share awards that should have been granted earlier but had to wait for a subsequent batch. In such cases, the vesting periods may be shorter to reflect the time from which an award would have been granted;</p> <p>(v) 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; and</p> <p>(vi) Grants of options or awards with a total vesting and holding period of more than 12 months.</p>

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<b>Limits on granting options or awards to individual participants and connected persons</b>						
11	29/7/2022	17.04	23.04	093-2022	Do the limits on grants of options or awards to connected persons under Main Board Rule 17.04 (GEM Rule 23.04) apply to grants to persons connected at the subsidiary level?	No. The limits set out in the Rule apply to connected persons at the issuer level only.
12	29/7/2022	17.03D, 17.04	23.03D, 23.04	094-2022	A listed issuer proposes to grant share awards to an individual participant. The participant is an associate of a director of the issuer.  Would the issuer be required to aggregate the grants of awards to the individual participant with any grants to the director within a 12-month period for the purpose of calculating (i) the 1% individual limit and (ii) the limit on grants to connected persons?	No. The grants are for the service of, and to incentivize each participant and as such, the issuer is not required to aggregate such options and awards with those granted to the director.
<b>Transfer of share awards or options</b>						
13	29/7/2022	17.03(17)	23.03(17)	095-2022	Under the note to Main Board Rule 17.03(17) (GEM Rule 23.03(17)), the Exchange may consider granting a waiver to allow a transfer of options or awards to a vehicle (such as 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	The issuer and the grantee must establish appropriate measures to ensure that after the transfer, the options or awards granted would continue to be for the benefit of the participant and any family members of such participant. These may include, among other, measures to restrict further transfers of the options or awards or changes in the

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					<p>purposes) that would continue to meet the purpose of the scheme and comply with other requirements of Chapter 17 (GEM Chapter 23).</p> <p>What are the conditions for granting the waiver?</p>	beneficiaries of the trust upon the grant of the waiver.
<b>B. Share schemes of subsidiaries of listed issuers</b>						
<b>Share schemes of subsidiaries (other than principal subsidiaries)</b>						
14	29/7/2022	14.32A 14.15(1)	19.32A 19.15(1)	096-2022	<p>A subsidiary of an issuer proposes to adopt a scheme for granting share awards and options to participants of the scheme.</p> <p>(a) Which percentage ratios apply for classifying the disposal of the issuer's interests in the subsidiary from the grants of awards and options under the scheme?</p> <p>(b) Which figure should be used as the numerator for calculating the consideration ratio?</p>	<p>(a) The disposal will be classified using the assets, revenue, profit and consideration ratios calculated based on the size of the scheme mandate, i.e., the maximum number of shares of the subsidiary that may be issued or transferred in respect of awards and options to be granted under such mandate.</p> <p>(b) The issuer should use the higher of (i) the fair value of the consideration (i.e. the grant price of share awards or the exercise price of share options); and (ii) the fair value of the interests of the subsidiary to be disposed of (see Main Board Rule 14.15(1) (GEM Rule 19.15(1))).</p>

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15	29/7/2022	14A.76	20.76	097-2022	Is a listed issuer required to comply with the disclosure and/or shareholders' approval requirements under Chapter 14A (GEM Chapter 20) for each grant of options or awards to a connected persons under a subsidiary's scheme?	<p>Yes. Grants of options or awards by a subsidiary to a connected person would be subject to the disclosure and/or independent shareholders' approval requirements under Chapter 14A (GEM Chapter 20) if the grants to such person over a 12-month period exceeds the de minimis thresholds under Main Board Rule 14A.76 (GEM Rule 20.76).</p> <p>In addition, grants of options or awards by a subsidiary to connected persons at the subsidiary level are exempt from the independent shareholders' approval requirement if the conditions set out in Main Board Rule 14A.101 (GEM Rule 20.101) are met.</p>
<b>C. Implementation and transitional arrangements</b>						
16	29/7/2022	-	-	098-2022	The amended Rules relating to share schemes will become effective on 1 January 2023. Can listed issuers and new applicants adopt the amended Rules for the share schemes before the effective date?	Yes. In addition, listed issuers or new applicants (adopting new schemes or refreshing the scheme mandate under existing schemes in 2022) should adopt the amended Rules.
17	29/7/2022	-	-	099-2022	The amended Rules relating to share schemes will become effective on 1 January 2023. What are the transitional arrangements for existing	Yes. See the Attachment for details of the transitional arrangements.

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					share schemes of listed issuers and their subsidiaries adopted before the effective date of the Rule amendments?	
18	29/7/2022	17.03B	23.03B	100-2022	<p>An issuer has adopted (i) a share option scheme and (ii) a share award scheme involving issue of new shares under an advanced mandate/general mandate before the effective date of the Rule amendments.</p> <p>After the effective date of the Rule amendments, can the issuer refresh or seek a new scheme mandate for its share option scheme and share award scheme separately at different times?</p>	No. As the scheme mandate limit of 10% applies to <u>all</u> schemes of the issuer, it must amend all its existing share schemes involving issue of new shares when it refreshes or seeks a new scheme mandate for any one share scheme.
19	29/7/2022	17.03(18)	23.03(18)	101-2022	Is an issuer required to seek shareholders' approval if it proposes to amend the terms of its existing share schemes to comply with Main Board Chapter 17 (GEM Chapter 23) as amended?	<p>Yes. Any alternations to the terms and conditions of a share scheme which are of material nature must be approved by shareholders under Main Board Rule 17.03(18) (GEM Rule 23.03(18)).</p> <p>However, as provided under the transitional arrangements, an issuer can continue to make grants to participants eligible under the amended Chapter 17 (GEM Chapter 23) (see transitional arrangements) under existing schemes</p>

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						until refreshment or expiry of the existing scheme mandate, upon which the issuer would be required to amend the terms of the schemes to comply with the amended Main Board Chapter 17 (GEM Chapter 23) and seek shareholders' approval for a new scheme mandate.

**Attachment: Transitional arrangements for share schemes existing as at 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:- - Announcement <sup>1</sup> - Interim Report <sup>2</sup> - Annual Report <sup>3</sup>	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) <sup>4</sup>	New definition of eligible participants applies for financial years commencing on or after 1 January 2023				<u>Other existing or new share schemes:</u> Grants of share awards or options must comply with Ch14 (based on the size of the scheme mandate for future grants) and/or Ch14A	
Scheme mandate <sup>5</sup>	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 Ch14 (based on the size of the scheme mandate for future grants) and/or Ch14A 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					

<sup>1</sup> See Main Board Rules 17.06A, 17.06B and 17.06C (GEM Rules 23.06A, 23.06B and 23.06C)

<sup>2</sup> See Main Board Rules 17.07 and 17.09 (GEM Rules 23.07 and 23.09)

<sup>3</sup> See footnote 2

<sup>4</sup> See Main Board Rule 17.03A (GEM Rule 23.03A)

<sup>5</sup> See Main Board Rules 17.03B and 17.03C (GEM Rules 23.03B and 23.03C)