

## **Chapter 23**

### **EQUITY SECURITIES**

#### **SHARE OPTION SCHEMES**

##### **Application of Chapter 23**

- 23.01 (1) The following provisions apply, with appropriate modifications, to all schemes involving the grant by a listed issuer or any of its subsidiaries of options over new shares or other new securities of the listed issuer or any of its subsidiaries to, or for the benefit of, specified participants of such schemes (and, for the purpose of this Chapter, “participant” includes any discretionary object of a participant which is a discretionary trust). Any arrangement involving the grant of options to participants over new shares or other new securities of a listed issuer or any of its subsidiaries which, in the opinion of the Exchange, is analogous to a share option scheme as described in this rule 23.01 must comply with the requirements of this Chapter.
- (2) Where the shares or other securities of the listed issuer or the subsidiary concerned are also listed on another stock exchange or the Main Board, the more onerous requirements shall prevail and be applied in the event of a conflict or inconsistency between the requirements of this Chapter and the requirements of the other stock exchange or the Main Board.
- (3) The term “grant” includes “offer”, “issue” and any other term used by the scheme to describe the grant of options under it.
- (4) Where there are two or more listed issuers within a group, each of the listed issuers must comply with the provisions of this Chapter in respect of its schemes and the schemes of any of its subsidiaries (whether the subsidiary concerned is listed on the Exchange or not). In particular, where the provisions require the scheme or any related matters to be approved by shareholders/independent non-executive directors of a listed issuer whose holding company is also listed on the Exchange, such scheme or matters must simultaneously be approved by the shareholders/independent non-executive directors of such listed issuer’s holding company.

##### **Adoption of a new scheme**

- 23.02 (1) (a) The scheme of a listed issuer or any of its subsidiaries must be approved by shareholders of the listed issuer in general meeting. The listed issuer must publish an announcement on the outcome of the shareholders’ meeting for the adoption of the scheme as soon as possible, but in any event not later than the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following such meeting, in accordance with the publication requirements in Chapter 16.
- (b) A scheme adopted by a new applicant does not need to be approved by its shareholders after listing. However, all the terms of the scheme must be clearly set out in the prospectus. Where the scheme does not comply with the provisions of this Chapter, options granted before listing may continue to be valid after listing (subject to the Exchange granting approval for listing of the new applicant’s securities to be issued upon exercise of such options) but no further options may be granted under the scheme after listing. The new applicant must also disclose in the prospectus full details of all outstanding options and their potential dilution effect on the shareholdings upon listing as well as the impact on the earnings per share arising from the exercise of such outstanding options.

*Notes: 1 The Exchange reserves the right to review and consider these matters on a case-by-case basis.*

*2 Where the new applicant is a subsidiary of a listed issuer, the scheme must be approved by shareholders of the listed issuer in general meeting. The terms of the scheme must comply with the provisions of this Chapter including, in particular, rule 23.03(9) (the basis of determination of the exercise price).*

- (2) The scheme document itself does not need to be circulated to shareholders of the listed issuer. However, if the scheme document is not so circulated, it must be published on the Exchange's website and the issuer's own website for a period of not less than 14 days before the date of the general meeting and made available for inspection at the general meeting and the terms of the shareholders' resolution must approve the scheme as described in the summary circulated to the shareholders of the listed issuer. The circular must include the following information:
- (a) the provisions described in rule 23.03;
  - (b) an explanation as to how the terms of the scheme, in particular, how the provisions described in rules 23.03(6), (7) and (9), will serve the purpose of the scheme as set out in the scheme document;
  - (c) information relating to any directors of the listed issuer who are trustees of the scheme or have a direct or indirect interest in the trustees; and
  - (d) a statement in the form set out in paragraph 2 of Appendix 1, Part B.
- (3) Where the scheme involves options over listed securities, the listed issuer is encouraged to disclose in the circular the value of all options that can be granted under the scheme as if they had been granted at the latest practicable date prior to the approval of the scheme. Where the listed issuer considers that disclosure of the value of options is not appropriate, it must state the reason for such non-disclosure in the circular. The listed issuer should use the Black-Scholes option pricing model, the binomial model or a comparable generally accepted methodology to calculate the value of options. The information described in (1), (2) and (4) in the Note to rule 23.08 should also be disclosed. The latest practicable date should be taken as the measurement date.
- (4) All circulars and announcements required under this Chapter must contain on the front cover or inside front cover of the circular or at the top of the announcement (as the case may be) a prominent and legible disclaimer in the following terms:
- "Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this [circular/announcement], make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this [circular/announcement]."
- (5) The listed issuer must provide a summary of the terms of the scheme to all participants on joining the scheme (and a copy of the scheme document to any participant who requests such a copy). The listed issuer must provide to all participants all details relating to changes in the terms of the scheme during the life of the scheme immediately upon such changes taking effect.

## Terms of the scheme

23.03 The scheme document must include the following provisions and/or provisions as to the following (as the case may be):—

- (1) the purpose of the scheme;
- (2) the participants of the scheme and the basis of determining the eligibility of participants;

*Note: Listed issuers are reminded to seek legal advice on the prospectus requirements of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, particularly where participation in the scheme is not restricted to executives and employees.*

- (3) the total number of securities which may be issued upon exercise of all options to be granted under the scheme, together with the percentage of the issued shares that it represents at the date of approval of the scheme;

*Notes: 1. The total number of securities which may be issued upon exercise of all options to be granted under the scheme and any other schemes must not in aggregate exceed 10 per cent of the relevant class of securities of the listed issuer (or the subsidiary) in issue as at the date of approval of the scheme (alternatively, in respect of a scheme of a subsidiary that will become effective only upon its separate listing, the 10% limit may be calculated by reference to the relevant class of securities of the subsidiary in issue as at the date of its listing). Options lapsed in accordance with the terms of the scheme will not be counted for the purpose of calculating the 10% limit.*

*The listed issuer may seek approval by its shareholders in general meeting for “refreshing” the 10 per cent limit under the scheme. However, the total number of securities which may be issued upon exercise of all options to be granted under all of the schemes of the listed issuer (or the subsidiary) under the limit as “refreshed” must not exceed 10 per cent of the relevant class of securities in issue as at the date of approval of the limit. Options previously granted under the schemes (including those outstanding, cancelled, lapsed in accordance with the scheme or exercised options) will not be counted for the purpose of calculating the limit as “refreshed.” The listed issuer must send a circular to its shareholders containing the information required under rule 23.02(2)(d) and the disclaimer required under rule 23.02(4).*

*A listed issuer may seek separate approval by its shareholders in general meeting for granting options beyond the 10 per cent limit provided the options in excess of the limit are granted only to participants specifically identified by the listed issuer before such approval is sought. The listed issuer must send a circular to the shareholders containing a generic description of the specified participants who may be granted such options, the number and terms of the options to be granted, the purpose of granting options to the specified participants with an explanation as to how the terms of the options serve such purpose, the information required under rule 23.02(2)(d) and the disclaimer required under rule 23.02(4).*

2. *The limit on the number of securities which may be issued upon exercise of all outstanding options granted and yet to be exercised under the scheme and any other schemes must not exceed 30 per cent of the relevant class of securities of the listed issuer (or the subsidiary) in issue from time to time. No options may be granted under any schemes of the listed issuer (or the subsidiary) if this will result in the limit being exceeded.*

3. *If the listed issuer (or the subsidiary) conducts a share consolidation or subdivision after the 10% limit has been approved in general meeting, the maximum number of securities that may be issued upon exercise of all options to be granted under all of the schemes of the listed issuer (or the subsidiary) under the 10% limit as a percentage of the total number of issued shares at the date immediately before and after such consolidation or subdivision shall be the same.*

(4) the maximum entitlement of each participant under the scheme;

*Note: Unless approved by shareholders in the manner set out in this Note to rule 23.03(4), the total number of securities issued and to be issued upon exercise of the options granted to each participant (including both exercised and outstanding options) in any 12-month period must not exceed 1 per cent of the relevant class of securities of the listed issuer (or the subsidiary) in issue. Where any further grant of options to a participant would result in the securities issued and to be issued upon exercise of all options granted and to be granted to such person (including exercised, cancelled and outstanding options) in the 12-month period up to and including the date of such further grant representing in aggregate over 1 per cent of the relevant class of securities in issue, such further grant must be separately approved by shareholders of the listed issuer in general meeting with such participant and his close associates (or his associates if the participant is a connected person) abstaining from voting. The listed issuer must send a circular to the shareholders and the circular must disclose the identity of the participant, the number and terms of the options to be granted (and options previously granted to such participant), the information required under rule 23.02(2)(d) and the disclaimer required under rule 23.02(4). The number and terms (including the exercise price) of options to be granted to such participant must be fixed before shareholders' approval and the date of board meeting for proposing such further grant should be taken as the date of grant for the purpose of calculating the exercise price under Note 1 to rule 23.03(9).*

(5) the period within which the securities must be taken up under the option, which must not be more than 10 years from the date of grant of the option;

(6) the minimum period, if any, for which an option must be held before it can be exercised;

(7) the performance targets, if any, that must be achieved before the options can be exercised or, if none, a negative statement to that effect;

(8) the amount, if any, payable on application or acceptance of the option and the period within which payments or calls must or may be made or loans for such purposes must be repaid;

(9) the basis of determination of the exercise price;

*Notes: 1 Subject to Note 2 to rule 23.03(9), 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. For the purpose of calculating the exercise price where an issuer has been listed for less than five business days, the new issue price shall be used as the closing price for any business day falling within the period before listing.*

2 *Note (1) to rule 23.03(9) does not apply to a share option scheme of a subsidiary of the listed issuer if the subsidiary's securities are not listed on the Exchange. However, the scheme must provide that the exercise price of options granted after the listed issuer has resolved to seek a separate listing of such subsidiary on the Exchange, the Main Board or an overseas stock exchange and up to the listing date of the subsidiary must be not lower than the new issue price (if any). In particular, any options granted during the period commencing six months before the lodgement of Form 5A (or its equivalent for listing on the Main Board or the overseas stock exchange) up to the listing date of the subsidiary are subject to this requirement. The scheme must therefore provide for any necessary adjustment of the exercise price of options granted during such period to not lower than the new issue price.*

- (10) the voting, dividend, transfer and other rights, including those arising on a liquidation of the listed issuer, attaching to the securities and (if appropriate) any such rights attaching to the options themselves;
- (11) the life of the scheme, which must not be more than 10 years;
- (12) the circumstances under which options will automatically lapse;
- (13) a provision for adjustment of the exercise price or the number of securities subject to options already granted and to the scheme in the event of a capitalisation issue, rights issue, sub-division or consolidation of shares or reduction of capital;

*Note: Any adjustments required under rule 23.03(13) must give a participant the same proportion of the equity capital as that to which that person was previously entitled, but no such adjustments may be made to the extent that a share would be issued at less than its nominal value (if any). The issue of securities as consideration in a transaction may not be regarded as a circumstance requiring adjustment. In respect of any such adjustments, other than any made on a capitalisation issue, an independent financial adviser or the listed issuer's auditors must confirm to the directors in writing that the adjustments satisfy the requirements set out in this note.*

- (14) a provision for the cancellation of options granted but not exercised;

*Note: Where a listed issuer cancels options and issues new ones to the same option holder, the issue of such new options may only be made under a scheme with available unissued options (excluding the cancelled options) within the limit approved by shareholders as mentioned in Note 1 to rule 23.03(3).*

- (15) unless the securities subject to the scheme are identical with other securities, a provision that they must be separately designated;
- (16) where there is a provision for termination of the operation of the scheme before the end of its life, a provision for the treatment of options granted under the scheme but not yet exercised at the time of termination;

*Note: Details of the options granted, including options exercised or outstanding, under the scheme and (if applicable) options that become void or non-exercisable as a result of the termination must be disclosed in the circular to shareholders seeking approval of the first new scheme to be established after such termination.*

- (17) transferability of options; and

*Note: Options granted under the scheme must be personal to the respective grantee. No options may be transferred or assigned.*

- (18) the specific terms of the scheme that can be changed by directors or scheme administrators without the approval of shareholders of the listed issuer in general meeting.

*Notes: 1 The provisions relating to the matters set out in this rule 23.03 cannot be altered to the advantage of participants without the prior approval of shareholders of the listed issuer in general meeting.*

*2 Any alterations to the terms and conditions of a share option scheme of a listed issuer or any of its subsidiaries which are of a material nature or any change to the terms of options granted must be approved by the shareholders of the listed issuer, except where the alterations take effect automatically under the existing terms of the scheme.*

*3 The amended terms of the scheme or the options must still comply with the relevant requirements of this Chapter 23.*

*4 Any change to the authority of the directors or scheme administrators in relation to any alteration to the terms of the scheme must be approved by shareholders of the listed issuer in general meeting.*

**Granting options to a director, chief executive or substantial shareholder of a listed issuer, or any of their respective associates**

- 23.04 (1) In addition to the shareholders' approval set out in Note 1 to rule 23.03(3) and the Note to rule 23.03(4), each grant of options to a director, chief executive or substantial shareholder of a listed issuer, or any of their respective associates, under a scheme of the listed issuer or any of its subsidiaries must comply with the requirements of this rule 23.04(1). Each grant of options to any of these persons must be approved by the independent non-executive directors of the listed issuer (excluding independent non-executive director who is the grantee of the options). Where any grant of options to a substantial shareholder or an independent non-executive director of the listed issuer, or any of their respective associates, would result in the securities issued and to be issued upon exercise of all options already granted and to be granted (including options exercised, cancelled and outstanding) to such person in the 12-month period up to and including the date of such grant:

- (a) representing in aggregate over 0.1% of the relevant class of securities in issue; and
- (b) (where the securities are listed on the Exchange), having an aggregate value, based on the closing price of the securities at the date of each grant, in excess of HK\$5 million,

such further grant of options must be approved by shareholders of the listed issuer. The listed issuer must send a circular to the shareholders. The grantee, his associates and all core connected persons of the listed issuer must abstain from voting in favour at such general meeting.

- (2) Listed issuers must comply with the requirements set out in rules 17.47A, 17.47B and 17.47C.
- (3) The circular must contain:
- (a) details of the number and terms (including the exercise price) of the options to be granted to each participant, which must be fixed before the shareholders' meeting and the date of the board meeting for proposing such further grant is to be taken as the date of grant for the purpose of calculating the exercise price under Note 1 to rule 23.03(9);

*Note: The description of the terms of the options must include the information required under rules 23.03(5) to 23.03(10).*

- (b) a recommendation from the independent non-executive directors of the listed issuer (excluding independent non-executive director who is the grantee of the options) to the independent shareholders as to voting;
- (c) the information required under rules 23.02(2)(c) and (d) and the disclaimer required under rule 23.02(4); and
- (d) the information required under rule 2.28.

*Notes: 1 Shareholders' approval as required under rule 23.04(1) is also required for any change in the terms of options granted to a participant who is a substantial shareholder or an independent non-executive director of the listed issuer, or any of their respective associates.*

*2 The requirements for the granting of options to a director or chief executive of a listed issuer set out in rules 23.04(1), (2) and (3) do not apply where the participant is only a proposed director or chief executive of the listed issuer.*

### **Restriction on the time of grant of options**

23.05 An issuer may not grant any options after inside information has come to its knowledge until (and including) the trading day after it has announced the information. In particular, it may not grant any option during the period commencing one month immediately before the earlier of:

- (1) the date of the board meeting (as such date is first notified to the Exchange under rule 17.48) for approving the issuer's results for any year, half-year or quarter-year period or any other interim period (whether or not required under the GEM Listing Rules); and
- (2) the deadline for the issuer to announce its results for any year, half year or quarter-year period under rule 18.49, 18.78 or 18.79 or any other interim period (whether or not required under the GEM Listing Rules),

and ending on the date of the results announcement.

*Note: No option may be granted during any period of delay in publishing a results announcement.*

### **Despatch of circular**

23.06 The circular required under this Chapter should be despatched to the shareholders no later than the date on which the listed issuer gives notice of the general meeting to approve the scheme or related matters as required under this Chapter.

### **Announcement on grant of options**

23.06A As soon as possible upon the granting by the listed issuer of an option under the scheme, the listed issuer must publish an announcement in accordance with the requirements of Chapter 16 setting out the following details:

- (1) date of grant;
- (2) exercise price of options granted;
- (3) number of options granted;
- (4) market price of its securities on the date of grant;
- (5) where any of the grantees is a director, chief executive or substantial shareholder of the listed issuer, or an associate of any of them, the names of such grantees and the number of options granted to each of them; and
- (6) validity period of the options.

### **Disclosure requirements**

23.07 In relation to each scheme of a listed issuer or any of its subsidiaries, the listed issuer must disclose in its annual report and half-year report the following information in relation to: (i) each of the directors, chief executive or substantial shareholders of the listed issuer, or their respective associates; (ii) each participant with options granted in excess of the individual limit; (iii) aggregate figures for employees working under employment contracts that are regarded as "continuous contracts" for the purposes of the Employment Ordinance; (iv) aggregate figures for suppliers of goods or services; and (v) all other participants as an aggregate whole:—

- (1) particulars of outstanding options at the beginning and at the end of the financial year/period, including number of options, date of grant, vesting period, exercise period and exercise price;
- (2) particulars of options granted during the financial year/period, including number of options, date of grant, vesting period, exercise period and exercise price and (for options over listed securities) the closing price of the securities immediately before the date on which the options were granted;
- (3) the number of options exercised during the financial year/period with the exercise price and (for options over listed securities) the weighted average closing price of the securities immediately before the date on which the options were exercised;
- (4) the number of options cancelled during the financial year/period together with the exercise price of the cancelled options; and
- (5) the number of options which lapsed in accordance with the terms of the scheme during the financial year/period.

23.08 In respect of options granted during the financial year/period over listed securities, the listed issuer is encouraged to disclose in its annual report and half-year report the value of options granted to participants set out in (i) to (v) of rule 23.07 during the financial year/period, and the accounting policy adopted for the share options. Where the listed issuer considers that disclosure of value of options granted during the financial year/period is not appropriate, it must state the reason for such non-disclosure in its annual report or half-year report.

*Note: In respect of the disclosure of the value of options in annual report or half-year report, the listed issuer should use the Black-Scholes options pricing model, the binomial model or a comparable generally accepted methodology to calculate the value of options. The listed issuer should also disclose, in the annual report or half-year report, the following information:*

- (1) a description of the model and significant assumptions used to estimate the value of the option, taking into account factors such as risk-free interest rate, expected life, expected volatility and expected dividend, if applicable;
  - (i) Where the calculation of the value is referable to a risk-free interest rate, such rate should be the rate prevailing on debt securities issued by the state, such as the Exchange Fund Notes in the case of Hong Kong based entities.
  - (ii) The listed issuer should set out the expected volatility used in calculating the value, with an explanation of any deviations from the historical volatility of the securities. The listed issuer may choose the period of time that it considers appropriate for calculating such historical volatility. However, such period may not be less than one year or, where securities have been listed for less than one year from the date of commencement of dealings in such securities, such period is to be from the date of commencement of such dealings to the date of the calculation.
  - (iii) Expected dividends should be based on historical dividends, with an explanation of any adjustments made for publicly available information indicating that future performance is reasonably expected to differ from past performance.
- (2) the measurement date which should be the date on which the options were granted;
- (3) the treatment of forfeiture prior to the expiry date; and
- (4) a warning statement with regard to the subjectivity and uncertainty of the values of options to the effect that such values are subject to a number of assumptions and with regard to the limitation of the model.

23.09 The listed issuer must include in its annual report a summary of each share option scheme approved by its shareholders setting out:

- (1) the purpose of the scheme;
- (2) the participants of the scheme;
- (3) the total number of securities available for issue under the scheme together with the percentage of the issued shares that it represents as at the date of the annual report;
- (4) the maximum entitlement of each participant under the scheme;

- (5) the period within which the securities must be taken up under an option;
- (6) the minimum period, if any, for which an option must be held before it can be exercised;
- (7) the amount, if any, payable on application or acceptance of the option and the period within which payments or calls must or may be made or loans for such purposes must be repaid;
- (8) the basis of determining the exercise price; and
- (9) the remaining life of the scheme.

#### **Transitional arrangements**

23.10 [Repealed 1 October 2020]

23.11 Listed issuers must comply with the terms of their share option schemes in addition to the requirements of this Chapter 23. A breach of any such terms or requirements will constitute a breach of the GEM Listing Rules.