

TRICOR SEMINAR 2008
Questions for the Speakers

Question relating to Hong Kong Listing Rule Amendments

Q1: When will the proposed changes on Listing Rules be implemented?

A: On 28 November 2008, Hong Kong Exchanges and Clearing Limited (“HKEx”) published its “Consultation Conclusions on Proposals in the 2008 Combined Consultation Paper”, and associated amendments to the Main Board and GEM Listing Rules (the “Rule Amendments”) which took effect on 1 January 2009. On 30 December 2008, HKEx announced its decision to defer the implementation of one of the Rule Amendments i.e. the extension of “black out” period until 1 April 2009.

Questions relating to “Board Portal”

Q2: What is the cost of the “Board Portal”?

A: The fully-customisable board portal presented during the “Technology in the board room” seminar is called “Blueprint OnBoard”, and was developed by ICSA Software International Limited, the UK software arm of the Institute of Chartered Secretaries and Administrators.

Prices for Blueprint OnBoard generally start from 20,000 GBP depending on the number of board users and administrators – see below.

The licence for Blueprint OnBoard bands users into two categories:

- ***Board users* – directors and senior executives, who are given secure online access to board papers and archived records, “any place, any time”; and**
- ***Administrator* – company secretaries & board administrators, who use the board portal for managing meetings and distributing papers.**

Blueprint OnBoard is a web-based software application, which can be installed on a corporate network and managed by a company’s own IT department, or outsourced to ICSA Software International Limited using its dedicated secure hosting service.

Further information is available online at <http://www.icsasoftware.com/onboard>.

Q3: Is it developed by Tricor?

A: “Blueprint OnBoard” was developed by, and is licensed by, ICSA Software International Limited, the UK software arm of the Institute of Chartered Secretaries and Administrators.

Stephen Page, a partner from Tricor’s UK office, Tricor Aldbridge LLP, works closely with ICSA Software to develop the board portal - “Blueprint OnBoard” - which was launched in February 2008.

A number of listed and non-listed companies in the UK, USA and Australia, many of whom are multinationals, have purchased Blueprint OnBoard.

Further information is available online at

<http://www.icsasoftware.com/onboard>.

Questions relating to Share Award Schemes

Q4: These schemes generally require acquisition of existing shares by the company / trust. In Hong Kong, since companies are not allowed to hold Treasury Shares, do we need a rather complicated trust structure to serve the purpose?

A: It is common that a simple trust would be set up for the purpose of establishing a share award scheme. The trust administered by its trustee is regarded as a separate entity from the listed issuer and therefore the trust arrangement will not involve any treasury shares.

Q5: In Malaysia, Singapore and the United Kingdom etc, the laws / listing requirements have been advanced to allow companies holding treasury shares. Should Hong Kong also be adopting treasury share mechanism?
(Note: In Singapore, companies can also enjoy tax benefit if companies use treasury shares for employee share benefit).

A: There is currently no provision in respect of treasury shares for Hong Kong incorporated companies under the Hong Kong Companies Ordinance. The speaker is not aware of any treasury share mechanisms adopted by Hong Kong listed companies which are incorporated in Bermuda, Cayman Islands or the PRC. However, the latest development in the PRC appears to provide more flexibility for share schemes as employee incentives.

Q6: Would this constitute connected transaction under the Listing Rules if the eligible participant of the scheme comprises directors (who are connected person)?

A: Granting shares under a share award scheme is not normally treated as a “transaction” between the listed issuer and the grantees. Therefore, a share award scheme usually does not involve connected transactions even if the grantees are directors or other connected persons.

Q7: Are there any rules governing the share award scheme?
How to set up the share award scheme?
How to comply with the rules?
Any contradiction between the repurchase share scheme and share award scheme?

A: The current Listing Rules relating to share option schemes (i.e. Chapter 17 of Main Board Rules and Chapter 23 of GEM Rules) do not usually apply to a share award scheme.

In order to set up a share award scheme, the listed issuer must adopt and approve the rules of the scheme and set up a trust. A trust deed would be executed between the listed issuer and the trustee whereby the trustee is appointed for administering the share award scheme, including but not limited to, purchasing shares from the open market, holding shares during vesting period and transferring shares to eligible participants when the necessary criteria are fulfilled.

A share award scheme is not a share repurchase scheme because the subject shares are bought not by the listed issuer but by the trustee. After the purchase, such shares still exist and are held by the trustee until they are transferred to the eligible participants. This is contrasted with a share repurchase where the shares so purchased by the listed issuer are required to be cancelled.

Q8: How to count the restricted stock units?
What are the procedures?
Will it be deemed as insider dealing/trading?

A: In the most simple share award scheme, the subject is already the listed issuer's shares, but not units.

There are restricted share unit scheme where the subject is expressed in terms of units. Each such unit usually refers to a right to receive a share granted to the participant. The share can be old or new share. This marks the difference between a share award scheme and a share unit scheme.

As for the procedures, please refer to answer to question no. 7.

Making any grant to participants during "black out" periods (which are extended with effect from 1 April 2009) or when there is unpublished price sensitive information should normally be prohibited by the scheme.

Q9: If repurchase mandate be excluded in Listing Rules, how can the company proceeds if it wants to arrange to buy bulk shares?

A: Under the share award scheme, the shares will be purchased by the trustee but not the listed issuer. Therefore, the scheme does not need a repurchase mandate.

Q10: What incentive will be leasing to the employee if a company which was listed 1-2 years ago granted share option to its employees with a much higher exercise price then at present or even at the exercise date. What do you advise to the company?

A: That company might agree with the employees to cancel the existing options which are already “under the water” and at the same time grant them equivalent number of options. The exercise price of such options can then be based on the current share price which might be lower than usual. The downside is that the new grants are utilizing the 10% limit of the share option scheme and may have to get the limit refreshed at the appropriate time, because the cancelled options cannot be counted back to the limit.

If the company now sets up a share award scheme, shares might be purchased at the current low price. This, however, will involve cash outlay.

In considering the different alternatives, issues like tax implications on the part of the employees and accounting implications on the part of the company will have to be taken into account.

Q11: Will it still be reasonable for the company to charge off the share-based compensation to its income statement as the cost was valued high at the grant date of the scheme which at present the share price has dropped say by 70%?

A: The basis should be provided in the applicable accounting standards.

Q12: Will restricted share award scheme / other award scheme be more appropriate at time like nowadays volatile markets?

A: Share schemes are normally used as long-term incentive programs for employees. There are quite some factors that the board would like to take into account in this regard, such as the cash expenditure required to operate a share award scheme, the estimated turnover of staff members who do not have the benefit of the existing or a future scheme, the overall morale of the employees, the correlation of staff performance to share price, estimation on the trend of share price, the size of employees' basic salaries vs. benefits from any scheme, accounting implications, tax issues, etc.