

Part B Consultation Questions

Please reply to the questions below that are raised in the Concept Paper downloadable from the HKEx website at: [add link]. Please indicate your preference by ticking the appropriate boxes.

Where there is insufficient space provided for your comments, please attach additional pages.

We encourage you to read all of the following questions before responding.

1. Should the Exchange¹ in no circumstances allow companies to use WVR structures?

Yes (in no circumstances allow companies to use WVR structures)

No

Please give reasons for your views below.

¹ References to “the Exchange” in this Questionnaire mean The Stock Exchange of Hong Kong Limited, a HKEx subsidiary.

Besides being a general principle of the Listing Rules, equitable treatment of all shareholders is one of the key principles for good corporate governance. To attain good corporate governance, all shareholders of the same series of a class should be treated equally, minority shareholders should be protected from abusive actions and there should have effective means of redress.

WVR structures are designed to allow certain persons (most likely, founders of a company) to maintain control of the company while going to the public market for financing. By doing so, not only the economic risk of the founders is not commensurate with their voting power, the level of corporate governance of the company is hindered due to the inequality treatment of shareholders. Besides, there is no strong justification for the founders to resist dilution of rights when the company is introducing new shareholders with his explicit consent.

There is argument that other countries (e.g. the US) permitting WVR structures for listed companies while effective shareholders protection can still be maintained. However, attention be drawn to the fact that different legal system and overall regulatory frameworks are being used by these countries and WVR structures can easily lead to abuse particularly in countries where minority shareholders protections are not mature. In the US, shareholders can take private legal actions and collectively class actions to achieve redress for damages after abuse has occurred. However, in Hong Kong, although the Securities and Futures Commission can initiate legal actions on behalf of listed company shareholders under the Securities and Futures Ordinance, yet, no statutory provisions is available which give minority shareholders certain grounds for pursuing private legal actions or class actions against company managers or controllers in case of abuse. Shareholders protections in Hong Kong is mostly relied on preventive measures (e.g. the Listing Rules) instead of post-event redress (e.g. private legal actions). If the preventive measures are to be changed so as to allow the use of WVR structures without other relevant changes in post-event redress, shareholders protection in Hong Kong may be threatened and thus reducing the competitiveness of Hong Kong as a better choice of listing place.

As one of the leading international financial centres in the world, maintaining high standards of corporate governance as well as providing a sound securities market with sufficient level of shareholders protection against extraction of private benefits by insiders will enhance the competitiveness of Hong Kong as a whole.

Please only answer the remaining questions if you believe there are circumstances in which companies should be allowed to use WVR structures.

2. Should the Exchange permit WVR structures:

- (a) for all companies, including existing listed companies; or
- (b) only for new applicants (see paragraphs 147 to 152 of the Concept Paper);

or

(c) only for:

- (i) companies from particular industries (e.g. information technology companies) (see paragraphs 155 to 162 of the Concept Paper), please specify below which industries and how we should define such companies;

or

- (ii) “innovative” companies (see paragraphs 163 to 164 of the Concept Paper), please specify how we should define such companies below;

or

- (iii) companies with other specific pre-determined characteristics (for example, size or history), please specify with reasons below;

or

- (d) only in “exceptional circumstances” as permitted by current Listing Rule 8.11² (see paragraph 81 of the Concept Paper) and, if so, please give examples below.

² GEM Rule 11.25.

Please give reasons for your views below.

If you wish, you can choose more than one of the options (b), (c) and (d) above to indicate that you prefer a particular combination of options.

3. If a listed company has a dual class share structure with unequal voting rights at general meetings, should the Exchange require any or all of the restrictions on such structures applied in the US (see the examples at paragraph 153 of the Concept Paper), or others in addition or in substitution?

Please identify the restrictions and give reasons for your views below.

4. Should other WVR structures be permissible (see Chapter 5 of the Concept Paper for examples), and, if so, which ones and under what circumstances?

Please give reasons for your views below. In particular, how would you answer Question 2 and Question 3 in relation to such structures?

5. Do you believe changes to the corporate governance and regulatory framework in Hong Kong are necessary to allow companies to use WVR structures (see paragraphs 67 to 74 and Appendix V of the Concept Paper)?

Yes

No

If so, please specify these changes with reasons below.

6. Do you have any comments or suggestions regarding the additional matters discussed in paragraphs 33 to 47 of the Concept Paper:

(a) using GEM, a separate board, or a professional board to list companies with WVR structures (paragraphs 33 to 41 of the Concept Paper); and

(b) the prospect of overseas companies seeking to list for the first time on the Exchange with a WVR structure or seeking a further primary or secondary listing here (see paragraphs 44 to 47 of the Concept Paper)?

7. Do you have any other comments or suggestions regarding WVR structures?

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