

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.

In Hong Kong, the "one-share, one-vote" policy has long been recognized as an appropriate and fair mechanism for investor protection and corporate governance.

However, over the decades, globalization, free trade and free markets have shaped the way international trade today is being conducted and also exerted a significant influence on how capital markets are being operated. Accordingly, investors can now make capital investments in nearly every major market without being limited by their physical locations.

As many key markets continue to evolve and develop to attract capital, we believe it is timely for the Exchange to explore the concept of weighted voting rights (WVR) structures. It is important for the Exchange to ensure it is strategically positioned to be the global exchange of choice by expanding its investment product offerings (such as new asset classes) and attracting a broader range of players across different markets.

While we support exploring the role of WVR structures, we believe this has to be balanced with an appropriate review and focused enhancement of the relevant corporate governance and investor protection rules for these entities. Accordingly enhancing the safeguards provided by corporate governance and disclosure responsibilities as well as transparency with respect to the voting rights and limitations is essential in order to ensure we achieve the right balance of understanding between shareholders with different voting rights. We would also like to see enhanced educational support for investors as part of the process to highlight the financial implications and aid transparency.

An enhanced corporate governance structure with appropriate and transparent disclosures for WVR-structured companies would help nurture investor's confidence towards WVR-structured companies enabling listed entities more flexibility in raising capital.

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

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.

Please give reasons for your views below.

Allowing new applicants to use WVR structures initially before considering expanding to other listed companies will help streamline and facilitate the legislation process of WVR structures and introduction of new rules.

The structures should not be applied to all listed companies as the existing investors made their investment decision based on the "one-share, one-vote" structure. Unless there are strong and compelling reasons, it is difficult for the current listed companies to convince investors to revamp the structure and voting rights entirely while maintain their investment. Confidence of shareholders especially the low risk-takers and those with relatively less investor education will be shaken, leading to controversies and disputes during the conversion process.

If allowing the structures to be used only among companies from particular industries, innovative companies, and companies with other specific pre-determined characteristics, it may be difficult to apply in practice as industry classification of some businesses may overlap or become unclear due to business integration over time.

Furthermore, opening the structures to companies regardless of their industry sectors will eliminate the need of making another regulatory consultation and revision whenever needs arise from businesses from other new and emerging sectors in future.

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.

² GEM Rule 11.25.

We believe the governance obligations of WVR-structured companies should be expanded to provide more confidence and transparency to shareholders, regulators and the market to balance the additional rights.

The Concept Paper sets out different types of WVR structures. Rather than limiting the options, we believe the focus should be on determining the appropriate corporate governance checks and balances as well as disclosures that will enable investors to fully understand the practical consequences of the WVR structures. At the same time companies will understand their obligations and responsibilities when choosing a WVR structure and then determine if they should adopt it from the perspectives of regulatory compliance and their long-term development, competitiveness and sustainability.

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?

There needs to be comprehensive requirements around disclosure on such matters as structures, rationales, merits, and risks. There should also be regulations around the matters on which WVR structure/s may apply together with additional governance and investor protection measures for specific types of WVR. Given those conditions there may be a number of WVR structures that may be permissible.

In line with our comments in Q2 and Q3, companies would need to assume more responsibilities and be more transparent about their disclosure if they were to use a WVR structure to ensure the concerns from the perspectives of investor protection and corporate governance are met.

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.

There are different mechanisms and measures for the Exchange's consideration in allowing WVR structures for IPO applicants and are not limited to the following:

1. More transparency to investors, market and regulators
 - a. Requiring companies to state when and under what circumstances the special voting rights will be available to be exercised and their corresponding risks in the IPO prospectus;
 - b. Stating and explaining the restrictions discussed under paragraph 153 that are not taken by the IPO applicants and incorporate where relevant as disclosure in the IPO prospectus on how this would affect the investors' rights and risks to facilitate decision-making process of the investors; and,
 - c. Encouraging these issuers to have quarterly operating and financial disclosure after listing.

2. Uplifting standard of corporate governance
 - a. Increasing the number of independent non-executive directors in these companies for a more balanced view on governance;
 - b. Assessing whether certain 'recommended best practices' under the 'Code on Corporate Governance Practices' (the "Code") could be moved up to the 'code provision' category; and,
 - c. Assessing the need for additional requirements under the Code for WVR structures.

3. Refinement of regulatory framework to accommodate WVR structured companies
 - a. Raising the cost of a minimum board lot size at time of listing for WVR-structured applicants from HK\$2,000 for general listing applicants under the current practice to a more significant amount;
 - b. Extending the moratorium for individuals or corporate shareholders that hold more/ preferential voting rights;
 - c. Limiting the issuance of shares with higher/ preferential voting rights after listing, such as not allowing companies to issue these share class/es and removing the additional voting rights after these shares were sold;
 - d. Setting a valid period for using the special voting rights such as only at times when the company's founder is still around;
 - e. Assigning a different class of stock code or stock symbol for WVR companies to help investors differentiate the investment risk. This is a similar practice to assigning '8' to the beginning of the stock code of a Growth Enterprise Market (GEM) issuer;
 - f. Revising the existing Code on Takeovers and Mergers and Listing Rules to address the exception as a result of WVR structures. For instance, the threshold percentage that will trigger a general offer to all shareholders of a listed company for the shareholding not previously owned by the acquirer, as well as the threshold for approval of connected transactions.
 - g. Exploring the existing legal regimes in Hong Kong to balance investors' protection for WVR structures.

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

Please refer to the comments below.

- (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)?

As stated in our response earlier, we are suggesting opening up the adoption of the WVR structures to all upcoming IPO applicants to enable Hong Kong to diversify its investment offerings. This encompasses companies that would like to apply for listing on Main Board (MB) or the GEM, and seek for primary and secondary listings which are eligible under the current regulatory framework.

Over the years, the GEM has nurtured many fast-growing and high-flying local and Chinese businesses, which initially did not meet the listing requirements of MB. The bourse acted effectively as a springboard for some of these companies to move up to MB. To enable Hong Kong to continue its position as an international financial center and diversify further, it is essential for the GEM to maintain its role as a second board in order to sustain its ability in assisting growing companies to raise funds from the capital market.

A professional or separate board for companies with WVR structures is not preferred as we believe there are alternative mechanisms to help investors distinguish these companies from those with "one-share, one-vote" as outlined in our earlier response in Q5, such as adopting a different class of stock code or symbol, or having a relatively significant board lot size, rather than having a separate board where market liquidity may hinder its future development.

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

No other comments or suggestions.

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