

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.

While sticking to the traditional “one-share-one-vote” principle is an easier and simpler route to take, we believe that our market should keep an open mind to market developments so as to compete with our counterparts in the rest of the world and that would mean we should not rule out the possibility of allowing WVR structures.

Having said, given that it is one of the most important corporate governance principles well established in Hong Kong for so many years, we must stay prudent before we decide to deviate from it. The gist is that we must give considerable and thorough thoughts with a view to developing a set of rules that are clear and manageable in practice, with a particular focus on providing sufficient safeguards for investors should our market allow companies to use WVR structures. There should also be an education process for the Hong Kong investing public, particularly those local retail ones, so as to allow them adequate time and opportunities to understand the possible implications on their investments in such companies.

We support the concept of WVR structures be considered at a second stage of consultation with a focus in the above context.

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

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

(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.

We think that WVR structures should be permissible for new issuers only (rather than existing listed companies) as there are not yet public shareholders at stake before listing and the investing public may have an informed assessment on whether or not to invest in such companies. If existing listed companies are allowed to adopt WVR structures, their minority shareholders can only choose to accept that their existing voting rights would be diminished or restricted, or to sell their shares upon implementation of WVR structures.

We believe that the use of WVR structures should not be restricted to particular types of companies or “innovative” companies because it is difficult to clearly define these companies and it may also be easy for any definitions to be manoeuvred (say, for example, companies may claim themselves to be technology companies by setting up online platforms).

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.

We agree that appropriate restrictions should be imposed on WVR structures. We believe that new issuers should provide compelling justifications for adopting WVR structures at the time of listing and the Exchange should require such structures to cease to have effect upon any changes in circumstances such that such structures are no longer justifiable.

We also agree that the investing public should be alerted to the implications of the WVR structures by requiring prominent warnings to be contained in the corporate communications of such companies as suggested in paragraph 154. Having a special stock code or stock short name may also help the investing public to differentiate such companies from other companies with single class shares.

We also agree with other additional restrictions to be imposed for the purpose of avoiding any potential abuse of powers by the controllers of the companies using WVR structures.

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?

While some structures are more prevalent at the moment, other variants may evolve over time. So, rather than limiting to specific types of WVR structures, we believe the control over WVR structures should be maintained by the Exchange's approval on a case-by-case basis by examining the exact features of the proposed structures in the context of their implications on minority shareholders' rights.

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.

We believe that it is vital to ensure our corporate governance and regulatory framework provides adequate safeguard for minority shareholders' interests against controllers' potential abuse of powers over companies with WVR structures.

Depending on the exact parameters based on which WVR structures will be allowed as concluded by the Exchange after this consultation, appropriate changes may have to be made to the current provisions under the Listing Rules and the Takeovers Code so as to clarify how such rules would apply to companies with WVR structures in different forms so as to provide sufficient safeguard for minority shareholders' interests.

In the long run, the legislative and regulatory authorities should also work closely with the relevant market practitioners to consider carefully whether and how the powers of the Securities and Futures Commission should be further strengthened to make it easier for it to obtain redress for minority shareholders, or alternatively, whether and how shareholders should be given more tools to enforce their own rights (such as class action rights and litigation funding, etc.).

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

As noted in the concept paper, there may not be any market that restricts the trading of ordinary shares to professional investors only and the Exchange noted during its review of GEM some years ago that there was little demand for such a market. Against this background, for so long as there is put in place a sound legal infrastructure that serves to provide sufficient safeguards for investors and the Hong Kong investing public, particularly those local retail ones, are being adequately educated of the implications of WVR structures, there may not be good reason to restrict companies with WVR structures from listing on the Main Board.

- (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)?

We hope, by a due process of our regulators giving thorough thoughts before allowing WVR structures, we are sending a positive message to the markets both within and outside Hong Kong that should enhance investors' confidence in the Hong Kong bourse which we believe would in turn attract more domestic and overseas companies to list in Hong Kong.

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

No

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