RESPONSE TO HKEX CONCEPT PAPER ON WEIGHTED VOTING RIGHTS

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This response is submitted by the Hong Kong office of Freshfields Bruckhaus Deringer. Please contact our Teresa Ko, Tim Mak or David Cotton if you have any queries on it.

Question 1 - Should the Exchange in no circumstances allow companies to use Weighted Voting Right structures?

Evolution has been part of our history

The Stock Exchange of Hong Kong (the ***Exchange***) has evolved considerably over the past couple of decades. It has been transformed from a small domestic exchange listing only local issuers to a global player ranked alongside New York and London as a destination for capital raising.

This transformation has been accompanied by a gradual opening of the Exchange over time to a wider pool of potential issuers - for example, PRC companies, overseas companies, mining companies and companies without a profitable track record, and even companies without a three year track record at all.

The Exchange has also listed companies in a broad range of sectors, and with a wide range of corporate structures, such as variable interest entities and business trusts. In each case, these changes have presented new risks for investors and the Exchange has, through a combination of disclosure and its suitability override, sought to address these risks by implementing enhanced rules, guidance and practices to ensure that investors are adequately protected. If the Exchange did allow companies to use weighted voting rights structures, including a partnership structure similar to that adopted by Alibaba Group, we would see this as a further step in its evolution, not unlike the diagram below, consistent with its approach over the last couple of decades, rather than a fundamental change to the market.

<table>
<tr><td colspan="6">Disclosure Based Regime

(with prescriptive requirements)</td></tr>
<tr><td>SFC dual filing</td><td colspan="4">Suitability override</td><td>Listing Committee</td></tr>
<tr><td>Variable Interest Entities (VIEs)</td><td>Overseas companies</td><td>Mining companies</td><td>Business Trusts</td><td>GEM</td><td>Weighted Voting Rights</td></tr>
<tr><td>Listing Decision and Guidance Letter
- Only able to use in narrow circumstances
- Mandatory contractual and other protections

No public consultation</td><td>Revised Joint Policy Statement on overseas companies
- Shareholder protection standards
- Country Guides

No public consultation</td><td>Chapter 18
- Not required to satisfy usual track record tests</td><td>Stapled Security Structure

Two issuers: Trustee and Company

No public consultation</td><td>Different set of rules

No Listing Committee hearing approval

No profit requirements</td><td>Specific conditions and restrictions</td></tr>
<tr><td colspan="6">Enforcement</td></tr>
</table>

The competition we face is now global

The world's capital markets are global. When companies come to us for advice on their IPO they often ask us to compare the listing rules and regimes in a number of jurisdictions. This is because, increasingly, issuers do not need to list on what might have historically been their 'natural' market in order to ensure a successful initial public offering. The existing Rule 8.11[1] is generally regarded in the market as an absolute ban on weighted voting rights structures, notwithstanding that it permits weighted voting rights structures in the 'exceptional circumstances'. The recent high profile Alibaba case, in which we were involved, has only served to strengthen this view. Accordingly, if a company with a weighted voting rights structure asks us to compare Hong Kong with the United States as a potential listing venue, we will advise them that it is very difficult, if not impossible, to list in Hong Kong. In addition, as more and more Chinese companies in the technology sector have listed in the United States, we have seen a number of issuers *without weighted voting rights structures* who might have been ordinarily expected to list in Hong Kong look to the United States instead.

If Alibaba Group had listed in Hong Kong, it is likely that Hong Kong would top the league table on IPO proceeds raised in 2014. In order for Hong Kong to stay competitive globally, it is only right that we review the Exchange's current approach to weighted voting rights structures, including the partnership structure.

Whilst it is too early to tell the way in which Shanghai Hong Kong Connect will affect Hong Kong's IPO business, we should not assume that Chinese issuers seeking international capital can or will always choose to list in Hong Kong nor that international companies will not be able to list on Mainland Exchanges directly.

We have a prescriptive investor protection regime which is a hallmark of our Exchange

Hong Kong has a very strong framework for dealing with controlled companies, that is companies where a single or group of related shareholders hold a majority of the voting rights. In particular, Hong Kong has rigorous rules on connected transactions – arguably the most developed in the world - which is a direct result of the Exchange's considerable focus on and experience in dealing with controlled companies. These act as a safeguard against the extraction of private benefits by connected persons, including substantial shareholders and directors, at the expense of public shareholders.

In addition, Hong Kong's requirement for listed issuers and their directors to disclose price sensitive information on a timely basis is now statutory backed, which provides investors with robust safeguards through the newly installed Corporate Regulation team and the wide powers that the Securities and Futures Commission (the ***SFC***) has under the Securities and Futures Ordinance (Cap. 571) (the ***SFO***), as well as the front line regulation by the Exchange.

Why should we deny retail investors free choice?

Retail investors are generally unable to invest in companies listed overseas, while institutional investors and high net worth individuals are typically able to invest in overseas listed securities - Alibaba Group being a high profile recent example. So long as the governance structures of these companies are subject to appropriate safeguards, enforcement action is robust, and the fact that they are different is made transparent, we should leave it to retail investors to decide whether or not to

[1] Rule 8.11 states that 'The share capital of a new applicant must not include shares of which the proposed voting power does not bear a reasonable relationship to the equity interest of such shares when fully paid'.

invest in a company and not make their decision for them. An absolute ban on listing companies with weighted voting rights structures would reduce investor choice by preventing many investors from investing in companies that might otherwise choose to list in Hong Kong.

Enforcement in Hong Kong has never been stronger

The SFC has a broad range of tools in its arsenal to deal with wrongdoing, including the power to take action against companies and their management for unfair prejudice, breach of directors' duties and market manipulation (including disclosure of false or misleading statements) and to obtain compensation for investors. The SFC has used these powers in a number of recent high profile cases involving listed companies and obtained significant sums in compensation for investors. It is not necessary for Hong Kong to have a class action regime to permit companies to list with weighted voting rights structures.

Diversified forms of governance structure should be the focus and the way forward

If we are to consider afresh the adaptability of weighted voting rights structures to our regime in Hong Kong, we must do it in tandem with the type of investor protection that we believe this form of listing should have by way of governance structure. Hong Kong has come too far for it to be tied to one form of governance structure and our history does not support this simplistic view. If we want to do this debate justice, we should not focus all of the debate on the one share one vote argument. What we need to think about is the future of a market which should be deep and broad enough to accommodate a diverse range of governance structures.

Question 2 - Should the Exchange permit Weighted Voting Right structures:

(a) for all companies, including existing listed companies; or

(b) only for new applicants; or

(c) only for:

(i) companies from particular industries (e.g. "information technology" companies);

(ii) "innovative" companies;

(iii) companies with other specific pre-determined characteristics (e.g. size or history); or

(iv) only in "exceptional circumstances" as permitted by current Listing Rule 8.11?*

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

We have not commented on all parts of this question, since they relate to commercial matters, but would make the observations set out below.

Because the form of governance structure is different, we appreciate the concern of the regulators to the risk of opening the floodgates and understand their desire to limit the number of potential applicants able to use a weighted voting rights structure. We support this sentiment and proffer the following thoughts to narrowly define the type of company which may list with a weighted voting rights structure:

- Quantitative measures such as size, market capitalisation and other financial indicators, track record and expectation may all be used.

- We have serious reservations over the practical implications of restricting weighted voting rights structures to companies in particular sectors or to companies which are 'innovative'. We foresee considerable difficulty in prescribing and applying a sector based restriction because in practice businesses do not always fall neatly into one or other sector. There could be even greater difficulty in applying an 'innovative' company requirement as this term is highly subjective.

- Weighted voting rights structures could be limited to new applicants. In this event, there would also need to be a ban or restrictions (e.g. a super majority independent shareholder approval requirement) on existing listed companies spinning off or selling assets into a listing vehicle with a weighted voting rights structure.

We also believe that following the listing of the first of this type of company (if there ever is one), the Exchange should review the case a period of time after the listing to see if the measures need to be revised.

The exceptional circumstances carve-out is only helpful if companies can actually use it. If the Exchange decides to permit companies to list with weighted voting rights structures, we believe

that it should implement clear and unambiguous new Listing Rules setting out when this is permitted, under what conditions and whether any restrictions will apply to the use of a weighted voting rights structure. Nevertheless, assuming that the Exchange does decide to permit weighted voting rights structures, we would suggest that Rule 8.11 remain in order to give the Exchange the flexibility to allow issuers to list with structures that do not fall strictly within the criteria but which are nevertheless suitable for listing. For this purpose, we would suggest that the Exchange provide a non-exhaustive list of parameters.

Question 3: If a 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 in the US, or others in addition or in substitution?

We believe that it would be appropriate for the Exchange to look at all of the restrictions customarily imposed on dual class share structures in the US (and other jurisdictions) and consider whether each one would be useful and appropriate for Hong Kong rather than to adopt the 'kitchen sink' approach and impose all of them into our regime.

We would make the following overriding observations as to the Exchange's approach in doing this:

- The Exchange needs to weigh up the prospect of attracting issuers that might want to consider a weighted voting rights structure against the risk of abuse of rights inherent such as structures.

- The Exchange may want to consider limiting special voting rights to specified matters, for example board nomination and appointment but not notifiable transactions.

- Any conditions and restrictions should be clearly described and, so far as possible, they should be objective requirements. This is extremely important to allow potential issuers and their directors, with the help of their advisers, especially sponsors and lawyers, to judge easily whether or not a Hong Kong listing is suitable for them, and there is consistency in the approach of the Exchange and the SFC to weighted voting rights structures.

- Imposing some limited simple backstop protections on weighted voting rights structures is justified but it is also important not to restrict the free functioning of a dynamic market which has the power to reflect acceptance of different governance structures through pricing and other market forces. We would not support the Exchange attempting to regulate for every possible situation.

Question 4: Should other Weighted Voting Right structures be permissible, and, if so, which ones and under what circumstances?

If the Exchange permits dual class share structures, we see no logical reason not to permit other weighted voting rights structures. For example, the Alibaba Group partnership structure arguably provides investors with better protection than a simple dual class share structure. We have set out below a summary of the Alibaba Group partnership structure, based on publicly available information, which we thought might be helpful in the context of some of our points in this response.

At the heart of the Alibaba Group partnership structure is the right of the partnership (the ***Partnership***) to nominate a majority of Alibaba Group's board of directors. Any directors so nominated by the Partnership are subject to the approval of all the shareholders on a one share one vote basis at the next AGM. If at any time the board has less than a majority of directors nominated by the Partnership, the Partnership will be entitled to appoint such number of additional directors as is necessary to ensure that the Partnership has a majority of the board of directors.

Amendment of these provisions of Alibaba Group's articles of association requires a 95% vote of all shareholders (including shareholders who are partners). The Partnership comprises 30 individuals, most of whom are employees or directors of Alibaba Group. Additional partners may be appointed to the partnership by a 75% vote of existing partners and partners may resign, retire or (by a vote of a majority of partners) be removed. There are no minimum share ownership requirements for partners, but the partners at IPO have agreed not to sell below 60% of their holdings at IPO within the first three years and not to below 40% of their holdings at IPO thereafter, while still partners.

The Partnership does not have any rights other than in relation to nomination and appointment of directors. All other matters requiring shareholder approval will be determined by a vote of all shareholders in the usual way.

It can be seen that the Partnership's nomination and appointment right is always ultimately subject to shareholder approval and that all other matters are determined on a one share one vote basis. This is superior for investors than a dual class share structure, in which investors holding the ordinary class shares are generally not able to block the holders of special class shares appointing a particular director, nor able to remove directors, nor able to vote on a one share one vote basis on other matters. In addition, in a Hong Kong context, unlike a dual class share structure, a company with a partnership structure would not be bid proof since a bidder that is able to secure at least 90% of the shares through an offer would be able to exercise squeeze out rights and amend the articles of association to remove the partnership structure. Partners would also not be able to escape being treated as connected persons under the Listing Rules, providing investors with additional protection.

If felt necessary, additional safeguards could also be built into the structure such that if a partnership nominee is voted down on, say, three consecutive general meetings, the partnership loses the right to nominate a majority of the directors on the board, either permanently or for a fixed period of time.

Question 5: Do you believe changes to the corporate governance and regulatory framework in Hong Kong are necessary to allow companies to use Weighted Voting Right structures?

While, as discussed above, it may be appropriate to impose specific conditions and restrictions on weighted voting rights structures, we do not believe that major changes would be required to the corporate governance and regulatory framework in Hong Kong to allow companies to use weighted voting rights structures given the existing level of investor protection under the Listing Rules and statute and the enforcement powers of the SFC and the Exchange.

In particular, we do not think that it is necessary for Hong Kong to have a class action regime before it can allow weighted voting rights and that if it were to have one, it would be likely to damage Hong Kong's global competitiveness.

We discuss this question in detail below.

Investor protection

Generally speaking, effective investor protection[2] is a desirable outcome that can be achieved using a variety of legal and regulatory tools and approaches which are calibrated and tailored to the particular characteristics of the market in question[3] and the prevailing market conditions. In this regard, one size does not necessarily fit all; and there is often more than one way to achieve broadly the same end.

The World Bank's views

It is interesting to note that the World Bank and International Finance Corporation's "Doing Business 2014" measure of business regulations ranks Hong Kong third in the world (with a score of 9 out of 10) for investor protection (ahead of the US, at sixth, with 8.3 out of 10), and awards Hong Kong nine out of ten for the regulation of connected transactions[4]. It is also interesting to note that:

(a) the World Bank ranks the US only marginally higher than Hong Kong for the ease by which shareholders can obtain legal redress in the form of damages; the US scored 9 out of 10, while Hong Kong scored 8 out of 10 (and the OECD rich economy average is 5 out of 10)[5]; and

(b) in the US, in a listed company scenario, private litigation is more common than SEC enforcement action[6], while in Hong Kong, SFC enforcement action is more common than private litigation[7].

So how have those high rankings for Hong Kong been achieved?

One-share, one-vote

For all of the reasons that the Concept Paper has articulated[8], the "one-share, one-vote" concept has been a contributing factor. But, as the Exchange recognises, "it [i.e. one-share, one-vote]

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2 Recognising that complete investor protection is likely unachievable in practice.

3 The Concept Paper recognises that the particular characteristics of the Hong Kong market are a relevant consideration: see, for example, paragraph 74 of the Concept Paper.

4 See paragraph 68 of the Concept Paper. See also the methodology behind those scores here: http://www.doingbusiness.org/methodology/protecting-minority-investors

5 See paragraph 69 of the Concept Paper.

6 See Appendix V, paragraph 2, of the Concept Paper.

7 See paragraphs 70 to 73 of the Concept Paper.

is not a universal norm of investor protection and commentators differ as to its appropriateness or rigid application in all circumstances".

Regulation, and the relevant regulators' powers, resources and ability to exercise those powers effectively clearly also play an important part. As the Concept Paper notes, "in Hong Kong…reliance is placed on Rules to prevent the abuse of control before it occurs (e.g. through connected transaction Rules) and post-event legal action, involving listed companies, is primarily carried out on shareholders' behalf by the SFC"[9].

Protections under the Listing Rules

- Regulation of connected transactions (preventing abuse of control before it occurs). For many years, the Listing Rules have included detailed rules relating to connected transactions entered into by the issuer or its subsidiaries. The aim of those rules is to seek to ensure that the interests of shareholders as a whole are taken into account by the issuer when it or its group enters into a connected transaction. The rules are administered "on the ground" by the Exchange's Listing Division and, where appropriate, the Listing Committee. Both of those entities within the Exchange have many years of experience in administering the rules with investor protection in mind. And the rules are broadly understood by the market.

- Directors' duties and responsibilities. The Listing Rules effectively impose upon every director of a listed company the same duties and responsibilities as a director of a Hong Kong incorporated company[10]. This is significant because the principal risk of a weighted voting rights structure is that the board does not act in the best interests of all of the shareholders, whether through extracting private benefits or preventing the company being acquired. The SFC has taken enforcement action to enforce directors' duties in a number of recent cases, including Styland Holdings, which involved a breach of fiduciary duties, Tack Fiori International, which involved a failure to exercise reasonable care and diligence and GOME, which involved a share repurchase a related breach of directors' duties.

- Service contracts and remuneration. Over the years, the disclosure of pay and remuneration of directors and senior management has been strengthened and the Listing Rules contain several provisions aimed at addressing the private benefit risks of excessive remuneration and favourable terms of service contracts through disclosure and, in some cases, independent shareholder approval requirements. Rule 13.68 requires independent shareholder approval for service contracts of a duration that may exceed three years or that require the issuer to give notice of more than one year or to pay compensation or make other payments equivalent to more than one year's emoluments. Appendix 16 (paragraph 24) requires an issuer's annual report to include detailed disclosure on directors' pay and benefits on an individual basis, as well as the CEO. These Rule provisions are supported by the Corporate Governance Code in Appendix 14 to the Listing Rules.

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8 See, for example, paragraph 6 of the Concept Paper.

9 See paragraph 70 of the Concept Paper.

10 Rule 3.08 of the Listing Rules seeks to impose on all Hong Kong listed company directors the same standard of legal duties as are required under Hong Kong law, irrespective of the company's place of incorporation.

- Enforcement. Where there is a breach, the Exchange can take disciplinary action[11]; and where that breach is very serious (particularly where it leads to significant loss to the Company) and there is evidence that the Company's officers have not complied with their legal obligations, the SFC can, and often will, take civil action[12] against those officers who are at fault, to disqualify them from being an officer / being involved in the management of the company[13] and, in appropriate cases[14], to order compensation directly against them[15]. The cases described above are exactly on point.

The role of the Securities and Futures Commission

The SFC plays an important role in the regulation of Hong Kong's securities and futures markets, and, increasingly, in the oversight and regulation of Hong Kong's listed companies[16]. In relation to the latter, since 2007[17], the SFC has taken numerous actions against Hong Kong listed company officers under section 214[18] of the Securities and Futures Ordinance for failure to meet directors' duties in a variety of circumstances. By way of example, the SFC has successfully pursued the following types of breaches, amongst others: defalcation/misappropriation (e.g. in breach of the connected transactions rules)[19], disclosure failures[20], and failing to exercise reasonable skill, care and diligence in entering into a number of imprudent transactions on behalf of the Company[21].

Towards the end of 2013, the SFC set up a dedicated corporate regulation team to review company announcements, circulars and report, and to conduct periodic in-depth reviews of each company, focusing particularly on those with a history of losses or frequent restructuring.

Class actions – are they a pre-requisite for effective investor protection?

The World Bank's findings, as summarised above, would suggest not. They suggest that Hong Kong's high rankings have been achieved without Hong Kong investors having the benefit of a US-style class action lawsuit system, and in circumstances where direct private shareholder actions in Hong Kong against listed companies and their officers are rare[22]. Indeed, the findings suggest that:

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11 Under Chapter 2A of the Listing Rules.

12 See section 214 of the Securities and Futures Ordinance (see footnote 17 below).

13 And any other company, listed or unlisted.

14 See, for example: http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=12PR23; http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=12PR103.

15 Such compensation must paid by them to the listed company.

16 Whilst the SFC does not have direct licensing jurisdiction over listed company directors and officers, the Securities and Futures Ordinance gives the SFC the ability to seek various civil court orders against listed company directors and officers.

17 See: http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=07PR89

18 http://www.legislation.gov.hk/blis_ind.nsf/CurAllEngDoc/FBD0D38DAA7574CE48257C920013A07D?OpenDocument

19 See footnote 12 above.

20 http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=11PR20; http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=13PR20.

21 http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=10PR28. In this case, the Court ordered the Company to bring legal proceedings against three former executive directors in order to seek compensation from them.

22 Please see Appendix V, paragraph 4 and 5, of the Concept Paper.

(a) the US class action system makes it only marginally (rather than substantially) easier for shareholders in the US to obtain financial redress than it is for Hong Kong shareholders under Hong Kong's non-class action system[23]; and

(b) the absence of a class action system, *by itself*, is not necessarily materially detrimental to investor protection, *provided that* the other key features of the Hong Kong regulatory regime and approach – namely, the connected transactions rules, an experienced and vigilant Exchange, and a strong and effective SFC – are in place.

What changes might be necessary to maintain investor protection without class actions?

If the Exchange determines that companies with weighted voting rights structures should be permitted to list in Hong Kong, this change should, in our view, be accompanied by at least the following:

(a) A review of the rules governing connected transactions, to ensure that those rules will always apply to the beneficiaries of a weighted voting rights structure (including all of the partners in a partnership structure), although we do not anticipate major changes being required given the breadth of the existing regime.

(b) Concerted market education so that the market is aware of the implications of weighted voting rights, and how the connected transaction rules will operate in that context, and what the differences are between one share one vote and weighted voting rights.

(c) Transparency - full disclosure of the risks of investing in a company with a weighted voting rights structure in the prospectus. A beneficiary of a weighted voting rights structure should also be subject to the provisions of Part XIVA of the SFO (the disclosure of interest regime) as if it owned shares.

(d) To ensure that investors are quickly and easily able to identify a company with weighted voting rights without having to carry out further research, we would propose that companies with a weighted voting rights structure be required to have a stock code with a particular number prefix.

[23] The Securities and Futures Ordinance contains a number of provisions which provide civil rights of action to those who have suffered financial loss because of misconduct. Please see, for example, sections 108, 281, 305, 307Z and 391.

Question 6: Do you have any comments or suggestions regarding the additional matters:

(a) using GEM, a separate board, or a professional board to list companies with Weighted Voting Right structures; and

As we have discussed in our response to Question 1, the Exchange has broadened the scope of companies eligible to list in Hong Kong considerably over the past 25 years. It has not been necessary to establish new boards to allow different type of issuers to list in the past[24] and, while it is ultimately a commercial question, we do not see any reason for the Exchange to change this approach if it permits companies with weighted voting rights structures to list in Hong Kong.

Nevertheless, if the Exchange concludes that there is insufficient support to allow companies with weighted voting rights structures to list on the Main Board, using GEM may be a way of allowing companies with weighted voting rights structures to list on a more cautious basis i.e. given the absence of a requirement for a retail offering and the clear high risk labelling of GEM (although we would note that these features notwithstanding it remains possible to conduct a retail offering on a GEM IPO and retail investors are able to participate in the secondary market whether or not there is a retail offering). GEM would need to be re-characterised more broadly in this event e.g. no longer aimed at companies unable to satisfy the Main Board requirements.

(b) the prospect of overseas companies seeking to list for the first time on the Exchange with a Weighted Voting Right structure or seeking a further primary or secondary listing here?

Provided that an overseas company satisfies the requirements for listing on the Exchange under the Revised Joint Policy Statement regarding the listing of overseas companies, we do see any reason to apply a different approach to overseas companies with a weighted voting rights structure seeking a primary listing on the Exchange, whether it is its first listing or it is already listed overseas.

However, for secondary listings of overseas companies, the Exchange may consider making the connected transaction rules of mandatory application (i.e. no possibility of waiver or a presumption against a waiver), given their role in investor protection.

[24] We do not regard GEM as an exception to this since GEM was created to list companies which did not meet the Main Board requirements as a stepping stone to the Main Board, rather than to accommodate companies of a different nature to existing listed companies.

Question 7: Do you have any other comments or suggestions regarding Weighted Voting Right structures?

Chinese businesses listed in the United States

The significant number of large Chinese businesses that have listed in the United States rather than Hong Kong has deprived the Hong Kong economy of potentially valuable business opportunities and deprived Hong Kong investors of the opportunity to participate in some of the most well-known and fastest growing brands coming out of China. We would strongly encourage the Exchange and the SFC to take this into account when considering the responses to the Concept Paper and formulating new rules. This may include revisiting the current bar on companies with a Greater China 'centre of gravity' carrying out secondary listings in Hong Kong. This restriction was designed to prevent issuers from carrying out a listing overseas and then doing a secondary listing in Hong Kong to avoid being subject to the full provisions of the Listing Rules that would apply if it had a primary listing. However this argument is arguably not applicable where an issuer is primary listed in a mature and sophisticated jurisdiction such as the United States where there is a rigorous listing approval process and significant ongoing obligations, such as Sarbanes Oxley. To avoid exchange shopping, the Exchange could consider limiting secondary listings to issuers primary listed on a very narrow range of overseas exchanges – e.g. Nasdaq/ New York and imposing a moratorium on listing in Hong Kong following a sole primary listing elsewhere, say 18 months.

Investors and the regulators in Hong Kong are experienced in dealing with companies with a dominant shareholder group

Most of the listed corporations in Hong Kong have a controlling shareholder who directly or indirectly owns 50% or more of the issued shares, or a sufficiently large holding to ensure de facto control. Neither retail nor institutional investors in these companies are, individually or as a group, able to force changes in the board of the company or veto other matters such as notifiable transactions that require shareholder approval[25]. Effectively, the retail and institutional investors have only an economic interest in the corporation. While it is acknowledged that voting rights is not the only potential issue with a weighted voting rights structure from the point of view of an ordinary shareholder, there is scant difference between a controlled corporation and a corporation with a weighted voting rights structure. Retail and institutional investors in Hong Kong, and the Exchange and SFC, are therefore not new to the risks of limited or no shareholder control over in companies with dominant shareholders. The risks of investing in companies with weighted voting rights may, in reality, not be significantly different to investments in the many controlled corporations listed in Hong Kong.

Management continuity

The main purpose of a weighted voting rights structure is to provide management with a degree of protection against shareholders seeking to remove them. The justification typically argued for doing this is that it enables management to run the business on a long term basis rather than having to be concerned about the short term horizons of public shareholders. The benefits of management stability is something recognised by the Exchange through the management continuity requirement that is one of the key eligibility criteria.

[25] Assuming that the controlling shareholder does not have an interest so is able to vote.