

## 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 Exchange<sup>1</sup> 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.

We welcome the opportunity to respond to the Concept Paper on weighted voting rights. Unless otherwise noted, terms used in our responses herein shall have the same meanings as those defined in the Concept Paper.

While we acknowledge that the "one-share one-vote" policy has, for many years, been seen as an important aspect of the "fair and equal treatment of shareholders" principle to protect investors, we are of the view that the use of WVR structures with proper safeguards on investor protection could be considered in Hong Kong.

To stay competitive with other leading venues for listing, stakeholders in Hong Kong should keep an open mind to different types of listing structures available at other international stock exchanges. The restriction on Hong Kong listed companies to issue shares with voting rights disproportionate to their nominal value was codified in 1989, and no exception has ever been granted under "exceptional circumstances" as permitted by Listing Rules 8.11. With the evolution in the capital markets (both internationally and locally in Hong Kong), enhancement of corporate governance and the changes in our regulatory framework over the past 25 years, we believe it would be in the interest of the Hong Kong market to consider uplifting the restriction with proper investor protection measures in place.

We are, however, mindful of the importance of high regulatory standards and the potential for abuse by shareholders with superior voting rights inherent in the WVR structures. Therefore, the enhancement of Hong Kong's competitiveness and the permission of the WVR structures should not come at the expense of diminished investor protection.

**Please only answer the remaining questions if you believe there are circumstances in which**

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

**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;

We take the view that only new applicants should be allowed to implement a WVR governance structure. For new listings, potential initial subscribers of shares can weigh, at the outset of making their investment decision, the risks associated with the WVR structure and the available safeguards and restrictions.

Extending the adoption of WVR structures to existing listed companies may prejudice the interests of the existing shareholders who may have made their investments on the premise of the "one-share one-vote" principle and there is the issue that these minority shareholders are not given the proper chance to reassess the associated risks should there be any change to the existing governance structure.

Conceptually, a sufficiently high percentage of approval by independent shareholders for implementing a WVR structure may provide the proper safeguard to protect the minority shareholders. However, we are concerned that this potential safeguard may not be sufficient to mitigate the risk that the rights of disinterested shareholders are compromised by allowing the implementation of a WVR structure by an existing listed company.

We do not consider it is appropriate to limit the use of WVR structures to companies from particular industry sectors as it is important to maintain a level playing field for all new applicants regardless of their industry.

or

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

Should WVR structures be allowed, it should not be limited to applicants of "innovative companies" for the "level playing field" reason stated above. Also, the classification of "innovative" companies will likely create subjectivity and definitional issues.

or

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

We have no objection, in principle, for the Exchange to impose specific pre-determined characteristics of the listing applicants in order for them to be eligible to adopt a WVR structure. We believe any such pre-determined criteria should be designed to achieve the objective of providing safeguards on investor protection and against abuses.

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- (d)  only in "exceptional circumstances" as permitted by current Listing Rule 8.11<sup>2</sup> (see paragraph 81 of the Concept Paper) and, if so, please give examples below.

Please give reasons for your views below.

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<sup>2</sup> GEM Rule 11.25.

The "exceptional circumstances" clause in Listing Rule 8.11 has never been clearly defined and no exception has been granted since the rule was implemented. We believe it is important to promote the transparency of our systems on which well-function markets depend and we are therefore of the view that the criteria for permission of WVR structures should be clearly defined and set out in the Listing Rules. Nevertheless, should WVR structures be allowed and introduced in Hong Kong, there will likely be unforeseen issues arising from the implementation of the new rules and interpretation of the safeguards and other pre-determined criteria. In this regard, we have no objection to retaining the "exceptional circumstances" clause in Listing Rule 8.11 to provide some flexibility as the WVR framework is introduced in Hong Kong.

We acknowledge the risk of existing listed companies circumventing a restriction that would allow only new applicants to have WVR structures (e.g. through spin-off of assets and businesses). We believe, however, that this risk of potential abuse or circumvention could be mitigated through additional measures or safeguards and should not be viewed as an impediment to the principle of restricting the use of WVR structures by new applicants only.

One possible safeguard in conjunction with an enhanced corporate governance structure is to increase the minimum number of independent non-executive directors ("INEDs") for listing applicants proposing to adopt a WVR structure. For example, the Exchange may require that a majority of the directors of the board is made up of INEDs. In this regard, we note that under Listing Rule 5.07, the Exchange has the power to stipulate a minimum number of INEDs which is higher than 3 if, in the opinion of the Exchange, the size of the board or other circumstances of the issuer justify it.

In respect of a size test, while there may not be a direct link between a company's size and the quality of its corporate governance, there may be merits of limiting the use of WVR structures for companies that are above certain size in terms of market capitalisation. From the perspective of proper investor protection, it may not be suitable for smaller companies that do not have a proven track record of high quality corporate governance to adopt WVR structures. The threshold for minimum market capitalisation, for example, could make reference to the market capitalisation/ revenue/ cash flow test in Listing Rule 8.05(2).

**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.

Should WVR structures be used in Hong Kong, we are in favor of adopting two restrictions commonly seen in the US market, namely the "restriction on transfers" and "minimum equity threshold held by founders" as mandatory restrictions. On the other hand, we do not see any compelling reason to require the implementation of a "sunset clause" or the other restrictions described in paragraph 153 of the Concept Paper, which we believe would best be left to the issuer to decide if those additional restrictions should be adopted.

Considerations as to the detail of any mandatory restrictions and the feasibility of introducing other restrictions not covered in the Concept Paper could be explored via further market consultation on the subject matter.

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?

We have no objection, in principle, to WVR structures other than a dual-class share structure provided that the same level of safeguards on investor protection is in place. Those structures (such as a structure similar to the Alibaba Partnership described in paragraph 146 of the Concept Paper) may involve a mechanism to provide incumbent controllers superior board control (e.g. superior rights on nomination of directors), which could differ significantly to a dual-class share structure in terms of how control of the company is obtained/maintained. This in turn could result in potential differences in the design and implementation of the necessary safeguards.

In this regard, we recommend that any proposed WVR structures other than a dual-class share structure, such as those described in paragraphs 142-146 of the Concept Paper, be carefully examined to ensure that the market is fully apprised of the proposed mechanism, the associated risks and the safeguards that are/ should be in place.

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.

To accommodate the use of WVR structures, changes to the existing Listing Rules (including the Corporate Governance Code) would be necessary. These changes should focus on (i) imposing restrictions on the use of WVR structures, (ii) amendments to the Corporate Governance Code with the aim to put in place sufficient safeguards and to improve transparency of corporate decisions, and (iii) changes to existing Listing Rules (such as the definition of connected persons) as a result of the new governance structure with WVR. In addition, the relevant provisions of the Code of Takeovers and Mergers relating to certain trigger points for mandatory or general offers would require to be revisited and studied to ensure ability to deal with the WVR structures.

In respect of the Hong Kong regulatory framework from a broader perspective, we note that a debate has been going on as to whether certain characteristics of the US legal/regulatory regime, which provide greater ease for investors to obtain legal redress for damages (such as class-action lawsuits and contingent legal fee arrangements), should be introduced in Hong Kong in order for WVR structures to be allowed. As stated in the Concept Paper, both the US and Hong Kong place a high priority on investor protection but achieve this goal differently. We are in favour of the view that for the purposes of determining the appropriate safeguards on investor protection to allow the use of WVR structures in Hong Kong, considerations should primarily be made in the context of, and with reference to, the existing Hong Kong legal framework as any significant changes to our existing framework in respect of shareholders' private litigation rights should be the subject of further study and consultation, given the significance of the matter.

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

We are of the view that so long as proper safeguards on investor protection are in place, the listing of companies with WVR structures does not necessarily need to be restricted to a particular board or to professional investors only.

- (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)?

In respect of overseas companies seeking to list on the Exchange with a WVR structure, given the potential differences in corporate governance structures and requirements for overseas jurisdictions and in the legal frameworks in relation to investor protection, it is important that all relevant aspects and proposals related to the listing of international companies are examined and addressed on a holistic basis. We are pleased to note that this will be covered by a separate market consultation. In addition, we agree with the Exchange's intention to also cover, as part of this market consultation, the issue of whether Chinese companies should be permitted to secondary list in Hong Kong (rather than only allowing those companies to primary list) as a result of the "centre of gravity" test.

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

As a leading international financial centre, Hong Kong should continue to innovate and keep an open mind to different forms and structures of listings. Balanced approach, recognising the importance of a fair and efficient Hong Kong capital market that facilitates the access to capital for companies with different governance structures and preserves high regulatory standards that protect investors from abuse should be adopted.

We look forward to seeing the conclusions of the Exchange in relation to the Concept Paper and the second stage consultation process with details of any proposed rule changes.

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