

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.

We support the Exchange to further consider allowing companies using the Weighted Voting Rights (“WVR”) structures for the reasons stated in the consultation paper, in particular: (i) given Hong Kong is a free market, the use of the WVR structures by companies should be allowed if there is a substantial portion of issuers and investors who prefer this preference and support the structure; (ii) a number of companies who use the WVR structures are already listed on other exchanges and are popular among the investors. Therefore, from a commercial point of view, if Hong Kong can react fast enough to support this change, it will gain a first-mover advantage amongst the other exchanges in the commonwealth countries and increase its competitiveness; (iii) if WVR structure is allowed to be used by companies, the whole listing process will gradually be shifted from merit-base to disclosure-base, hence the investors are encouraged to read the prospectus carefully before making their investment decision; and (iv) there are a number of types of WVR structures and we believe that certain WVR structures, such as structures imposing loyalty voting rights encourage a longer term and more stable shareholding, are relatively fair and reasonable. So, the use of such structures should not be discouraged.

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:

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

- (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 are of a view that the Exchange should permit WVR structures for the types of companies mentioned in options (a) to (d) above because it is not meaningful to differentiate these applicants, which will create difficulties for companies who would like to impose a WVR structure. In particular, (i) we cannot see the reason for prohibiting existing listed companies because these companies can always undergo privatization and then apply for a new listing with a WVR structure; (ii) existing listed companies should be allowed to adopt a WVR structure subject to having obtained its shareholders' approval; (iii) the treatment of the different types of companies under option (c) should be uniform as companies can always change their business scope.

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 believe restrictions should be proposed by the company and vetted and approved by the Exchange and the SFC. We do not think it is the right approach for the Exchange to list out an exhaustive list of mandatory restrictions for the companies to follow. As different companies and different WVR structures may require different restrictions, we suggest the Exchange imposes a general set of principles as follows:

- (1) The special rights proposed to be enjoyed by shareholders of a class shall be justified with good reasons;
- (2) The proposed restrictions should be appropriate and sufficient in counteracting against the risks posed by the above special rights to the protection of minority shareholder; and
- (3) The more special rights proposed to be enjoyed by shareholders of a class, the more onerous restrictions should be imposed on the company.

Apart from the restrictions described in the consultation paper, other restrictions may include but should not be limited to:

- (1) high-vote shareholders being required to give extra undertakings to the listcos that they will not take actions which are not in the general interest of shareholders;
- (2) a longer lock-up period for shareholders with special rights; or
- (3) a requirement that extra rights will expire if market cap of the listcos falls below a certain amount to guard against the scenario that the vision of high-vote shareholders might disappear.

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?

Yes, we do not propose to list out permitted WVR structures as they might evolve with time. One of the WVR structures is, for example, extra loyalty votes for shares not transferred over a period of time.

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.

Changes to the corporate governance and regulatory framework in Hong Kong are necessary in order to address concerns from the buy-side. As mentioned above, we suggest the Exchange set out general principles including the requirement of companies putting up sufficient and robust corporate governance measures to address the risks create by adopting a WVR structure. Companies should properly justify the existence and purpose of adopting a WVR structure and suggest imposing more stringent obligations on the board of directors of the company in the company's articles of association or other constitutive documents for safe guarding the interesting of the minority shareholders.

We have no strong view on the necessity to amend LR8.11, but the Exchange may (i) publish a practice note or a guidance letter to explain under what circumstances the Exchange will approve the listing of companies with WVR structures; or (ii) amend the relevant Listing Rules that are separately applicable to those companies with WVR structures which are directly or indirectly governing corporate governance matters which are applicable to listed company, its directors and shareholders (e.g. Chapter 13 relating to continuing obligations of a listed issuer, Chapter 14A relating to connected transactions, Appendix 14 relating to corporate governance code, 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

We do not have a strong view in creating a separate board. However, companies with WVR structures may have “W” before their stock codes to make it easily recognized by the investors.

- (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)?

Yes, both scenarios should be allowed.

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

Our views for now have been presented in the above.

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