

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.

WVR are said to be undemocratic, in that they offend against a principle that each ordinary share in a company should have the same voting rights if it represents the same amount of capital contributed to the company. We dispute that such a principle exists. It is for the shareholders of a company, through the agreement among them evidenced by the company's articles of association, to decide whether to accord different voting rights to shares representing different amounts of contributed capital. But in any event, whether or not such a principle exists, nobody is forcing investors who object to WVR to become shareholders in companies with WVR. The only protection which they need is proper disclosure of the structures.

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;

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

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.

² GEM Rule 11.25.

There is nothing inherently objectionable about properly disclosed WVR for any company in any industry, already listed or not already listed - see our answer to question 1 above. It follows that we would suggest the repeal of Listing Rule 8.11(1) (and the corresponding GEM Rule).

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.

The Exchange should not require any such restrictions. Whether to impose them should be a matter for the companies concerned, not the Exchange. It would not in any event be open to the Exchange to impose such restrictions on existing listed companies with WVR. The Exchange has no power to require shareholders to give up rights. To do so would be in any event be expropriatory. As was rightly said in the 1987 report of the standing committee on company law reform appended to the concept paper, "to interfere with established contractual rights would be contrary to general principle and might raise questions of compensation".

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 particular views on the way in which weighted voting rights are structured. The key in our view is disclosure. Provided that they can be properly and comprehensibly disclosed, there should be no objection to them in principle.

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.

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 think it makes sense for companies with simple and easily understandable WVR structures to be listed separately from companies without such structures.

- (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)?

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

- End -