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[1] 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.

Please refer to the answer on the separate file attached.

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 8.11[2] (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.

To recognise the importance of control from management in some special industries/ segments while benchmarking other major permissible stock exchanges.

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.

   Yes. Similar restrictions should be implemented to control the risks involved. Such restrictions and their comparison should be shown to the public clearly. It worths a separate section in the listing circular, and regular warnings in regular earning releases and company filings.

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?

   No Comment.

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.

Introduction of class action, since the legal system doesn't provide the necessary checks and balances to protect minority interests

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 could consider launching a pilot scheme on the GEM board to facilitate the market development. Inadequate critical mass of separate 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)?

WVR structure should only be allowed in new applicants (first time listing), or those WVR companies with secondary listing in HKEX using the same WVR parameters as their primary listing location.

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

Hong Kong has a greater retail investor participation culture than other developed markets, so investor protection should be given appropriate consideration and weight. As such, introduction of class action is warranted. Also as the HK market is dominated by family and Mainland SOE controlled companies, special consideration should be given to preventing existing HK listed companies from seeking to take advantage of WVR structures to the detriment of the investing public, e.g. by restructuring, going private and relisting assets.

- End -

REPLY TO PART B QUESTION 1

1. **Should the Exchange[1] <u>in no circumstances</u> allow companies to use WVR structures?**

   In general, WVR structure should not be allowed because they significantly impact corporate governance at a company level by making it difficult to challenge incumbent management. Hong Kong already receives adverse reviews from time to time on the issue of corporate governance and family control of conglomerates. Allowing WVR would provide one more easy to use, powerful tool that can be potentially used to 'bend' corporate governance requirements to the will of the promoter.

   USA has a somewhat different regime for investor protection and application of one aspect (WVR) without context of the overall investor protection ecology that exists there could be problematic. It should be noted that Hong Kong tends to have higher levels of retail investor participation in the capital markets.

   While there is considerable regret and pain over the loss of the Alibaba listing, there could be other reasons such as the deeper capital markets, better appreciation of technology stocks, potential of higher valuations that could have been additional factors that tilted the scale in favor of USA. Hong Kong could consider other measures to enhance the overall ecology for technology stocks listing in Hong Kong.

   Hong Kong can also monitor other mega technology listings to consider whether the threat of market share loss is of a magnitude that justifies the risk of jeopardising the interests of minority shareholders.

   While we consider what we stand to gain by allowing WVR structures (presumably, the next "Alibaba", whenever that occurs, as these are not frequent occurrences) we should also consider what we stand to lose. - there is a very real risk of promoters seeking to shift assets out of Hong Kong listed companies and then relist them in new listed vehicles with WVR structures. This could materially impact the overall markets. Hong Kong could easily start slipping on other metrics and rankings concerning our capital markets.

   There is merit in the argument that given the structure of the China markets and the nature of private equity participation, promoters of technology stocks could have very low levels of equity by the time they list, and this is not desirable. Perhaps we can explore alternate measures to make Hong Kong a more attractive location for listing technology stocks. Perhaps, more research on this aspect needs to be conducted before considering WVR structures as a viable alternative.

   In any event the current regime that allows for WVR structures in exceptional circumstances does hold potential. A swifter and pre planned approval process (with a list corresponding additional corporate governance requirements) to accommodate exceptional approval requests could help significantly.