

Part B Consultation Questions

1. Should the Exchange in no circumstances allow companies to use WVR structures?

No

Please give reasons for your views below.

The Exchange needs to seriously consider allowing companies with WVR in HK

The existing prohibition on listing such companies will seriously erode the competitiveness of Hong Kong as a listing venue, which is unfortunate for Hong Kong's investors and its financial services industry. The continuing and apparently increasing popularity of the NYSE and NASDAQ for listing Chinese technology company stocks raises questions in terms of Hong Kong's position as the gateway to international capital for Chinese companies. This trend has been exacerbated by the current stance.

The Exchange's securities market led the world in IPO funds raised for three consecutive years ending in December 2011.¹ In 2012 and 2013, however, the NYSE was the top exchange for IPO funds raised, and it is set to take the top spot again in 2014. In the first nine months of 2014, the NYSE ranked first by deal value while Hong Kong ranked second.² In the first three quarters, the IT sector saw the most IPOs, with 107 IPOs globally raising US\$42.9 billion. Of these, 39 listed on the NYSE and Nasdaq raising US\$35.2 billion.³

The loss of Alibaba's IPO to the NYSE this year is the most obvious consequence of our backward thinking, given that the Exchange has long been the natural international fund-raising venue for Chinese companies. It was also disappointing for Hong Kong investors who were allocated very few of Alibaba's IPO shares.

Shareholders are essentially capitalists and the suggestion that they need to somehow be protected from themselves, is simply ludicrous. If the market has room for multiple tax structures, non-voting shares, and other accommodations, it's absurd that somehow we need to exclude companies like Alibaba. There exist many poorly governed companies and where voting rights are only given a perfunctory nod, and minorities are always abused. The premiums and discounts accorded with WVR will be assigned by the market, it's counter-intuitive that the Exchange allows many abusive Open Offers yet chooses to exclude the largest deal of the year simply on this basis.

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

¹ Hong Kong Exchanges and Clearing Limited. "Hong Kong Leads World in IPO Fundraising for Three Consecutive Years and Attracts more International Listings". January 2012.

² Ernst & Young, "EY Global Trends 2014 Q3".

³ Ibid.

- (b) only for new applicants (see paragraphs 147 to 152 of the Concept Paper)

Please give reasons for your views below.

We consider that WVR structures should only be allowed for new listing applicants, since potential investors would invest with awareness of the risks associated with the structure which would be disclosed in the prospectus.

Companies should not be allowed at post listing to changed their voting systems this obviously handicaps non-controlling shareholders.

- (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;
 - (ii) “innovative” companies (see paragraphs 163 to 164 of the Concept Paper), please specify how we should define such companies below;
- (d) only in “exceptional circumstances” as permitted by current Listing Rule 8.11 (see paragraph 81 of the Concept Paper) and, if so, please give examples below.

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 restrictions on WVR mentioned in the Concept Paper are measures voluntarily adopted by listed companies in the US to limit the rights attached to multiple vote shares with the aim of improving the shares’ marketability. Our view is that the restrictions to be placed on WVR structures should be a matter for negotiation between the underwriters and investors.

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 restructures?

We believe that other WVR structures delivering similar results should be permitted to list if the Listing Rules and corporate governance requirements provide for structural transparency and sufficient risk disclosure. The minority shareholders in such companies should also be entitled to the same protections as minority shareholders in listed companies controlled by a single shareholder or a group of related shareholders.

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)?

No.

If so, please specify these changes with reasons below.

There should be a further consultation on detailed proposals once it has been decided that companies with WVR structures should be allowed to list. We note however that connected transactions are already highly regulated under the Listing Rules, and that these should protect minority shareholders in a WVR structure from abuse by controlling shareholders.

In particular, we do not consider that a class action regime and legal contingency fees should be preconditions to allowing the listing of WVR structures. Details of class actions and contingency fee arrangements which are available in the United States are given in the Concept Paper and this might give the impression that the current prohibition on WVR listings is somehow justified by Hong Kong's lack of a class action regime and arrangements for payment of legal fees on a contingency basis.

It seems that company shareholders cannot bring a class action suit in the United States to obtain redress for the type of corporate governance issues which are most likely to arise in the case of companies with WVR structures, which are likely to involve breach of directors' fiduciary duties such as failure to act in the best interests of the shareholders as a whole or conflict situations. This is because the shareholders do not have a direct claim against the wrongdoers (e.g. the company directors) because the harm done to them is incidental to the harm done directly to the company.

In the United States, the appropriate type of shareholder action where company directors breach their fiduciary duties, is a derivative action, not a class action. This allows one or more shareholders to bring a derivative action on behalf of the company against the directors, but any remedy will be granted to the company, so that minority

shareholders benefit only indirectly by virtue of any increase in the company's share price. Hong Kong legislation already allows derivative actions. Thus it does not appear that a class action regime needs to be established in Hong Kong before WVR structures are allowed to list.

The SFC in Hong Kong is often times impotent and always inefficient, investors are increasingly aware of the hypocrisy that its claims as a mandate. The failure of our regulator will bring about more derivative actions and will drain Institutional funds seeking a more robust infrastructure.

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 in favour of allowing such companies to list either on the Main Board or on GEM, provided that if a company has a WVR structure, this is made obvious to potential 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)?

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