

## Part B Consultation Questions

Please reply to the questions below that are raised in the Concept Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017061.pdf>

Please indicate your preference by checking the appropriate boxes.

Where there is insufficient space provided for your comments, please attach additional pages.

1. What are your views on the need for Hong Kong to seek to attract a more diverse range of companies and, in particular, those from New Economy industries to list here? Do you agree that the New Board would have a positive impact on Hong Kong's ability to attract additional New Economy issuers to our market?

Please give reasons for your views.

I think it is good to attract a more diverse range of companies to list in Hong Kong. However, this should not be done at the expense of sacrificing core principles of HKEx.
---

2. What are your views on whether the targeted companies should be segregated onto a New Board, rather than being included on the Main Board or GEM?

Please give reasons for your views.

For the purpose of early stage companies (without WVR structures), the new Board PRO can be a way for these companies to be listed.

However, the new Board PREMIUM can be seen as Main Board with WVR as that is the only difference. According to paragraph 8 (ii) "New Board PREMIUM, targeted at companies that meet the existing financial and track record requirements of the Main Board, but which are currently ineligible to list in Hong Kong because they have non-standard governance structures."

This appears to be an end run to the concerns raised by SFC in its statement on HKEx's draft proposal on weighted voting rights on Jun 25, 2015.

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=15PR69>

In addition in paragraph 119, HKEx indicated that limiting "WVR structures to a New Board, rather than the Main Board, would mean the Main Board would not be affected by any attempt to circumvention" as a way to address SFC's concern. However, it is not clear from the proposal that New Board PRO or New Board PREMIUM will NOT be migrated to the Main Board at a later time. Paragraph 127 suggests this is possible. In other words, if it is possible for an issuer that initially lists on New Board PREMIUM with WVR structure to migrate to the Main Board with WVR structure, then this is blatant regulatory loophole.

3. If a New Board is adopted, what are your views on segmenting the New Board into different segments according to the characteristics described in this paper (e.g. restriction to certain types of investor, financial eligibility etc.)? Should the New Board be specifically restricted to particular industries?

Please give reasons for your views.

Segmenting the New Board into different segments is an appropriate way to address the inherent risks of listing early stage companies.

4. What are your views on the proposed roles of GEM and the Main Board in the context of the proposed overall listing framework?

Please give reasons for your views.

The proposed roles are fine as long as any migration from the New Boards to GEM or the Main Board is subjected to the same listing and regulatory standards that exist for listing on GEM and the Main Board.

5. What are your views on the proposed criteria for moving from New Board PRO to the other boards? Should a public offer requirement be imposed for companies moving from New Board PRO to one of the other boards?

Please give reasons for your views.

As per paragraph 127, as long as the New Board Pro issuer meets all the admission criteria and other listing requirements of the relevant board, there is no reason to deny their moving to the other boards. However, HKEx should make it clear that there will be no "grandfathering" or exemptions from any of the admission criterias for such migration to the other boards.  
Yes, a public offer requirement should be imposed under the relevant admission criteria and listing requirements of the board that the issuer is moving to. This ensures there is no regulatory arbitrage between the boards.

6. What are your views on the proposed financial and track record requirements that would apply to issuers on New Board PRO and New Board PREMIUM? Do you agree that the proposed admission criteria are appropriate in light of the targeted investors for each segment?

Please give reasons for your views.

The proposed financial and track record requirements look fine. However, paragraph 139 is extremely problematic. There is no valid reason to allow a blanket exemption from the requirement to provide equivalent shareholder protection standards to those of Hong Kong under the 2013 JPS. There is already a mechanism for companies to apply waivers from the Listing Rules in Hong Kong, a blanket exemption is neither needed nor desirable.

In particular since the New Board PRO is targeting issuers with limited or no track record, the issue of minority shareholder protection is even more critical.

7. What are your views on whether the Exchange should reserve the right to refuse an application for listing on New Board PRO if it believes the applicant could meet the eligibility requirements of New Board PREMIUM, GEM or the Main Board?

Please give reasons for your views.

This caveat looks fine.

8. What are your views on the proposed requirements for minimum public float and minimum number of investors at listing? Should additional measures be introduced to ensure sufficient liquidity in the trading of shares listed on New Board PRO? If so, what measures would you suggest?

Please give reasons for your views.

The proposed minimum public float is fine with the caveat that the majority of the 300 holders are not related parties. There should also be a requirement that the minimum float of shares should not fall below 25% of the issued shares held by non related parties.



9. What are your views on whether companies listed on a Recognised US Exchange that apply to list on the New Board should be exempted from the requirement to demonstrate that they are subject to shareholder protection standards equivalent to those of Hong Kong? Should companies listed elsewhere be similarly exempted?

Please give reasons for your views.

There is no reason for such a blanket exemption. There is already a mechanism for companies to apply waivers from the Listing Rules in Hong Kong, a blanket exemption is neither needed nor desirable.  
No. There is simply no reason for such blanket exemption.

10. What are your views on whether we should apply a “lighter touch” suitability assessment to new applicants to New Board PRO? If you are supportive of a “lighter touch” approach, what relaxations versus the Main Board’s current suitability criteria would you recommend?

Please give reasons for your views.

Until HKEx publishes its proposal on the type of "lighter touch" suitability regime, there is no basis to evaluate whether such "lighter touch" is justified.

11. What are your views on whether the New Board PRO should be restricted to professional investors only? What criteria should we use to define a professional investor for this purpose?

Please give reasons for your views.

Given the New Board PRO is targeting early stage issuers, it would be prudent to limit participation to professional investors. SFC has issued guidelines as to who can be considered professional investor which took effect Mar 25, 2016.  
<https://www.charltonslaw.com/amendments-to-the-hong-kong-professional-investor-regime-take-effect-on-25-march-2016/>

12. Should special measures be imposed on Exchange Participants to ensure that investors in New Board PRO-listed securities meet the eligibility criteria for both the initial placing and secondary trading?

Yes

No

Please give reasons for your views.

If HKEx makes the assumption that New Board PRO-listed securities would only be participated by professional investors, there needs to be a mechanism to ensure investors who ultimately invest in New Board PRO-listed securities are indeed professional investors.

13. What are your views on the proposal for a Financial Adviser to be appointed by an applicant to list on New Board PRO, rather than applying the existing sponsor regime? If you would advocate more prescriptive due diligence requirements, what specific requirements would you recommend be imposed?

Please give reasons for your views.

No comments.

14. What are your views on the proposed role of the Listing Committee in respect of each segment of the New Board?

Please give reasons for your views.

No comments.

15. Do you agree that applicants to listing on New Board PRO should only have to produce a Listing Document that provided accurate information sufficient to enable professional investors to make an informed investment decision, rather than a Prospectus? If you would advocate a more prescriptive approach to disclosure, what specific disclosures would you recommend be required?

Yes

No

Please give reasons for your views.

At a time when investors are demanding more not less disclosure, it is rather strange that HKEx is contemplating creating a New Board that explicitly allows less financial transparency from companies. Filing a Prospectus is a necessary requirement for companies to gain access to public funds.

The implied rationale that since the New Board Pro is only open to professional investors therefore less information is required is disingenuous. Professional investors are the main users of prospectus published by issuers seeking IPOs currently. Why would professional investors want less information for the New Board Pro where the the issuer does not even need to have a track record or meet any minimum financial hurdles?

I would be surprised if there are any professional investor who said he or she would prefer less information about issuers we are investing in.

16. What are your views on the proposed continuous listing obligations for the New Board? Do you believe that different standards should apply to the different segments?

Please give reasons for your views.

These proposals are fine.

17. For companies that list on the New Board with a WVR structure, should the Exchange take a disclosure-based approach as described in paragraph 153 of this Concept Paper? Should this approach apply to both segments of the New Board?

Please give reasons for your views.



Prior to asking for responses to this question, HKEx should answer how and why WVR structure is beneficial for the investing public. As noted in paragraphs 103 and 104, there are clear risks from WVR structures but nowhere in the consultation paper does HKEx explain how the New Boards will protect the investing public from these risks.

Pursuant to Section 63 of the SFO (Chapter 571 of the Laws of Hong Kong), HKEX, as a recognised exchange controller, shall act in the interest of the public with particular regard to the interest of the investing public; and ensure that the interest of the public prevails where it conflicts with HKEX's interest.

As WVR structures fundamentally violates the one share one vote principle of good corporate governance, it should not be allowed on any exchanges managed by HKEx. By allowing WVR structures, HKEx is fundamentally abandoning a key tenet of good corporate governance and acting against the interest of investing public.

HKEx should also explain why it believes allowing WVR in the New Board addressed the many investors' concerns on WVR structure in response to HKEx's Concept Paper on Weighted Voting Rights (<https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2014082cc.pdf>).

HKEx should in particular heed to the conclusion in its own consultation conclusion paper that stated "Among those that opposed permitting WVR structures in all circumstances, were institutions with very large amounts of AUM globally, such as BlackRock and Fidelity." I do not believe institutional investors have changed their minds in the last two years with regards to WVR structures.

Finally on this question, the suggestion that disclosure itself resolves the fundamental issues with WVR for either of the proposed New Boards is illogical. WVR structures are disadvantageous to investors who by design will be holding share classes with inferior voting rights which essentially leaves them at the mercy of those shareholders holding superior voting rights. Does HKEx believes that the mere disclosure of such WVR structures is sufficient to alert the public of the inherently higher risks associated with such structures?

18. If, in addition, you believe that the Exchange should impose mandatory safeguards for companies that list on the New Board with a WVR structure, what safeguards should we apply? Should the same safeguards apply to both segments of the New Board?

Please give reasons for your views.

Much like question 17, this question should not be asked until HKEx answers how and why WVR structure is beneficial for the investing public.

The appropriate safeguard is not to allow WVR structures as no safeguards can address the inherent deficiencies in subjecting minority shareholders to inferior voting share rights.

In paragraph 40 and 41, HKEx has cherry picked some statistics to highlight the "mis-opportunities" of Mainland companies with primary listing in the US with WVR structures. I would note that stripping out Alibaba and Baidu, the market capitalization of such companies fall substantially to USD150 billion from USD561 billion.

Additionally, it is puzzling that HKEx did not mention Tencent which is listed on the HKEx's Main Board (without WVR structure) with a market capitalization of USD344 billion. Tencent is definitely a New Economy company, its growth and share price performance does not appear to have been adversely impacted by its adherence to the good corporate governance principle of one share one vote. Its Chairman, Mr Ma Huateng, has been instrumental in Tencent's development and owns less than 10% of the company's voting rights. Yet it is interesting that shareholders have been happy with his re-nomination as Chairman/CEO year after year.

Simply put, HKEx's intention to join the race to the bottom by abandoning the principle of one share one vote and introduce WVR structures to the New Boards is catering only to its self interest and one that is not wanted by large institutional investors.

19. Do you agree that the SEHK should allow companies with unconventional governance features (including those with a WVR structure) to list on PREMIUM or PRO under the "disclosure only" regime described in paragraph 153 of the Concept Paper, if they have a good compliance record as listed companies on NYSE and NASDAQ? Should companies listed elsewhere be similarly exempted?

Please give reasons for your views.

No and no.

This is regulatory arbitrage and a race to the bottom for minority investor unfriendly listings.

20. What are your views on the suspension and delisting proposals put forward for the New Board?

Please give reasons for your views.

These proposals are fine.

21. Should New Board-listed companies have to meet quantitative performance criteria to maintain a listing? If so, what criteria should we apply? Do you agree that companies that fail to meet these criteria should be placed on a “watchlist” and delisted if they fail to meet the criteria within a set period of time?

Please give reasons for your views.

No comments.

22. Do you consider that an even “lighter touch” enforcement regime should apply to the New Board (e.g. an exchange-regulated platform)?

Yes

No

Please give reasons for your views.

As the New Board will be for companies with limited or no track record, a "lighter touch" enforcement regime is inappropriate.

- End -