

# Weighted Voting Rights Consultation Conclusions

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# Outline of Presentation



**1** Key Points

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# Key Points



- Having carefully considered all the responses to the Concept Paper, the Exchange concludes that there is support for a **second stage consultation** on proposed changes to the Rules on the acceptability of weighted voting rights (WVR) structures. In making this decision, the Exchange has taken into consideration its duty to act in the best interest of the market as a whole and in the public interest
- WVR structures should not be available in all circumstances. The Exchange is considering proposing that, generally, **“one share, one vote” should prevail** but that WVR structures should be allowed for certain companies in certain circumstances and with certain safeguards. It is not the Exchange’s intention that such structures become commonplace in Hong Kong
- The Exchange considers that the permissibility of WVR structures is an important factor that affects Hong Kong’s **competitive position** vis-à-vis other markets. To further explore this issue, we will seek market feedback in the second stage consultation on the relative importance of the permissibility of WVR structures to a company’s choice of listing venue
- The Exchange considers that the **secondary listing** of companies with WVR structures is an important issue giving rise to different considerations; we will focus some attention on this in the second stage consultation. We will also seek feedback on whether the current prohibition on secondary listing for companies with a Greater China **“centre of gravity”** should be relaxed to a certain extent

## Structure of the Consultation Conclusions

- Chapter 1: Introduction
- Chapter 2: Methodology
- Chapter 3: Market Feedback and Conclusions
- Chapter 4: Issues
- Chapter 5: Draft Proposal and Way Forward
- Appendices include:
  - List of Respondents
  - Summary Results of Quantitative Analysis
  - SFC Speech of 19 March 2015

# Chapter 1 - Introduction



## BACKGROUND

- **Concept Paper:** Published on 29 August 2014 to seek views on whether WVR structures<sup>1</sup> should be permissible for companies listed or seeking to list on the Exchange's markets
- **Reasons for the Consultation:**
  - The Listing Rules should “*reflect currently acceptable standards in the market place*”<sup>2</sup>
  - 25 years have elapsed since the restriction on WVR structures was implemented in the Listing Rules<sup>3</sup>
  - The Listing Division has received a number of enquiries from participants in the market (both during and prior to 2013) on the acceptability of WVR structures
  - The FSDC<sup>4</sup> commented that “...*the ‘one share one vote’ concept may be studied in more detail and re-considered with the benefit of public consultation*”

***The Exchange considered there was sufficient merit in WVR structures being the subject of a review, and that this topic warranted a comprehensive public debate.***

1. Governance structures that give certain persons voting power or other related rights disproportionate to their shareholding
2. Main Board Listing Rule 2.03
3. Main Board Listing Rule 8.11
4. The Financial Services Development Council, established by the Hong Kong SAR Government in January 2013

# Chapter 1 - Introduction (cont'd)



## BACKGROUND

### ■ Purpose of the Concept Paper:

- Sought views on the concept of WVR structures to promote an informed, focused and coherent discussion on a topic of great market interest and potential significance to Hong Kong
- Did not advocate the status quo or a change and did not put forward specific Listing Rules for consultation
- Intended to be a neutral, factual and analytical presentation of the relevant issues and considerations
- Stated that the Exchange had formed no view for or against WVR structures

***The Exchange anticipated the Concept Paper would lead to:***

- (a) a conclusion that no amendment to the Rules to allow companies to use WVR structures was appropriate at this time and current practice is supported; OR***
- (b) a conclusion that there is support for a material change to the Listing Rules on the acceptability of WVR structures, which would require proceeding to a second stage formal consultation process.***

# Chapter 1 - Introduction (cont'd)



## NUMBER OF RESPONSES AND NATURE OF RESPONDENTS

RESPONDENT CATEGORY	NUMBER OF RESPONSES	PERCENTAGE OF RESPONSES <sup>5</sup>
<b>INSTITUTIONS</b>		
<b>Market Practitioners:</b>	<b>36</b>	<b>35%</b>
Investment Managers	17	16%
Sponsor Firms / Banks	7	7%
Accountancy Firms	6	6%
Law Firms	6	6%
<b>Professional Bodies</b>	<b>22</b>	<b>21%</b>
<b>Listed Companies</b>	<b>9</b>	<b>9%</b>
<b>HKEx Participants</b>	<b>3</b>	<b>3%</b>
<b>None of the above</b>	<b>1</b>	<b>1%</b>
<b>INDIVIDUALS</b>		
<b>HKEx Participant Staff</b>	<b>9</b>	<b>9%</b>
<b>Retail Investors</b>	<b>4</b>	<b>4%</b>
<b>Institutional Investors</b>	<b>2</b>	<b>2%</b>
<b>Listed Company Staff</b>	<b>2</b>	<b>2%</b>
<b>None of the above</b>	<b>16</b>	<b>15%</b>
<b>TOTAL</b>	<b>104</b>	<b>100%</b>

5. The percentages in this column do not total 100% due to rounding.

# Chapter 2 - Methodology



- Consistent with past, publicly stated, policy we:
  - categorised respondents using the category they chose on the questionnaire
  - treated “professional bodies” as a separate category
  - counted responses not respondents (e.g. a submission by a professional body is counted as one response even though it has many members)
  - counted submissions with entirely identical content as one response
  - performed both a qualitative and quantitative analysis



# Chapter 3 - Market Feedback and Conclusions



## Question 1: Should the Exchange in no circumstances allow companies to use Weighted Voting Right structures?

- Respondents that supported permitting WVR structures in some circumstances included:
  - **Accountancy firms, sponsor firms/banks, law firms and listed company staff;**
  - **Professional bodies** (a majority); and
  - **Listed companies** (a third supported, a third opposed and a third supported only in exceptional circumstances)
- **Investment managers** were, on a strict numerical basis, split on the question. Some opposed the use of WVR structures in all circumstances. An equal number thought there were circumstances in which WVR structures could be permitted
- The clearest opposition came from **retail investors** and the vast majority of **HKEx Participant staff**, who opposed allowing WVR structures in all circumstances
- Generally, very few respondents believed WVR structures should be permitted unconditionally

# Chapter 3 - Market Feedback and Conclusions (cont'd)



***Respondents were asked to answer the remaining questions only if they believed that there are circumstances in which companies should be allowed to use WVR structures.***

# Chapter 3 - Market Feedback and Conclusions (cont'd)



**Question 2: Should the Exchange permit Weighted Voting Right structures: (a) for all companies, including existing listed companies; or (b) only for new applicants?**

- **Conclusion:** WVR structures should be restricted to new applicants only with anti-avoidance measures to prevent circumvention of this restriction

**Question 2(c)(i)&(ii): Should the Exchange permit WVR structures only for companies from particular industries (e.g. IT companies) or “innovative” companies?**

- **Conclusion:** WVR should not be restricted to particular industries or “innovative” companies

**Question 2(c)(iii): Should the Exchange permit WVR structures only for companies with specific pre-determined characteristics (e.g. size or history)?**

- **Conclusion:** Companies with WVR structures should have certain pre-determined characteristics and meet higher eligibility standards

# Chapter 3 - Market Feedback and Conclusions (cont'd)



**Question 2(d): Should the Exchange permit WVR structures only in “exceptional circumstances”?**

- **Conclusion:** Companies with WVR structures should not be listed only under “exceptional circumstances” as this acts as an effective ban

**Question 3: If a listed company has a dual-class share structure, should the Exchange require any or all of the restrictions applied in the US, or others in addition or substitution?**

- **Conclusion:** A number of the restrictions applied in the US, and possibly others, should be mandatory for companies with WVR structures to protect investors

**Question 4: Should other WVR structures be permissible, and, if so, which ones and under what circumstances?**

- **Conclusion:** Weighted voting rights carried by shares should be the preferred method as the structures can be more easily accommodated by the current legal and regulatory framework in Hong Kong (e.g. Takeovers Code)

# Chapter 3 - Market Feedback and Conclusions (cont'd)



**Question 5: Do you believe changes to the corporate governance and regulatory framework in Hong Kong are necessary to allow companies to use WVR structures?**

- **Five** responses stated that the introduction of a class action regime was necessary
- **Ten** responses stated that this was not necessary. Some stated that, in the US, class action cases are most often brought to seek remedies for matters that are not related to abuses of control that possibly arise under a WVR structure
- No other material regulatory or legislative changes were identified
- **Conclusion:**
  - The Exchange does not believe that a class action regime is a necessary pre-requisite for the acceptability of WVR structures

# Chapter 3 - Market Feedback and Conclusions (cont'd)



**Question 6(a): Do you have any comments or suggestions regarding using GEM, a separate Board, or a professional board to list companies with WVR structures?**

***The Concept Paper stated that it does not seek to address the more general question of the re-positioning of GEM or the creation of a professional (or other) board for companies with WVR structures, but that we would take into account any views from the market submitted in response to the Concept Paper on the acceptability or desirability of using GEM, another separate board focused on, for example, specific sectors or companies with specified characteristics, or a professional board, to list companies with WVR structures.***

■ **Respondents' views:**

- We should try to attract good companies and requiring them to list on a separate board would imply they are inferior to Main Board companies
- Liquidity would suffer if companies were listed on a separate board and make it harder for investors to exit

- **Exchange's preliminary view:** GEM, a separate board or a professional board should not be used to list companies with WVR structures. These companies should, however, be differentiated using other methods, such as a stock name that includes a marker

# Chapter 3 - Market Feedback and Conclusions (cont'd)



**Question 6(b): Do you have any comments or suggestions on the prospect of overseas companies seeking to list for the first time on the Exchange with a WVR structure or seeking a primary or secondary listing here?**

***The Concept Paper stated that we prefer to consult on the specific question of whether overseas companies should be able to list with WVR structures as part of a future exercise, looking holistically at the listing regime for overseas companies, and the Concept Paper does not seek specific views on this question. However, we would take note of any views that respondents may wish to submit in this area.***

- **Respondents' views:**
  - Favoured giving secondary listed companies greater flexibility
  - No respondent supported restricting WVR structures to secondary listed companies only
- **Exchange's preliminary view:** The use of WVR structures should not be restricted to overseas companies only. However, we should consult in relation to secondary listing

# Chapter 3 - Market Feedback and Conclusions (cont'd)



**Question 7: Do you have any other comments or suggestions regarding WVR structures?**

- **Respondents' views:** Re-visit the current bar on companies with a Greater China “centre of gravity” from secondary listing in Hong Kong
- **Exchange's position:** We will seek views on this matter as part of the second stage consultation



# Chapter 4 - Issues



## INTRODUCTION

- It is clear from the responses to the Concept Paper that those who support permitting WVR structures, for the most part, do **not** support their use by **all** companies under **all** circumstances; nor does the Exchange
- Chapter 4 of the Consultation Conclusions sets out a number of issues raised in the Concept Paper responses and separately posed by the SFC, along with the Exchange's **preliminary thoughts** to provide some guidance to the market on our current direction and thinking in relation to the second stage

# Chapter 4 - Issues (cont'd)



## RING-FENCING

- Restriction to new companies (with appropriate “anti-avoidance” measures)
- Ring-fencing to a “type of company” (precise parameters to be established in the second stage consultation)

# Chapter 4 - Issues (cont'd)



## SAFEGUARDS

- Permissible WVR structures – We expect to consult with the Takeovers Panel on the implications of different WVR structures under the Takeovers Code
- Limit on extent of rights, e.g. restrictions on transfer and a minimum equity shareholding requirement
- Strengthening the role of independent non-executive directors
- Disclosure and differentiation requirements

# Chapter 4 - Issues (cont'd)



## COMPETITION

- In his March 2015 speech, the CEO of the SFC posed the question as to whether allowing weighted voting rights would increase Hong Kong's competitiveness as a listing venue
- The Exchange considers that the permissibility of WVR structures **is** an important factor that affects its competitive position vis-à-vis other markets, principally the US, in attracting Mainland Chinese company listings
- The Concept Paper stated that a number of arguments had been put forward by commentators and others as grounds for either maintaining the status quo or allowing WVR structures, but that it was likely those relating to Hong Kong's competitive position required the **most** consideration and debate. The Concept Paper therefore focused on these in detail. It noted:
  - The Exchange faced competition for the listings of Mainland Chinese companies, 102 of which, at the time, had chosen to primary list in the US (on NYSE or NASDAQ), rather than in Hong Kong
  - Almost one-third of these companies (29%) have a WVR structure and this third represents 70% of the market capitalisation of all US listed Mainland Chinese companies

# Chapter 4 - Issues (cont'd)



## COMPETITION (cont'd)

- The Exchange believes that this data, together with anecdotal and other representations made to it on previous occasions, **support** the “competition” argument
- However, the Concept Paper also acknowledged that companies take **many factors** into account when choosing a listing venue and listed many of them
- As part of our consultation on the second stage proposal, we propose to ask market participants and others the factors that companies consider when choosing a listing venue and, therefore, the **importance of the permissibility of WVR structures to this decision**

# Chapter 4 - Issues (cont'd)



## SECONDARY LISTING

- **Allowing companies with WVR structures to secondary list:**
  - This is an important and, to some degree, a separate issue giving rise to **different considerations from the main question** of WVR structures for companies seeking a primary listing; and accordingly we will focus some attention on this as part of the second stage consultation process
  - We will consider this matter as part of the second stage consultation

# Chapter 4 - Issues (cont'd)



## SECONDARY LISTING (cont'd)

- **Allowing Chinese companies to secondary list:**
  - The Concept Paper noted that there was public debate on the acceptability of a secondary listing for Chinese companies with WVR structures that are already listed on US exchanges
  - Some respondents suggested that the Exchange **revisit its current bar** on companies with a Greater China “centre of gravity” carrying out secondary listings in Hong Kong
  - The Exchange agrees that a review of the “centre of gravity” restriction is appropriate in this context and will seek views on this matter and, as part of its second stage consultation, put forward a proposal in this regard

# Chapter 5 - Draft Proposal and Way Forward



## NEXT STEPS

- The Exchange is in the process of finalising a draft proposal for a second stage consultation which is intended to be refined:
  - first, through discussions with stakeholders to ensure that we have the benefit of their views before we put forward a proposal for formal consultation
  - then, through a formal consultation process to ensure that the proposal has the appropriate support
  
- The Exchange expects to begin the discussions shortly after the publication of the Consultation Conclusions, with a view to the formal consultation commencing in the **third quarter or early in the fourth quarter of 2015**



# Chapter 5 - Draft Proposal and Way Forward (cont'd)



## FEATURES OF THE DRAFT PROPOSAL

- By way of transparency to the broader market, it is currently envisaged that the draft proposal will include the following features:

### Ring-fencing:

- Restrictions to new applicants only (with appropriate anti-avoidance measures)
- A very high expected market capitalisation test in addition to existing eligibility criteria for listing on the Main Board
- “Enhanced suitability” criteria to identify certain features that the Exchange would expect such companies to have (regarding the applicant’s business and the contribution of the founder(s))
- Restrictions on who can hold weighted voting rights at any point in time and the percentage shareholding interest such persons hold in the relevant company prior to listing

# Chapter 5 - Draft Proposal and Way Forward (cont'd)



## FEATURES OF THE DRAFT PROPOSAL (cont'd)

### Safeguards:

- A restriction to WVR structures in the form of different classes of shares, although such shares can carry differing levels of weighted voting rights
- A minimum shareholding level to be maintained by the permitted beneficiaries of weighted voting rights, after listing, amongst other requirements for such beneficiaries
- Beneficiaries of weighted voting rights to be deemed “connected persons” under the Listing Rules irrespective of whether they would otherwise fall within the definition
- An issuer with a WVR structure would need to:
  - be clearly differentiated with a stock name marker;
  - include prominent and ongoing disclosure around the WVR structure; and
  - make detailed disclosure on the voting activities of those holding weighted voting rights

# Chapter 5 - Draft Proposal and Way Forward (cont'd)



## FEATURES OF THE DRAFT PROPOSAL (cont'd)

### Corporate governance measures:

- An issuer with a WVR structure would be expected to put in place certain enhanced corporate governance measures, including around:
  - independent non-executive directors;
  - the establishment of a Corporate Governance Committee;
  - the role of the Compliance Adviser; and
  - communication with shareholders

# Chapter 5 - Draft Proposal and Way Forward (cont'd)



## FEATURES OF THE DRAFT PROPOSAL (cont'd)

### Secondary listing and “centre of gravity”:

- The ability for companies with WVR structures to secondary list on the Exchange even though their WVR structure would not meet the proposed requirements for a primary listing
- A limited waiver from the current “centre of gravity” test for Greater China companies\* that were primary listed on a Recognised Exchange before today, the date of the Consultation Conclusions paper, with or without a WVR structure

\* The factors that the Exchange considers when determining whether a company has a “centre of gravity” in Greater China include but are not limited to: place of headquarters, operations and nationality of management.

# Concluding Remarks



- In making the decision to move forward to a second stage consultation, the Exchange has taken into consideration its duty to act in the best interest of the market as a whole and in the public interest
- It is clearly in the public interest to attract quality companies to list on our market and to provide more choice to investors, provided that the interest of public shareholders is appropriately protected through ring-fencing measures and safeguards
- We believe that US listings data and anecdotal and other representations support the view that the availability of WVR structures is a factor in an issuer's choice of listing venue
- The Exchange will consult on appropriate requirements for secondary listed issuers applying to list with WVR structures and a limited relaxation of the "centre of gravity" prohibition
- **The draft proposal developed by the Exchange is in the process of being finalised and may be altered. Any Rule amendments require approval by the SFC's board of directors and their view will be material to the formal second stage consultation proposal**

# Q&A