



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

27 November 2014

By email < response@hkex.com.hk > and by post

Our Ref.: [REDACTED]

Corporate and Investor Communications Department
Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

Dear Sirs,

Re: Concept Paper on Weighted Voting Rights

--- The Hong Kong Institute of Certified Public Accountants has considered the above concept paper and our comments are set out in the questionnaire attached to this letter.

If you have any questions on this submission or wish to discuss it further, please contact the undersigned by phone on [REDACTED] or email [REDACTED].

Yours faithfully,

[REDACTED]

Mary Lam
Director, Member Support

ML/ay
Encl.

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.

See Appendix.

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;

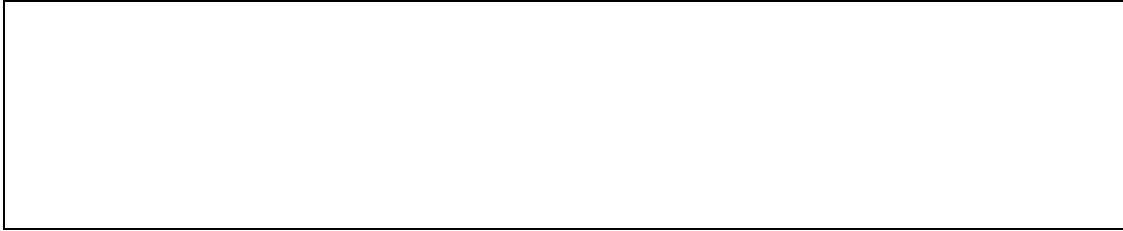
See Appendix.

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.



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 Institute considers that there are merits in each of the restrictions or measures adopted by US listed companies in order to limit the rights enjoyed by holders of multiple voting shares. It is considered that restrictions on transfer of such shares from the original owners to third parties are of utmost importance and hence, clear regulation should be developed to govern this aspect. The basic principle is to avoid abuse of the use of dual class share structure to disadvantage other shareholders.

Also, as the reasons for adopting a dual class share structure are different in different companies, it would be difficult to develop a set of general rule of law which fits all situations. The appropriateness of applicable restrictions or conditions should take into account the circumstance of each company and its reasons for adopting a dual class share structure to avoid the abuse of control. This could be explored in a further consultation.

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 submit that the features, merits and associated risks of each of the WVR structures should be studied and considered carefully before any recommendation is made to introduce such structures to the Hong Kong stock market.

The Securities and Futures Commission and the Stock Exchange of Hong Kong should educate the market of the WVR concept and the associated risks. Investors, in particular the less sophisticated retail investors that make up a significant proportion of minority shareholders in Hong Kong, would need time to learn and understand the WVR framework.

Nevertheless, it is noted that many of the companies which would like to list with WVR structures are fast growing companies that competing exchanges would welcome. In order to bolster the attractiveness of the Hong Kong securities market, we suggest that the Stock Exchange should expedite its study of this subject, taking into account feedback from market practitioners and other stakeholders.

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.

As explained in our response to Q1, we believe that the introduction of WVR structures would require consideration of wider changes to the corporate governance and regulatory framework in Hong Kong to maintain appropriate levels of investor protection.

1. The existing Listing Rules, the Code on Takeovers and Mergers and the Companies Ordinance that make reference to percentage of shareholding or the number of shares may need to be extended to refer to a specified percentage of voting rights.

2. In order to avoid the abuse of minority shareholders, consideration should be given to raise the threshold for approval of connected party transactions with shareholders holding multiple voting rights, and to impose additional conditions to connected party transactions, as appropriate.

3. Companies using WVR structures may be required to comply with additional corporate governance measures, in particular on investor protection aspect, to safeguard the interest of shareholders. For example, composition of the board of such companies should comprise majority of independent non-executive directors.

4. As mentioned in our answer to Q3 above, there should be clear regulations on transfer of shares with multiple voting rights.

5. Relevant sections of the Securities and Futures Ordinance may need to be more clearly elaborated in order to provide the Securities and Futures Commission with ample authority to carry out investigation and enforcement roles on shareholders' behalf or for the purpose of shareholders' protection.

6. From a bigger picture perspective, consideration would need to be given to review Hong Kong's legislative framework to ensure investor protection is maintained and that investors could obtain appropriate legal redress for damages through private actions against listed companies. It is noted that in 2012, the Law Reform Commission of Hong Kong published some consideration on how mechanisms to enhance investor protection may be developed.

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

The Institute is of the view that companies with WVR structures could be listed either on the main board or on the GEM, given that such companies and the different classes of shares can be clearly demarcated by the stock codes and the stock short names to enable investors know which companies are with WVR structures and the rights attached to any particular class of shares.

- (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)?

No specific view.

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

We suggest that the proposed arrangements tailored-made for companies with WVR structures, if they were allowed to be listed in Hong Kong, would not be extended to the dual class share structure company currently listed on the Stock Exchange, as the company already has a long history of listing in Hong Kong and its existing arrangements have been well accepted by the market.

- End -

Question 1

The Hong Kong Institute of Certified Public Accountants (the "Institute") is aware that there are divergent views in the market towards the concept of weighted voting right ("WVR") structures. The WVR concept may not be welcome by some investors as it takes rights away from public shareholders, and they perceive that this hurts the market. Institutional investors may fear that they will be marginalised by the company's founding members or management. Having said, since WVR structures are more common in the developed markets in the world, this suggests that there are some understandable and good reasons to have them.

The Institute welcomes the Hong Kong Exchanges and Clearing ("HKEx") provides a concept paper setting out relevant background information to facilitate an open public debate on the concept of WVR structures, and whether there are any merits on permitting companies with WVR structures to be listed on the Stock Exchange of Hong Kong.

While the Institute has no objection, in principle, to HKEx exploring the feasibility of permitting companies with WVR structures to be listed on the Stock Exchange of Hong Kong, we recommend that HKEx should carefully consider whether WVR structures would be fit for Hong Kong under Hong Kong's existing legal regime, which limits the options for shareholder actions against listed companies and their directors. We are mindful of the importance of investor protection, which is central to Hong Kong's high regulatory standards. This core value of Hong Kong's securities market should not be compromised.

The Institute considers that introducing the WVR concept to the Hong Kong stock market not only will lead to a significant change to the general principle (i.e., fair and equal treatment of shareholders) of the existing Listing Rules and the Code on Takeovers and Mergers, but will also have great impact on, for example, investor protection and shareholders' redress aspects, which merit review. We are concerned that consideration of individual issues on a piecemeal basis, without the benefit of seeing a coherent overall picture, could result in inconsistent and fragmented changes. We strongly recommend, therefore, that HKEx should move forward conservatively to gauge feedback from market practitioners and other stakeholders and conduct a comprehensive study of the implications of the WVR structures on various different aspects, in particular, whether the existing legal and regulatory regimes should be modified. All relevant aspects would need to be examined carefully and holistically.

Furthermore, we consider that it would be more meaningful to evaluate the suitability of introducing the WVR concept to Hong Kong with reference to the future direction and positioning of the Hong Kong securities market, say, over the next decade, as part of a broader and macro scope. It would be helpful if HKEx could provide further information about its medium- and long-term strategic outlook for the development of the Hong Kong securities market, which may shed light on this complex, technical subject. We understand that the recently launched Shanghai-Hong Kong Stock Connect is aimed to enhance capital market connectivity between Mainland China and Hong Kong via establishing mutual stock market access. Nevertheless, since China's legal regime prohibits companies from using WVR structures, we are afraid that allowing companies with WVR structures to list in Hong Kong may be inconsistent with the regulatory harmonisation which underpins Hong Kong's greater integration with the Mainland stock markets.

From the perspective of bolstering the competitiveness of Hong Kong as an international financial centre of global significance, in particular, as the leading financial centre for the listing and trading of Mainland Chinese enterprises outside Mainland, we note that in addition to the United States (on NYSE or NASDAQ), where a number of Mainland Chinese companies have chosen to be primary listed, Singapore is also a potential competitor to Hong Kong.

Hong Kong and Singapore are the two Asian exchanges that are suitable for listing of Mainland Chinese companies in view of their legal requirements, language, tax and foreign exchange. At present, there are 57 Mainland Chinese companies primary listed in Singapore. Although Singapore currently restricts the use of WVR structures by listed companies, it has recently amended its Companies Act to permit public companies in Singapore to offer shares with multiple voting rights in order to give them greater flexibility in raising capital and provide investors with a wider range of investment opportunities. It is logical to predict that the next step will most likely be for the Singapore Stock Exchange to allow companies with WVR structures to list.

It is noted from the concept paper that there were 102 Mainland Chinese companies primary listed on the US exchanges as at end of May 2014. Only 30 of them have a WVR structure. Since the US and Hong Kong exchanges intensify their competition as the international listing venue of choice for Mainland Chinese enterprises, it is useful to also understand the reasons for the remaining companies which have chosen to list on the US exchanges, as it appears that listed with a WVR structure is not the only reason.

Question 2(c)(iii)

We consider that approval for listing of companies with WVR structures should not be granted as a matter of routine. The listing applicant should be able to explain and justify, to the satisfaction of the Listing Division and the Listing Committee, that it has good reasons to adopt a WVR structure. In addition, the listing applicant should be able to also demonstrate that it has an effective mechanism to safeguard the interests of ordinary shareholders.