

27 November 2014

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 British Chamber of Commerce in Hong Kong, via its Financial Markets Committee [and its General Committee] is pleased to provide comments on the Hong Kong Exchanges and Clearing Limited (“HKEx”) Concept Paper on Weighted Voting Rights.

Background

The British Chamber of Commerce in Hong Kong (“BCCHK”) is a dynamic force that represents the business interests of its members both in Hong Kong, Mainland China and the Asia Pacific Region. The Chamber represents a broad spectrum of British, Hong Kong, Chinese and international companies, most of whom share significant commercial interests here. There are over 1200 members of the BCCHK, including 66 companies in the financial services sector.

The BCCHK aims are:

- To promote members' interests with government and business bodies in Hong Kong, Mainland China and Britain.
- Thereby to be a recognised, authoritative voice for international business in Hong Kong.

The aim of the Financial Markets Committee (“FMC”) is to represent and promote the collective interests of the Chamber in Hong Kong’s financial markets, to keep Hong Kong at the forefront of this sector internationally. The group’s issues-based approach will allow identified issues that are received from the membership to drive any specific focus of the group.

Our members welcome to opportunity to respond to the HKEx Concept Paper on Weighted Voting Rights.

Our responses to the questions posed in the concept paper are attached to this letter.



The British
Chamber of Commerce
in Hong Kong
香港英商會

Yours sincerely

Andrew Weir
Chairman, BCCHK

Richard Winter
Chairman, FMC

Cc: Brigadier Christopher Hammerbeck – Executive Director

Response to the Hong Kong Stock Exchange's Concept Paper on behalf of Financial Markets Committee of British Chamber of Commerce in Hong Kong ("BCC-FMC").

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

No

Please give reasons for your views below.

BCC-FMC is concerned that not allowing companies using WVR structures to list in Hong Kong will be detrimental to the Hong Kong market and contrary to the interests of investors, both institutional and retail. There was huge local interest in the Alibaba Group IPO, yet anecdotally it appears that Hong Kong investors received few - if any - shares. The exclusion of Hong Kong investors from the largest ever IPO of a Chinese company is regrettable given the Hong Kong Stock Exchange's long-held position as the international listing venue of choice for Mainland Chinese companies and the gateway to Mainland China for international investors.

Also, as an established international financial centre, Hong Kong has a deep pool of experienced professionals to advise on and support the establishment of such structures. We have had considerable experience of these structures in the Stock Exchange's long history.

BCC-FMC acknowledges the importance of investor protection and the potential for abuse of minority shareholders inherent in WVR structures. Yet the risk is similar for minority shareholders in family-controlled companies and companies using pyramid structures, which face no restriction on listing in Hong Kong. As acknowledged in the Concept Paper, Hong Kong's regulators seek to control abuse through regulation, corporate governance provisions and enforcement. The Exchange's Listing Rules seek to prevent abuse by controlling shareholders (e.g. through the connected transaction rules) and when it does occur, redress for shareholders is normally obtained by the SFC bringing proceedings on shareholders' behalf under sections 212 to 214 of the Securities and Futures Ordinance (see paragraphs 70 to 71 of the Concept Paper). The SFC is increasingly using these sections to address misconduct. Provided that the current supervision and enforcement regime applies to WVR structures, with a few additional controls, we do not see why investor protection would be diminished.

Moreover, a company using a WVR structure will see that this is "priced in" by the market. Investors will only buy shares with unequal voting rights if the price is right, and will often extract a price for the assumption of the associated risk in the form of a discount. Ultimately, of course, investors are free to vote with their feet.



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

Please give reasons for your views below.

BCC-FMC is in favour of WVR structures for new listing applicants who can provide good justifications (which must ultimately benefit shareholders) for such a structure. Fundamentally, a WVT structure may be necessary during the initial years of a company's business; we question (whilst keeping an open mind) whether existing listed companies - keeping in mind shareholders' interests - need such a structure. Nevertheless, it should be recognised that, if the WVR structure is only permitted for new listing applicants, there is a risk that existing listed issuers will circumvent the rules in ways that anti-avoidance provisions may not successfully address, as the Exchange has identified (at paragraphs 151 to 152 of the Concept Paper). Therefore, provided there are sufficiently strict safeguards, it may be acceptable for an existing listed company to change to a WVR structure. Such safeguards should include approval of a sufficiently high percentage of non-controlling independent shareholders to implement the structure post-listing so that the rights of minority shareholders should be sufficiently protected. The requirements could, for example, follow those for privatization or withdrawal of a listing, namely: (i) approval by 75% of voting rights at a general meeting; and (ii) no more than 10% of the votes attaching to disinterested shares cast against the proposal.

(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;

No. BCC-FMC favours allowing companies from all industries to list using a WVR structure. Restricting use of the structure to specific industries poses problems in terms of regulatory subjectivity, challenges in defining particular industries and catering for future industries which will no doubt emerge.

- (ii) "innovative" companies (see paragraphs 163 to 164 of the Concept Paper), please specify how we should define such companies below;

No. Similar definitional problems and subjectivity.

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- (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.

No. The Listing Rules already contain an exceptional circumstances exception permitting the listing of WVR structures, but as has been seen, no circumstances have yet been considered sufficiently exceptional, even for the largest IPO in history, to justify allowing a company with a WVR structure to list.

Companies need to know what are the criteria for listing, otherwise they risk wasting money, time and effort in applying for a listing which could ultimately be refused on the basis that the circumstances are not sufficiently exceptional. Together with the additional requirement to make a large amount of information about the company public at the listing application stage, the lack of certainty may deter good listing applicants from seeking a Hong Kong listing.

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.

BCC-FMC considers there is merit in all the measures voluntarily adopted by US listed companies to limit the rights attaching to multiple voting shares, with the addition of specific regulatory controls - such as enhanced supervision over the management team and setting a de-minimis scale for listings. We also believe that there should be stronger minority protection and that Legal Aid should be granted in suitable cases where companies act to the detriment of the minority shareholders. This has been considered by the Legco Panel over the past 10 years, but the Legal Aid Ordinance has not been widened as yet. We have in mind the PCCW Case – where in fact the Court granted the minority shareholders’ some of their costs, and this could give a precedent. Questions as to which measures are the most appropriate, and whether they should be mandatory or optional, should be explored via a further consultation once the decision has been made to allow WVR structure companies to list in principle.

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?

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Please give reasons for your views below. In particular, how would you answer Question 2 and Question 3 in relation to such restructures?

BCC-FMC's view is that other structures which could achieve substantially the same outcome as WVR structures should be allowed to list provided that safeguards are in place (in the form of the Listing Rules, Takeovers Code and Corporate Governance requirements) to ensure proper disclosure of the structure and its associated risks, and to ensure that minority shareholders are not disadvantaged to a greater extent than minority shareholders in other companies with a controlling stake. Further consideration and consultation on acceptability of certain partnership structures can also be considered, similar to the Alibaba arrangements.

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

If so, please specify these changes with reasons below.

The requirements for achieving control of a listed company through an acquisition of multiple voting shares should be consistent with the Takeovers Code's provisions in relation to the acquisition of a controlling stake (i.e. 30% of voting rights and 2% creeper clause).

It will also be necessary to ensure that the connected transaction rules extend to transactions with persons who have control other than by control of voting rights (e.g. by superior board appointment rights granted by the company's Articles). Likewise matters which require approval by disinterested shareholders must not be voted on by persons who have control other than by holding 30% of the voting rights. Consideration could also be given to raising the number of non-executive directors to achieve a majority.

The above matters can be dealt with in a further consultation on detailed proposals once the decision to allow the listing of companies with WVR structures has been made.

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

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Such companies could list either on the Main Board or on GEM, provided that stock codes clearly indicate companies which have a WVR structure.

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

With increased competition for Chinese listings from the US, the UK and Singapore, it is vital that the Exchange acts quickly to evaluate new developments and possible changes to Hong Kong's regulatory environment to ensure the Exchange's continued relevance and competitiveness and maintaining Hong Kong as an international financial centre. BCC-FMC would therefore stress the urgency of implementing necessary regulatory changes - with appropriately stringent safeguards - to permit companies with WVR structures to list as soon as is reasonably practicable.

Also, it is important that HK provides a regulatory framework that enables it to become an attractive destination for secondary listings of attractive overseas companies with WVR structures.

It would very much like to see the publication of a consultation paper setting out specific proposals within the next four months.

Singapore has recently amended its Companies Act to permit the issue of shares with multiple voting rights. If Hong Kong delays any longer, there is a very real possibility that Singapore will eclipse Hong Kong as the Asian destination of choice for this significant market segment.