



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.: C/CFC, M97534

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 2287 7086 or email < mary@hki CPA.org.hk >.

Yours faithfully,

Mary Lam
Director, Member Support

ML/ay
Encl.



QUESTIONNAIRE ON WEIGHTED VOTING RIGHTS

We invite interested parties to respond to the Concept Paper on Weighted Voting Rights, which can be downloaded from the HKEx website at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2014082.pdf>

(“the Concept Paper”)

This Questionnaire contains: a Privacy Policy Statement; Part A: General Information of the Respondent; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEx both Part A and Part B of this Questionnaire no later than **30 November 2014** by one of the following methods:

By mail or
hand delivery to: Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

Re: Concept Paper on Weighted Voting Rights

By fax to: (852) 2524 0149

By e-mail to: response@hkex.com.hk

Please mark in the subject line:

Re: Concept Paper on Weighted Voting Rights

Our submission enquiry number is (852) 2840 3844.

The names of persons who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate this in Part A.

Definitions

The terms used in Part B of this questionnaire are defined in the “Definitions” section of the Concept Paper.

Privacy Policy Statement

Hong Kong Exchanges and Clearing Limited and from time to time, its subsidiaries, affiliated companies controlling it or under common control with it and its joint ventures (each such entity, from time to time, being “**HKEx**”, “**we**”, “**us**” or an “**affiliate**” for the purposes of this Privacy Policy Statement as appropriate) recognises its responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by HKEx is accurate. HKEx will use your personal data in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, as required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEx website, continued use by you of the HKEx website shall be deemed to be your acceptance of and consent to this Privacy Policy Statement.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels below.

HKEx will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorized personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your request.

Purpose

From time to time we may collect your personal data such as your name, mailing address, telephone number, email address and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEx and any company of which HKEx is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis; and
5. other purposes directly relating to any of the above.

Direct marketing

Except to the extent you have already opted out or in future opt out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to our financial services and information services, and related financial services and information services offered by our affiliates.

If you do not wish to receive any promotional and direct marketing materials from HKEx or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels below.

Identity Card Number

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

Transfers of personal data for direct marketing purposes

Except to the extent you have already opted out or in future opt out, we may transfer your name, mailing address, telephone number and email address to our affiliates for the purpose of enabling our affiliates to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

Other transfers of personal data

For one or more of the purposes specified above, the personal data may be:

1. transferred to our affiliates and made available to appropriate persons in our affiliates, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong; and
2. supplied to any agent, contractor or third party who provides administrative or other services to HKEx and/or any of our affiliates in Hong Kong or elsewhere.

How we use cookies

If you access our information or services through the HKEx website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEx website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEx website:

Session Cookies: temporary cookies that only remain in your browser until the time you leave the HKEx website, which are used to obtain and store configuration information and administer the HKEx website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit.

Session cookies are also used to compile anonymous statistics about the use of the HKEx website.

Persistent Cookies: cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEx website or to track and record user preferences.

The cookies used in connection with the HKEx website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEx website.

Compliance with laws and regulations

You agree that HKEx and its affiliates may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations, or in order to comply with a court order, subpoena or other legal process, or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere). You also agree that HKEx and its affiliates may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our affiliates and employees.

Corporate reorganisation

As HKEx continues to develop its business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

Access and correction of personal data

Under the PDPO, you have the right to ascertain whether HKEx holds your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request HKEx to inform you of the type of personal data held by it. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data (“**Privacy Commissioner**”) which may be found on the official website of the Office of the Privacy Commissioner.

Requests for access and correction or for information regarding policies and practices and kinds of data held by HKEx should be addressed in writing and sent by post to us (see contact details below).

A reasonable fee may be charged to offset HKEx’s administrative and actual costs incurred in complying with your data access requests.

Termination or cancellation

Should your account with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our affiliates and employees.

Contact us

By Post:

Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12/F., One International Finance Centre
1 Harbour View Street
Central
Hong Kong

By Email:

pdp@hkex.com.hk

Part A General Information of the Respondent

(1) Please state whether your response represents your personal or your company's view by checking () the boxes below and filling in the information as appropriate:

Company view

Company name*:	Hong Kong Institute of Certified Public Accountants				
Company type*:	<i>HKEx Participant</i> :- <input type="checkbox"/> SEHK <input type="checkbox"/> HKFE				
	<input type="checkbox"/> HKSCC <input type="checkbox"/> SEOCH <input type="checkbox"/> HKCC				
	<input type="checkbox"/> Listed company <input checked="" type="checkbox"/> Professional body / Industry association				
	<input type="checkbox"/> Market practitioner <input type="checkbox"/> None of the above				
Contact person*:	Ms	Mary Lam			
Title:	Director, Member Support				
Phone no.*:	2287 7086	Email address:	mary@hki CPA.org.hk		

Personal view

Respondent's full name*:	Mr/Ms/Mrs _____				
Phone no.*:	_____	Email address:	_____		
Among the following, please select the one best describing your position*:					
<input type="checkbox"/> Listed company staff	<input type="checkbox"/> HKEx participant staff	<input type="checkbox"/> Retail investor			
<input type="checkbox"/> Institutional investor	<input type="checkbox"/> None of the above				

Important note: All fields marked with an asterisk (*) are mandatory. HKEx may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.

(2) Disclosure of identity

HKEx may publish the identity of the respondent together with Part B of this response to the members of public. Respondents who do not wish their identities to be published should tick the box below:

I/We do not wish to disclose my/our identity to the members of the public.

Signature (with Company Chop if the response represents company view)

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;

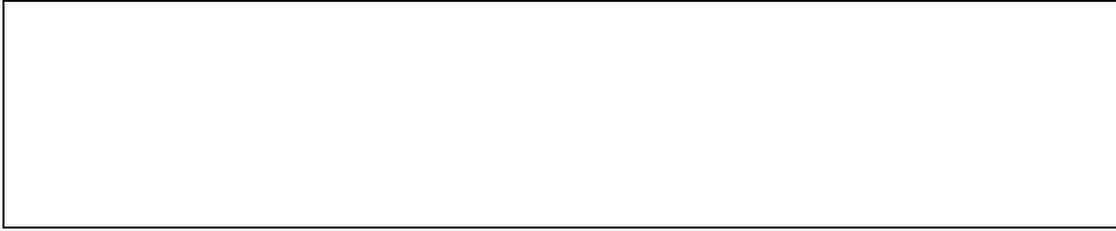
See Appendix.

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.