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The Hong Kong Institute of Chartered Secretaries (Incorporated in Hong Kong with limited liability by guarantee)

Submission:

In response to the Concept Paper on Weighted Voting Rights released by
Hong Kong Exchanges and Clearing Limited
in August 2014

The Hong Kong Institute of Chartered Secretaries
(Incorporated in Hong Kong with limited liability by guarantee)
3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong
香港中環都爹利街8號香港鑽石會大廈3樓 Tel 電話 : (852) 2881 6177
Website: <http://www.hkics.org.hk>

香港特許秘書公會
(於香港註冊成立的擔保有限公司)
Street, Central, Hong Kong
圖文傳真 : (852) 2881 5050
E-Mail : ask@hkics.org.hk



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.

We have divergent views as to whether listed issuers should be permitted to list with WVR structures. The consensus amongst our members is that the "one share one vote" structure is the best structure to promote corporate governance, and deviations therefrom, like where connected persons may not vote their shares, are for the purpose of enhancing minority protections. Yet, even amongst such members, there is a population that take the view that WVR structures could be considered where adoption of these will enhance Hong Kong's competitiveness as an international financial centre by attracting sizeable listings. Nevertheless, they will require enhanced minority protections to fill the regulatory arbitrage between "one share one vote" and WVR structures. They have suggested that the enhanced minority protections should include (1) at least a substantial shareholder with "skin in the game", (2) the use of an alternative board to prevent confusion and to protect minority investors and (3) statutory derivative actions as current SFC regulatory tools following the Tiger Asia case may not be sufficient as there is no direct investor access rights. At this stage, we submit that the "one share one vote" is the best form of corporate governance and inroads will require detailed proposals as to minority protections for the matter to be considered.

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

¹ References to "the Exchange" in this Questionnaire mean The Stock Exchange of Hong Kong Limited, a HKEx subsidiary.

(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;

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;

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.

² GEM Rule 11.25.

This can be kept as an additional general discretion.

Please give reasons for your views below.

The main focus should be the detailed proposals relating to corporate governance, including minority protections adopted by reason of WVR structures in accordance with our answer to Question 1. This will be more easy for new listed issuers to achieve.

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 main focus should be the detailed proposals relating to corporate governance, including minority protections adopted by reason of WVR structures in accordance with our answer to Question 1.

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?

The main focus should be the detailed proposals relating to corporate governance, including minority protections adopted by reason of WVR structures in accordance with our answer to Question 1.

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.

There is definite need for changes to implement the detailed proposals relating to corporate governance, including minority protections adopted by reason of WVR structures in accordance with our answer to Question 1.

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

We are open to any proposal that provide adequate consideration of corporate governance, including minority protections adopted by reason of WVR structures in accordance with our answer to Question 1.

(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)?

We will adopt market consensus in this regard.

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

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