



28 November 2014

By post and email: [response@hkex.com.hk](mailto:response@hkex.com.hk)

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**

Dear Sirs,

The Chamber of Hong Kong Listed Companies (“CHKLC”) is pleased to have the opportunity to respond to the Concept Paper on Weighted Voting Rights (WVR) structures. The Chamber understands the importance of this review, the outcome of which will have a long term impact on our market development. The Concept Paper lists out very detailed analysis of the present situation and practices about WVR structures in other markets; based on the analysis given, the Chamber would like to share our thoughts on the subject.

“One-share-one-vote” principle should be upheld

CHKLC firmly believes in the merit of “one-share-one-vote” principle. This has been a most prevalent principle underlying a wide spectrum of governance practices, including those found in the Exchange’s Listing Rules, and is commonly accepted as a measure of fairness and equality for all shareholders. For example, rule 13.39(4) of the Listing Rules stipulates that any vote of shareholders at a general meeting must be taken by poll, which is a manifestation of the “one-share-one-vote” spirit. This principle is further reinforced recently by the abolition of the “Headcount Test” in the Companies Ordinance.

Therefore, for the benefit of consistency and predictability, it is the view of CHKLC that the “one-share-one-vote” principle should be maintained in our market.

Nonetheless, as the Concept Paper pointed out, under the Hong Kong Companies Ordinance, a company’s articles may permit the issue of share classes carrying more or less than one vote per share, only that the Exchange does not allow listing of those shares unless in “exceptional circumstance” and having been agreed by the Exchange (Listing Rule 8.11). In other words, listing of shares with unequal voting rights is possible under the existing regime and the Exchange will be the gatekeeper. In our opinion, this strikes a good balance between upholding the important principle of “one-share-one-vote” and allowing room for flexibility if

it is deemed necessary. CHKLC believes this will be a good approach to take when deliberating whether Hong Kong should permit WVR structures. It is our view that instead of institutionalising VWR structures with specific rules, thereby shaking the foundation of “one-share-one-vote” principle, the Exchange can make use of the power given to it under the existing rules and gives permission to WVR structures on a **case-by-case basis and only in exceptional circumstances**, especially where the interests of Hong Kong as a major international financial centre would be hampered.

It would be helpful to the market if the Exchange can provide some guidelines as to what constitutes “exceptional circumstances” so that companies can assess their own situation and decide if they could proceed with their plan of seeking to list shares of WVR.

To ensure that the permission would only be granted on genuinely good grounds, we would recommend that an endorsement by the Financial Secretary be sought in order to provide checks-and-balances.

In the event that a WVR structure is approved for listing, we are of the view that they should not be listed on the Main Board where investors are accustomed to their rights under the “one-share-one vote” principle. We do not see it necessary either to create another professional board, which would only complicate our market structure.

One possible route is to have the WVR shares traded on the GEM Board which is intended to provide a fund raising platform for younger and growth companies. Companies listed on GEM are required to make enhanced disclosures and investors are trading on an “investor-beware” basis. In this light, GEM Board might be appropriate for companies with WVR structures where investors do assume more risks by owning shares of disproportionate voting rights

#### Other considerations

As aforesaid, the Exchange shall act as the gatekeeper and consider granting permission to the listing of WVR shares in exceptional circumstances. When deciding whether to grant the permission, there are some basic principles that the Exchange should take in to account, as follows:

- Only for IPO companies

Firstly, WVR shares should only be allowed for newly-listed companies where the particular shareholding structure will be transparent to potential new shareholders and it will be up to them to subscribe to the IPO on an informed basis. WVR shares should not be issued by existing listed companies as it would be unfair to existing minority shareholders to have the WVR structures imposed on them, and leaving them with no choice but to sell off their shares should they not want to be subject to such structures.

- Not limited to IT or innovative companies

Secondly, the permission to listing WVR shares should not be limited to certain industries such as the information technology (IT) industry, or innovative companies. As pointed out in the Concept Paper, in overseas exchanges where WVR shares are allowed, they are not restricted to IT companies. It would be hard to justify why a particular industry seems to be treated favourably over the others. Nor should it be exclusive to innovative companies. Besides the fact that determining what is innovative would be subjective or even arbitrary at times, the innovative-ness of a company may be short lived. What is considered innovative at the time of listing may become obsolete a few years down the road; the first company to enter a special field or deploy special technology may be considered innovative, the companies that follow are not. Hence, it is difficult to draw the line between what is innovative and what is not.

- Considered for companies whose founding shareholders hold non-controlling stake

One of the effects of having WVR or similar structures is that they give the founding shareholders -- who initially collectively had a majority stake in the company but which stake was diluted subsequently through new share issuance to third party investors -- a secure control of the company even though they only have a minority stake so that they can focus on developing their companies for the long term benefits of all shareholders, without fear of having their shareholdings further diluted and lose company control.

As seen in the case of Alibaba, the partnership structure they proposed for Hong Kong and eventually approved in the US allows the 27 partners an exclusive right to nominate a simple majority of the board, giving them effective control. Companies whose founding shareholders own a minority stake, probably due to frequent rounds of fundraising at the early stage of company development would find this kind of structures most beneficial. While this is common in the IT sector, companies in other industries would have similar situation.

Therefore, instead of being industry-specific, the Exchange can consider allowing WVR structures specifically to companies, regardless of industries, whose founding shareholders, who once collectively owned a majority stake in the company, own only a non-controlling stake at the time of listing application because of rounds of fundraising.

#### Restrictions

Although we agree WVR shares could be permitted under very exceptional circumstances, their listing must be subject to a number of restrictions.

- Sunset Clause

As WVR structures allows founding shareholders who do not own a controlling stake of the company at the time of listing to have a secure control of the board, such protection needs

not be perpetual. A sunset clause would be necessary whereby the WVR shares must be converted back to ordinary shares within a certain time period. Such time period should be long enough to allow the founding shareholders to grow the business whereas they could strengthen their control through accumulating a higher equity interests during that time. Tentatively, the time period of 10 years seems to be fair.

- Change in the Shareholding Level of Founding Shareholders

If at any time the stake of the founding shareholders collectively reaches majority control, the WVR shares are no longer needed and they shall be converted back to ordinary shares. On the other hand, if the collective stake drops below a certain level which may signify a loss of commitment to the company or meaningful influence, the WVR shares need also be converted. The market can discuss what the minimum level of shareholding should be.

Therefore, the requirement to convert the WVR shares back to ordinary shares will arise at the expiration of the set time limit or upon the founding shareholders' stake going over 50% or below the minimum level to be agreed, whichever is earlier.

- Transfers within Founding Shareholders Group Only

The transfers of WVR shares shall be limited within the group of original founding shareholders. This is to ensure the intent of permitting WVR shares will continue to be served. If the WVR shares are transferred to third parties not forming part of the original founding shareholders group, the shares need to be converted.

- Substantial Change of Original Business

In the circumstances that the business of the company changes substantially from the time when it is listed, the WVR shares need to be converted, as the purpose of allowing the founding shareholders to control and develop the original business is lost.

In addition to the above, the various means of restrictions in use in the US markets listed out in the Concept Paper are reasonable and can be considered for Hong Kong.

### Conclusion

In conclusion, CHKLC believes that the "one-share-one-vote" principle be upheld and applied to Hong Kong listed companies except in very special circumstances where Hong Kong's position as a leading international financial centre would be adversely affected. However the listing of WVR structured-companies must be subject to conditions and restrictions. It is applicable only to newly listed companies where founding shareholders hold a non-controlling stake; it should not be industry specific, and listing will be on the GEM Board only. There should be a sunset clause that mandates the conversion of the WVR shares back to ordinary shares within 10 years, or when founding shareholders assume controlling stake or their stake



drops below the minimum level to be agreed or when the business of the company is substantially changed.

Should there be any queries or clarification required, please feel free to let us know.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Sun', with a long, sweeping flourish extending to the right.

P. P. Patrick Sun  
Chairman