

Listing Dual-Class Share Companies in Hong Kong What You Need to Know



Since April 2018, the Hong Kong Stock Exchange has had a regime for listing innovative “new economy” companies with dual-class share structures, which represents a key step toward opening up the Hong Kong market to successful, high-growth companies featuring technological innovation in their operations or business models.

What companies may qualify?

- New listing applicants only
- Minimum expected market capitalisation (“market cap”) of HK\$10b
- If less than HK\$40b of market cap, meets higher revenue test of HK\$1b in the most recent audited financial year
- Qualifies as an innovative company, namely having one or more of the following features:
 - Has been successful as to its core business due to the application of new technologies, innovations and/or business models
 - Has research and development (“R&D”) as a significant contributor to value and cause of expense
 - Has had its success demonstrably attributable to unique features or intellectual property
 - Has an outsized market cap or intangible asset value relative to the tangible asset value

What is considered to be “innovative” fluctuates over time. The fact that one company has qualified for Weighted Voting Rights (WVR) listing does not guarantee similar treatment for another company with a similar technology, innovation or business model.

- Has track record of measurable high business growth in terms, for example, of users, customers, unit sales, revenue, profits, market value, etc. with an expected high growth trajectory
- Has received meaningful third-party funding from a sophisticated investor (including a financial institution) which must remain at IPO and retain at least 50% of the investment at the time of listing for a period of at least six months post-IPO – but this does not apply in a spin-off, and the six-month lock-up for third-party investors is subject to exceptions for de minimis investors provided that the main investors are in compliance

The “sophistication” of third-party investment will be measured by reference to factors such as net assets or assets under management, relevant investment experience, and the investor’s knowledge and expertise in the relevant field. Whether an investment is “meaningful” will be considered in light of the nature of the investment, amount invested, size of the stake taken up, timing of the investment, etc.

- Meets the following requirements in relation to the WVR structure
 - The WVR holders have been materially responsible for the company’s growth by way of skills, knowledge or strategic directions
 - The WVR holders have an active executive role and assume the role of directors at the time of listing
 - Has suitable shareholder’s protection mechanisms (see the section on structural limits below)

Having all the characteristics set out in the rules and guidance does not guarantee the applicant’s suitability to list with a WVR structure. Only “bona fide” cases will be accepted and extreme cases of non-conformity with corporate governance norms (e.g. ordinary shares carrying no voting rights at all) may be rejected by the Stock Exchange.

Who can hold WVR?

- WVR beneficiaries must be directors
 - The WVR will cease upon cessation of directorship, death or incapacity, or transfer of the share (subject to limited exceptions where there is no circumvention of the general transfer restriction, e.g. with respect to trust structure or estate or tax planning)
- WVR beneficiaries must beneficially own collectively at least 10% of the underlying economic interest in total issued share capital at the time of listing
 - This will not be an ongoing requirement post-listing
 - The Stock Exchange may accept a lower minimum shareholding percentage on a case-by-case basis, if the lower percentage still represents a very large amount in absolute dollar terms

The Stock Exchange is unlikely to view as attempted circumvention cases of holding through partnership, trust or other vehicles where (i) in the case of a partnership, the partnership terms specify that the voting rights attached to the shares are solely dictated by the WVR beneficiary; (ii) in the case of a trust, the WVR beneficiary in substance retains an element of control of the trust and the purpose of the trust is estate or tax planning; or (iii) in the case of a corporate or other vehicle, the WVR beneficiary wholly owns and controls that vehicle at all relevant times.

The Stock Exchange will deem a WVR beneficiary as no longer qualifying as a director when, for example, he or she is convicted of an offence involving fraud or dishonesty, is subject to a disqualification order made by a competent court, or is found by the Stock Exchange to have committed certain breaches of rules.

Every WVR beneficiary must have been materially responsible for the growth of the business, by way of his skills, knowledge and/or strategic direction in circumstances where the value of the company is largely attributable or attached to intangible human capital.

Are WVR schemes subject to limits?

- WVR must be attached to specific class(es) of shares
 - The class must be unlisted
 - The WVR attached to this class of shares must confer only enhanced voting powers on resolutions tabled at general meetings
- WVR must be capped at not more than 10 times the voting power of ordinary shares
- Non-WVR shareholders must be able to cast at least 10% of the votes eligible to be cast at a general meeting
- A shareholder holding 10% (or such lower percentage as is prescribed under applicable company law) on a one-vote-per-share basis must be able to convene a general meeting and to propose resolutions in the meeting agenda
- Any conversion from WVR shares to ordinary shares must be on a 1:1 ratio and Stock Exchange approval will be required for the listing of the converted shares
- The WVR attached to a beneficiary's shares must cease upon transfer to another person of the beneficial ownership of / economic interest in / voting rights attached to such shares
- The WVR structure must cease when none of the original WVR beneficiaries at the time of listing has beneficial ownership of shares with WVR
- The WVR safeguards must be incorporated in the constitutional documents
- A WVR beneficiary must also provide an undertaking to the company to comply with the WVR safeguards
- Time-defined sunset clause is not required for WVR

Weighting is capped at

10x

the vote of ordinary shares

At least

10%

of the votes can be casted by non-WVR shareholders

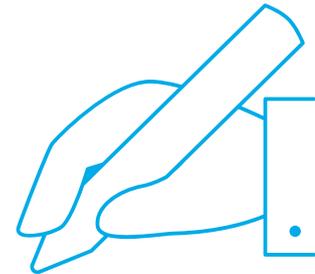
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conversion from WVR shares to ordinary shares

Can votes be weighted for all resolutions?

- The following matters must be decided on a one-vote-per-share basis:
 - Changes to the constitutional documents
 - Variation of class rights
 - Appointment or removal of independent non-executive directors (INEDs)
 - Appointment or removal of auditors
 - Voluntary winding-up

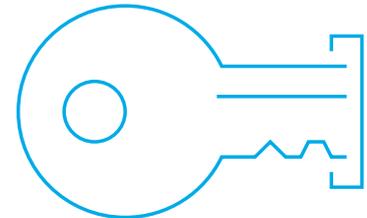
Although amendments to constitutional documents can and must be approved by non-WVR shareholders, this does not enable non-WVR shareholders to remove or further constrain a WVR scheme; the WVR attached to a class of shares may be varied only with the consent of shareholders of the relevant class.



What other requirements apply?

- Enhanced disclosure
 - Report on the work of corporate governance committee must be included in half-yearly and annual reports
 - WVR companies listed under the new regime will be identifiable as such by way of a marker “W” to the stock name
 - Additional warnings, rationale for having WVR and associated risks must be disclosed in listing documents, periodic financial reports, circulars and announcements
 - Disclosure of WVR beneficiaries’ identities and any impact of conversion in listing document and interim and annual reports
 - Disclosure in listing documents, interim and annual reports of all circumstances in which WVR will cease
- Enhanced corporate governance
 - Mandatory corporate governance committee composed entirely of INEDs, with mandatory terms of reference and mandatory disclosures in periodic reports
 - Establishment of nomination committee comprising INEDs
 - Rotation of INEDs every three years
 - Mandatory engagement of compliance advisers on permanent basis, whose advice must be sought in relation to prescribed matters involving WVR or a potential conflict of interest
 - Training requirements for directors and senior management

WVR companies listed under the new regime will have a marker “W” for the stock name.



Any other ongoing regulation?

- All shareholders of listed securities should be treated fairly and holders of listed securities of the same class must be treated equally
- After listing, a company is prohibited from increasing the proportion of WVR in issue, or issuing any further WVR shares
 - A WVR beneficiary is under an express duty to use best endeavours to procure the company's compliance with this rule
 - There are only limited exceptions for WVR beneficiary's pre-emption rights to prevent dilution in a rights issue, open offer, pro rata scrip dividend issue, stock split, etc., and subject to the Stock Exchange's prior approval
- Where the company reduces its issued shares through a buyback, the WVR beneficiaries must reduce their WVR proportionately (e.g. through conversion into one-share-one-vote shares)
- After listing, a company may not change the terms of a WVR class of shares to increase the WVR carried by that class
- For the purposes of connected transaction rules, a WVR beneficiary and any vehicle through which it holds such WVR will be deemed to be a core connected person of the company

The Stock Exchange has taken measures to supplement its enforcement powers vis-à-vis WVR beneficiaries who have acted in a manner contrary to the Listing Rules. In appropriate cases the Stock Exchange may constrain access to the market by the listed company or an individual director through a cold shoulder order.

Dealings may be suspended in any of the listed issuer's shares, including those held by the offending WVR beneficiaries. The Stock Exchange's usual powers to withhold listing approval and/or clearance of corporate documents, suspend trading or delist a company will also apply generally to listed issuers with WVR structures.

Where a WVR beneficiary casts its votes in contravention of the rules, the resolution will be taken as not to have been passed and the votes will not be counted for the purpose of the Listing Rules.

Contacts



Yang Chu

Partner | Corporate
+852 2533 3397
yang.chu@davispolk.com



Li He

Partner | Corporate
+852 2533 3306
li.he@davispolk.com



James C. Lin

Partner | Corporate
+852 2533 3368
james.lin@davispolk.com



Gerhard Radtke

Partner | Corporate
+852 2533 3363
gerhard.radtke@davispolk.com



Miranda So

Partner | Corporate
+852 2533 3373
miranda.so@davispolk.com



Howard Zhang

Partner | Corporate
+86 10 8567 5002
howard.zhang@davispolk.com

New York
Northern California
Washington DC
São Paulo
London

Paris
Madrid
Hong Kong
Beijing
Tokyo

davispolk.com

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