HKEx Will Proceed With Formal Consultation on Weighted Voting Rights

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On 19 June 2015, the Stock Exchange of Hong Kong Limited (HKEx) published conclusions to its concept paper on weighted voting rights (Concept Paper), announcing that it will proceed with conducting a formal consultation process to review the current regulatory framework. Specifically, the HKEx will review the prohibition barring companies with governance structures that give certain shareholders voting powers and other rights disproportionate to their shareholdings from listing on the HKEx. These rights are referred to as "weighted voting rights" (WVRs) by the HKEx and are known as “dual-class" share structures in other markets.

The HKEx has concluded that there is support for a second-stage consultation based on the responses received to the Concept Paper and have indicated that the HKEx is open to re-examining the current bar on WVRs. This bar on WVPs was widely reported to have led to Alibaba taking its record-breaking 2014 initial public offering to the United States.

Conclusions to the Concept Paper

The Concept Paper was published in August 2014 — in the wake of the rejection of Alibaba’s listing plan by Hong Kong regulators — to solicit market views on whether companies currently listed or seeking to list on the HKEx should be permitted to adopt WVRs, a governance structure favored in particular by telecommunications, media and technology companies, which allows their founders to raise multiple rounds of capital while maintaining overall control of the companies.

The Concept Paper considered the principles of investor protection, the current regulatory framework under the Hong Kong Companies Ordinance (Cap. 622) and the competitiveness of Hong Kong as one of the world’s top listing venues. Having reviewed all the responses to the Concept Paper, the HKEx published its conclusions on 19 June 2015, stating that there is support for a second-stage consultation on proposed changes to its listing rules and the acceptability of WVRs. In its conclusions, the HKEx noted that a majority of respondents had expressed support for the use of WVRs in some circumstances, and expressed its belief that there are measures that it can put in place to mitigate the potential risks to investors posed by WVRs and that it is possible to create a regime with the necessary investor protections.

In an attempt to lure back Chinese companies that have opted to list on overseas stock exchanges in recent years (and most notably in U.S. markets), the HKEx also will seek market views in the second-stage consultation on whether the current bar on secondary listing of companies with “center of gravity” in Greater China should be relaxed.

Next Steps

Instead of reopening the debate on the question of whether weighted voting rights should be permitted, the HKEx instead will focus on identifying measures that can be put in place to mitigate the potential risks of WVRs and create a regime with corresponding investor protections. Preliminary discussions will be held with market stakeholders in the coming months to finalize a formal proposal for public consultation in the third- or fourth-quarter of 2015. Based on the draft proposals in the conclusions to the Concept Paper, the HKEx is contemplating ring-fencing features that would only allow new companies seeking to list on the HKEx to adopt WVRs that meet certain criteria.

Other safeguard measures are expected to be fleshed out in the preliminary discussions with market stakeholders on the draft proposal, with a view to the formal consultation commencing in the third or fourth quarter of 2015. Any changes to the current regime will ultimately also require the approval of the Securities and Futures Commission of Hong Kong.

Coupled with the surprise announcement by the HKEx that it also may consider scrapping its policy that prohibits companies with a "center of gravity" in Greater China from applying for a secondary listing, the change in the HKEx's stance seems timed to draw the attention of the numerous U.S.-listed China-based companies that recently have completed or announced or may be contemplating going private transactions — many of which are known to be looking at Shanghai's A share market as a possible alternative listing venue in light of current strong valuations in that market.