

### 1. Introduction

Two of the main stock exchanges in Asia – the Stock Exchange of Hong Kong (**SEHK**) and the Singapore Stock Exchange (**SGX**) – have recently changed their regulations to allow companies with dual class shares (**DCS**) to list.

SEHK implemented the change on April 30 while the SGX introduced new rules to the Singapore Exchange Securities Trading Limited Listing Rules (Mainboard) on June 26.

The changes are made with the intention to grow the stock market scene in Asia.

In Singapore, under a DCS structure, certain shareholders are given voting rights much higher than their shareholding. Shares in one class carry one vote (known as **OV shares**), while shares in another class carry multiple votes (termed **MV shares**).

In Hong Kong's case, the DCS structures were referred to as weighted voting rights (**WVR**) structures.

Essentially, these structures mean that issuers can issue different classes of shares, some which carry one vote, whilst some carry more than one vote, to protect the influence of the founders and top executives (usually the directors). The structures, often favoured by fast growing technology companies, are seen as a protection against shareholders' pressure for short term gains.

The table below compares the primary listing frameworks in both countries to help clients determine if they qualify for listing in either stock exchange and the conditions that come with such listings.

Clients who wish to discuss the feasibility of such structures should contact members of our Equity Capital Markets team for a detailed discussion. Their contact details can be found at the end of this update.

## 2. Comparative table between the DCS framework in Singapore and Hong Kong

Framework	SGX	SEHK
<b>Minimum market capitalisation</b>	<ul style="list-style-type: none"> <li>• No additional admission requirements (including as to the minimum market capitalisation) will be imposed for DCS structures, although the admission requirements in Chapter 2 of the Mainboard Rules require the issuer to meet at least one of the following quantitative requirements: <ul style="list-style-type: none"> <li>▫ minimum consolidated pre-tax profit of at least S\$30 million for the latest financial year and an operating track record of at least three years;</li> <li>▫ profitable in the latest financial year, an operating track record of at least three years and a market capitalisation of not less than S\$150 million; or</li> <li>▫ operating revenue in the latest completed financial year and a market capitalisation of not less than S\$300 million</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Applicants to list with WVR structure to have a minimum expected market capitalisation at the time of listing of not less than HK\$10 billion</li> <li>• If the applicant has below HK\$40 billion of expected market capitalisation, it must have at least HK\$1 billion of revenue in the most recent audited financial year</li> </ul>
<b>External validation</b>	<ul style="list-style-type: none"> <li>• Issuer must fulfil the admission requirements in Chapter 2 of the Mainboard Rules</li> <li>• Issuer must be suitable for listing with a DCS structure. Factors that SGX may take into account include: <ul style="list-style-type: none"> <li>▫ the business model of the company, for example, that the company has a conceptualised long-term plan that contemplates ramping up growth at a fast pace;</li> <li>▫ track record, including operating track record, of the company, group or business;</li> <li>▫ the role and contribution of intended MV shareholders to the success of the company or business. In the case of a group of persons or an entity permitted to hold MV shares (known as a permitted holder group), its relevance to the company or business;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Applicant must have received meaningful (being more than just a token investment) third-party funding from sophisticated investors (including financial institutions), who will retain an aggregate of 50% of their investment at the time of listing for a period of at least six months post-IPO (subject to exceptions for de minimis investments by specific investors) as further set out in the guidance letter of SEHK (HKEX-GL93-18)</li> </ul>
<b>Nature of the company and company success</b>		<ul style="list-style-type: none"> <li>• Characteristics of an innovative company will be used to determine an issuer's eligibility to list with a WVR structure. The following will be the characteristics of an innovative company according to the guidance letter of SEHK (HKEX-GL93-18):</li> </ul>

	<ul style="list-style-type: none"> <li>▫ participation by sophisticated investors;</li> <li>▫ if the permitted holder group is a trust or corporate vehicle, the suitability of the arrangement, including an assessment of whether sunset features or other safeguards are in place to govern the holding structure; and</li> <li>▫ other features of the company or business that require a DCS structure</li> </ul>	<ul style="list-style-type: none"> <li>▫ its success is attributable to the application of new technologies, innovations, and/or new business model to the company’s core business, which also serves to differentiate the company from existing players;</li> <li>▫ R&amp;D is a significant contributor of expected value and constitutes a major activity and expense;</li> <li>▫ its success is demonstrated to be attributable to unique features or intellectual property; and/or</li> <li>▫ it has an outsized market capitalisation/intangible asset value relative to its tangible asset value</li> <li>• Applicant to demonstrate a track record of high business growth which can be objectively measured by operational metrics such as by business operations, users, customers, unit sales, revenue, profits, and/or market value, and its high growth trajectory is expected to continue</li> </ul>
<p><b>Contribution and responsibility of MV/WVR holders, eligible persons, and cessation</b></p>	<ul style="list-style-type: none"> <li>• Issuer must specify the holders of MV shares during the initial public offering (IPO). In the case of a permitted holder group, an issuer must specify the scope of the permitted holder group at IPO, and may not add to the scope subsequently</li> <li>• A holder of MV shares must be appointed as a responsible director. In the case of a permitted holder group, a responsible director must be appointed for the permitted holder group</li> <li>• MV shares will be automatically converted to OV shares on a one-for-one basis upon: <ul style="list-style-type: none"> <li>▫ (i) sale or transfer of the MV shares to any person, and in the case of a permitted holder group, other than to persons in the permitted holder group; or</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Each WVR holder has been materially responsible for the growth of the business, by way of their skills, knowledge, and/or strategic direction where the value of the company is largely attributable or attached to their contributions</li> <li>• Each WVR holder has an active executive role within the business and contributes to a material extent to the ongoing growth of the business</li> <li>• Each WVR holder must be a director of the issuer at the time of listing</li> <li>• The rights of a WVR holder will cease upon cessation of directorship, death or incapacity (for the purposes of performing the role as a director), or transfer of the share</li> </ul>

	<ul style="list-style-type: none"> <li>▫ (ii) cessation of service as a responsible director, and in the case of a permitted holder group, other than where a new responsible director is appointed, unless shareholders approve otherwise in a general meeting where the voting is on the basis that one MV share is limited to only one vote (a situation known as the <b>Enhanced Voting Process</b>). The relevant holder of MV shares, the person to whom the MV shares are to be sold or transferred and such responsible director (as the case may be), and their respective associates, must abstain from voting on the resolution</li> <li>• Holders of MV shares are to observe a moratorium on the transfer or disposal of their entire shareholdings in the issuer in respect of their interests in both MV shares and OV shares for at least 12 months after listing</li> </ul>	
<b>Ring-fencing measures</b>	<ul style="list-style-type: none"> <li>• Existing companies which had listed with a one-share-one-vote structure would not be permitted to convert to a DCS structure post-listing</li> <li>• Restriction on issuing MV shares post-listing except in the event of a rights issue, bonus issue, scrip dividend scheme or consolidation or subdivision of shares, in each case in conjunction with the issuance of OV shares</li> <li>• Any issuance of MV shares by an issuer with a DCS structure must be approved by a special resolution of the shareholders in a general meeting</li> <li>• Issuer must ensure also that, in undertaking any corporate action, the proportion of the total voting rights of the MV shares as a class against those of the OV shares after the corporate action will not increase above that proportion existing prior to the corporate action</li> </ul>	<ul style="list-style-type: none"> <li>• Only new applicants can have WVR structure</li> <li>• WVR holders must beneficially own at least 10% of the underlying economic interest in the applicant's total issue share capital at the time of its initial listing</li> <li>• After listing, an issuer is prohibited from increasing the proportion of shares that carry WVR above the proportion in issue at the time of listing</li> <li>• After listing, an issuer may only allot, issue and grant shares carrying WVR with the prior approval of SEHK and on a pro-rata basis as with the other non-WVR shareholders</li> </ul>
<b>Limits on MV/WVR powers</b>	<ul style="list-style-type: none"> <li>• Maximum voting differential between each MV share and OV share of 10 to 1, where each MV share carries up to 10 votes and each OV share</li> </ul>	<ul style="list-style-type: none"> <li>• WVR to be capped to not more than 10 times the voting power of ordinary shares, and non-WVR holders must hold</li> </ul>

	<p>carries one vote; issuer must specify the number of votes for MV shares at IPO, and may not increase such number subsequently</p> <ul style="list-style-type: none"> <li>• In any general meeting, the number of votes that may be cast by holders of OV shares who are not also holders of MV shares must be at least 10% of the total voting rights of the issuer</li> <li>• OV shareholders holding at least 10% of the total voting rights on a one-share-one-vote basis must be able to convene a general meeting</li> <li>• Key matters must be decided where voting is based on the Enhanced Voting Process – e.g. changes to the issuer's constituent documents, variation of rights attached to any class of shares, waiver of automatic conversion of MV shares, appointment and removal of independent directors and auditors, reverse takeover of the issuer, winding up of the issuer and delisting of the issuer</li> </ul>	<p>at least 10% of the votes eligible to be cast at general meeting and this same percentage (10%) of one-share-one-vote shares must be able to convene a general meeting</p> <ul style="list-style-type: none"> <li>• Key matters must be decided on a one-share one-vote basis – e.g. material changes to constitutional document, variation of class rights, appointment and removal of an independent non-executive director and auditors and the voluntary winding up of the issuer</li> </ul>
<p><b>Enhanced disclosure and corporate governance</b></p>	<ul style="list-style-type: none"> <li>• Prospectus to disclose the risks of DCS structures, rationale for adoption of DCS structure, matters subject to Enhanced Voting Process including implications to holders of OV shares, and key provisions in the constituent documents relating to DCS structures in a prominent manner</li> <li>• Issuer to disclose its DCS structure, the holders of MV shares and their respective shareholding and voting percentage, both at the point of listing and on a continuing basis in its annual report</li> <li>• Shareholders' circular to contain information on voting rights of each class of shares</li> <li>• Prospectus, and on a continuing basis, announcements, circulars and annual reports to include prominent statement on the cover page highlighting that the issuer is a company with a DCS structure</li> <li>• SGX will also clearly demarcate, on trading screens, the securities of issuers with DCS structures, by identifying them in a distinctive manner</li> </ul>	<ul style="list-style-type: none"> <li>• Enhanced disclosure will be required in relation to issuers with WVR structures, including the use of a unique stock marker "W", and appropriate warnings such as "a company controlled through weighted voting rights" in the prospectus and ongoing corporate communications</li> <li>• Enhanced corporate governance will also be required (e.g. mandatory requirements for a corporate governance committee comprising entirely of independent non-executive directors and the appointment of compliance advisers on a permanent basis)</li> </ul>

	<ul style="list-style-type: none"> <li>Majority of each of the committees performing the functions of an audit committee, a nominating committee and a remuneration committee, including the respective chairmen, must be independent</li> </ul>	
<b>Secondary listing</b>	<ul style="list-style-type: none"> <li>SGX has separately clarified on July 28 2017 that companies with a DCS structure that are primary-listed in developed markets can seek a secondary listing on SGX</li> <li>All companies applying for a secondary listing are subject to the listings review process and must satisfy the relevant suitability criteria</li> </ul>	<ul style="list-style-type: none"> <li>SEHK has added a new chapter 19C to the existing Main Board Listing Rules to create a new secondary listing route to attract innovative issuers that are primarily listed on a qualifying exchange. Submissions to SEHK can be made on a confidential basis</li> <li>Applicants seeking a secondary listing with a WVR structure will generally be required to meet the eligibility and suitability criteria applicable to a primary listing</li> </ul>

**For more specific advice, please contact:**

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