

Chapter 8A

EQUITY SECURITIES

WEIGHTED VOTING RIGHTS

INTRODUCTION

The concept of proportionality between the voting power and equity interest of shareholders, commonly known as the “one-share, one-vote” principle, is an important aspect of investor protection as it helps align controlling shareholders’ interests with those of other shareholders and makes it possible for incumbent management to be removed, if they underperform, by those with the greatest equity interest in an issuer.

Although the Exchange believes that the “one-share, one vote” principle continues to be the optimum method of empowering shareholders and aligning their interests in a company, the Exchange will consider listing applications of companies seeking to deviate from this principle, under the conditions and safeguards set out in this Chapter. Applicants are expected to demonstrate the necessary characteristics of innovation and growth and demonstrate the contribution of their proposed beneficiaries of weighted voting rights to be eligible and suitable for listing with a WVR structure as set out in guidance published on the Exchange website and amended from time-to-time.

Scope

The Exchange Listing Rules (including Chapter 8) apply as much to issuers with or seeking a listing with a WVR structure, as other issuers of equity securities. This Chapter sets out rules and modifications to existing rules applicable to issuers with, or seeking, a listing with a WVR structure. For overseas issuers with a WVR structure with, or seeking, a secondary listing, the rules in this Chapter are subject to modification by rule 8A.46.

Issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the relevant requirements.

General Principles

8A.01 The general principle of rule 2.03(4) for issuers with, or seeking, a listing with a WVR structure under this Chapter is modified as follows:

The Listing Rules reflect currently acceptable standards in the market place and are designed to ensure that investors have and can maintain confidence in the market and in particular that:–

...

(4) all holders of listed securities are treated fairly and all holders of listed securities of the same class are treated equally; ...

DEFINITIONS

8A.02 In this Chapter, the following definitions apply:

“non-WVR shareholder” a shareholder of a class of listed shares of an issuer with a WVR structure who is not also a beneficiary of weighted voting rights;

“weighted voting right” the voting power attached to a share of a particular class that is greater or superior to the voting power attached to an ordinary share, or other governance right or arrangement disproportionate to the beneficiary’s economic interest in the equity securities of the issuer; and

“WVR structure” a structure of an issuer that results in weighted voting rights

GENERAL

8A.03 In the event of any failure to adhere to the requirements of this Chapter as determined by the Exchange, the Exchange may, as it considers necessary for the protection of the investors or the maintenance of an orderly market and in addition to any other action that the Exchange considers appropriate under the rules, exercise absolute discretion to:

(1) direct a trading halt or suspend dealings of any securities of the issuer or cancel the listing of any securities of the issuer as set out in rule 6.01;

- (2) impose the disciplinary sanctions set out in rule 2A.10 against the parties set out in rule 2A.09;
- (3) withhold:
 - (a) approval for an application for the listing of securities; and/or
 - (b) clearance for the issuance of a circular to the issuer's shareholders

unless and until all necessary steps have been taken to address the non-compliance as directed by the Exchange to its satisfaction.

QUALIFICATIONS FOR LISTING

Basic Conditions

8A.04 A new applicant seeking a listing with a WVR structure must demonstrate to the Exchange that it is both eligible and suitable for listing with a WVR structure.

8A.05 The Exchange will consider applications for listing with a WVR structure from new applicants only.

Note: The Exchange retains the discretion to reject an application for listing if it believes an issuer has acted intentionally to avoid rule 8A.05 or in a manner which has the effect of avoiding rule 8A.05.

Qualifications for Listing with a WVR Structure

8A.06 A new applicant seeking a listing with a WVR structure must satisfy one of the following:

- (1) a market capitalisation of at least HK\$40,000,000,000 at the time of listing; or
- (2) a market capitalisation of at least HK\$10,000,000,000 at the time of listing and revenue of at least HK\$1,000,000,000 for the most recent audited financial year.

PERMISSIBLE WVR STRUCTURES

Restriction to share class based WVR structures

8A.07 Subject to the requirement of rule 8A.24, a WVR structure must attach weighted voting rights only to a class of an issuer's equity securities and confer on a beneficiary enhanced voting power on resolutions tabled at the issuer's general meetings only. In all other respects, the rights attached to a class of equity securities conferring weighted voting rights must otherwise be the same as the rights attached to the issuer's listed ordinary shares.

A class of shares with weighted voting rights is ineligible for listing

8A.08 An issuer must not seek a listing of a class of shares carrying weighted voting rights.

Voting power of non-WVR shareholders

8A.09 Non-WVR shareholders must be entitled to cast at least 10% of the votes that are eligible to be cast on resolutions at the listed issuer's general meetings.

Note 1: Compliance with this rule means, for example, that an issuer cannot list with a WVR structure that attaches 100% of the right to vote at general meetings to the beneficiaries of weighted voting rights.

Note 2: A beneficiary of weighted voting rights must not take any action that would result in a non-compliance with this rule.

Restriction on voting power

8A.10 A class of shares conferring weighted voting rights in a listed issuer must not entitle the beneficiary to more than ten times the voting power of ordinary shares, on any resolution tabled at the issuer's general meetings.

Beneficiaries of Weighted Voting Rights

8A.11 At listing, any beneficiaries of weighted voting rights must be members of the applicant's board of directors.

Minimum Economic Interest at Listing

- 8A.12 The beneficiaries of weighted voting rights must beneficially own collectively at least 10% of the underlying economic interest in the applicant's total issued share capital at the time of its initial listing.

Note: The Exchange may be prepared to accept a lower minimum shareholding percentage, on a case by case basis, if the lower underlying economic interest still represents a very large amount in absolute dollar terms (for example if the applicant has an expected market capitalisation of over HK\$80 billion at the time of its initial listing) taking into account such other factors about the applicant as the Exchange may in its discretion, consider appropriate.

RESTRICTIONS ON PURCHASE AND SUBSCRIPTION

Issues of Shares Carrying Weighted Voting Rights

- 8A.13 A listed issuer must not increase the proportion of shares that carry weighted voting rights above the proportion in issue at the time of listing.

Note: If the proportion of shares carrying weighted voting rights is reduced below the proportion in issue at the time of listing, this rule 8A.13 shall apply to the reduced proportion of shares carrying weighted voting rights.

- 8A.14 A listed issuer with a WVR structure may only allot, issue or grant shares carrying weighted voting rights with the prior approval of the Exchange and pursuant to (1) an offer made to all the issuer's shareholders pro rata (apart from fractional entitlements) to their existing holdings; (2) a pro rata issue of securities to all the issuer's shareholders by way of scrip dividends; or (3) pursuant to a stock split or other capital reorganisation provided that the Exchange is satisfied that the proposed allotment or issuance will not result in an increase in the proportion of shares carrying weighted voting rights.

Note 1: If, under a pro rata offer, beneficiaries of weighted voting rights do not take up any part of the shares carrying weighted voting rights (or rights to those shares) offered to them, those shares (or rights) not taken up could only be transferred to another person on the basis that such transferred rights will only entitle the transferee to an equivalent number of ordinary shares.

Note 2: To the extent that rights in a listed issuer's shares not carrying weighted voting rights in a pro rata offer are not taken up in their entirety (e.g. in the case where the pro rata offering is not fully underwritten), the number of the listed issuer's shares carrying weighted voting rights that can be allotted, issued or granted must be reduced proportionately.

Note 3: Where necessary, beneficiaries of weighted voting rights must use their best endeavours to enable the issuer to comply with this rule.

Purchases of Own Shares

8A.15 If a listed issuer with a WVR structure reduces the number of its shares in issue (e.g. through a purchase of its own shares) the beneficiaries of weighted voting rights must reduce their weighted voting rights in the issuer proportionately (for example through conversion of a proportion of their shareholding with those rights into shares without those rights), if the reduction in the number of shares in issue would otherwise result in an increase in the proportion of the listed issuer's shares that carry weighted voting rights.

Prohibition on Changing Terms of Shares Carrying Weighted Voting Rights

8A.16 After listing, a listed issuer with a WVR structure must not change the terms of a class of its shares carrying weighted voting rights to increase the weighted voting rights attached to that class.

Note: If a listed issuer wishes to change the terms of a class of its shares carrying weighted voting rights to reduce those rights it may do so but must, in addition to complying with any requirements under law, first obtain the prior approval of the Exchange and, if approval is granted, must announce the change.

CONTINUING OBLIGATIONS

Ongoing Requirements for Beneficiaries of Weighted Voting Rights

8A.17 The beneficiary's weighted voting rights in a listed issuer must cease if, at any time after listing, the beneficiary is:

- (1) deceased;
- (2) no longer a member of the issuer's board of directors;
- (3) deemed by the Exchange to be incapacitated for the purpose of performing his or her duties as a director; or

- (4) deemed by the Exchange to no longer meet the requirements of a director set out in these rules.

Note 1: The Exchange would deem a beneficiary of weighted voting rights to no longer meet the requirements of a director if, for the following reasons, the Exchange believed the person no longer has the character and integrity commensurate with the position:

- (a) the beneficiary is or has been convicted of an offence involving a finding that the beneficiary acted fraudulently or dishonestly;
- (b) a disqualification order is made by a court or tribunal of competent jurisdiction against the beneficiary; or
- (c) the beneficiary is found by the Exchange to have failed to comply with the requirement of rules 8A.15, 8A.18 or 8A.24.

Note 2: The dealing restrictions of rule 10.06(2), the issue restrictions of rule 10.06(3) and the director dealing restrictions under Appendix 10 do not apply where the dealing or issue is solely to facilitate the conversion of shares carrying weighted voting rights into ordinary shares to comply with rule 8A.17.

Restriction on Transfer of Shares with Weighted Voting Rights

- 8A.18 (1) The weighted voting rights attached to a beneficiary's shares must cease upon transfer to another person of the beneficial ownership of, or economic interest in, those shares or the control over the voting rights attached to them (through voting proxies or otherwise).
- (2) A limited partnership, trust, private company or other vehicle may hold shares carrying weighted voting rights on behalf of a beneficiary of weighted voting rights provided that such an arrangement does not result in a circumvention of rule 8A.18(1).

Note 1: The Exchange would not consider a lien, pledge, charge or other encumbrance on shares carrying weighted voting rights to be a transfer for the purpose of rule 8A.18 on condition that this does not result in the transfer of legal title to or beneficial ownership of those shares or the voting rights attached to them (through voting proxies or otherwise).

Note 2: The Exchange would consider a transfer to have occurred under rule 8A.18 if a beneficiary of weighted voting rights and a non-WVR shareholder(s) enter into any arrangement or understanding to the extent that this resulted in a transfer of weighted voting rights from the beneficiary of those weighted voting rights to the non-WVR shareholder.

8A.19 If a vehicle holding shares carrying weighted voting rights in a listed issuer on behalf of a beneficiary no longer complies with rule 8A.18(2), the beneficiary's weighted voting rights in the listed issuer must cease. The issuer and beneficiary must notify the Exchange as soon as practicable with details of the non-compliance.

Definition of a Connected Person and Core Connected Person

8A.20 A beneficiary of weighted voting rights and any vehicle through which such beneficiary holds shares carrying weighted voting rights (who does not otherwise meet the rule 14A.07 definition of a "connected person") is a person deemed to be connected to the listed issuer by the Exchange under rule 14A.07(6). A beneficiary of weighted voting rights and any vehicle through which such beneficiary holds shares carrying weighted voting rights (who does not otherwise meet the rule 1.01 definition of a "core connected person") is deemed to be a core connected person of the listed issuer by the Exchange.

Conditions for Conversion of Shares Carrying Weighted Voting Rights

8A.21 Any conversion of shares with weighted voting rights into ordinary shares must occur on a one to one ratio.

Note: An issuer with a WVR structure must seek the Exchange's prior approval of the listing of any shares that are issuable upon conversion of its shares carrying weighted voting rights.

Conditions for End of WVR Structure

8A.22 A listed issuer's WVR structure must cease when none of the beneficiaries of the weighted voting rights at the time of the issuer's initial listing have beneficial ownership of shares carrying weighted voting rights.

CORPORATE GOVERNANCE

Right of Non-WVR Shareholders to Convene an Extraordinary General Meeting

8A.23 Non-WVR shareholders must be able to convene an extraordinary general meeting and add resolutions to the meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights on a one vote per share basis in the share capital of the listed issuer.

Resolutions Requiring Voting on a One Vote per Share Basis

8A.24 Any weighted voting rights attached to any class of shares in a listed issuer must be disregarded and must not entitle the beneficiary to more than one vote per share on any resolution to approve the following matters:

- (1) changes to the listed issuer's constitutional documents, however framed;
- (2) variation of rights attached to any class of shares;
- (3) the appointment or removal of an independent non-executive director;
- (4) the appointment or removal of auditors; and
- (5) the voluntary winding-up of the listed issuer.

Note: The purpose of rule 8A.24 is to protect non-WVR shareholders from resolutions being passed by WVR beneficiaries without their consent and not to enable non-WVR shareholders to remove or further constrain weighted voting rights. The weighted voting rights attached to a class of issued shares may be varied only with the consent of the holders of that class of shares as stipulated by the regulations and/or laws to which the issuer is subject. Where the regulations and/or laws do not require such approval, the Exchange will require such approval to be included in its constitutional documents to the extent it is not prohibited under the laws of its incorporation.

8A.25 Without limiting the issuer's obligation to comply with rule 8A.24, where a beneficiary of weighted voting rights casts their votes in a manner contradictory to the requirements of rule 8A.24, the Exchange will not accept that such resolutions have been passed in accordance with the requirements of these rules nor for determining the requisite majority of votes required for matters specified in these rules.

Note: This action by the Exchange is without prejudice to other actions that the Exchange may take in these circumstances.

Independent Non-Executive Directors

Role of an independent non-executive director

8A.26 The role of an independent non-executive director of a listed issuer with a WVR structure must include but is not limited to the functions described in code provisions C.1.2, C.1.6 and C.1.7 in Part 2 of Appendix 14 to these rules.

Nomination committee

8A.27 Issuers with a WVR structure must establish a nomination committee that complies with Section B.3 in Part 2 of Appendix 14 of these rules.

Note: The appointment or re-appointment of directors, including independent non-executive directors must be subject to the recommendation of the nomination committee, in accordance with sub-paragraphs (b) and (d) of code provision B.3.1 in Part 2 of Appendix 14 of these rules.

8A.28 The nomination committee established under rule 8A.27 must be chaired by an independent non-executive director and comprising a majority of independent non-executive directors.

Retirement by rotation

8A.29 The independent non-executive directors of an issuer with a WVR structure must be subject to retirement by rotation at least once every three years. Independent non-executive directors are eligible for re-appointment at the end of the three year term.

Corporate Governance Committee

Terms of reference

8A.30 An issuer with a WVR structure must establish a Corporate Governance Committee with at least the terms of reference set out in code provision A.2.1 in Part 2 of Appendix 14 to these rules, and the following additional terms:

- (1) to review and monitor whether the listed issuer is operated and managed for the benefit of all its shareholders;
- (2) to confirm, on an annual basis, that the beneficiaries of weighted voting rights have been members of the listed issuer's board of directors throughout the year and that no matters under rule 8A.17 have occurred during the relevant financial year;
- (3) to confirm, on an annual basis, whether or not the beneficiaries of weighted voting rights have complied with rules 8A.14, 8A.15, 8A.18 and 8A.24 throughout the year;
- (4) to review and monitor the management of conflicts of interests and make a recommendation to the board on any matter where there is a potential conflict of interest between the issuer, a subsidiary of the issuer and/or shareholders of the issuer (considered as a group) on one hand and any beneficiary of weighted voting rights on the other;

Note: This applies to any grants of options or awards to any beneficiary of weighted voting rights under a share scheme governed by Chapter 17.

- (5) to review and monitor all risks related to the issuer's WVR structure, including connected transactions between the issuer and/or a subsidiary of the issuer on one hand and any beneficiary of weighted voting rights on the other and make a recommendation to the board on any such transaction;
- (6) to make a recommendation to the board as to the appointment or removal of the Compliance Adviser;
- (7) to seek to ensure effective and on-going communication between the issuer and its shareholders, particularly with regards to the requirements of rule 8A.35;
- (8) to report on the work of the Corporate Governance Committee on at least a half-yearly and annual basis covering all areas of its terms of reference; and
- (9) to disclose, on a comply or explain basis, its recommendations to the board in respect of the matters in sub-paragraphs (4) to (6) above in the report referred to in sub-paragraph (8) above.

Composition

8A.31 The Corporate Governance Committee must be comprised entirely of independent non-executive directors, one of whom must act as the chairman.

Reporting requirements

8A.32 The Corporate Governance Report produced by a listed issuer with a WVR structure to comply with Appendix 14 of these rules must include a summary of the work of the Corporate Governance Committee, with regards to its terms of reference, for the accounting period covered by both the half-yearly and annual report and disclose any significant subsequent events for the period up to the date of publication of the half-yearly and annual report, to the extent possible.

Compliance Adviser

8A.33 Rule 3A.19 is modified to require an issuer with a WVR structure to appoint a Compliance Adviser on a permanent basis commencing on the date of the issuer's initial listing.

8A.34 An issuer must consult with and, if necessary, seek advice from its Compliance Adviser, on a timely and ongoing basis in the circumstances set out in rule 3A.23 and also on any matters related to:

- (1) the WVR structure;
- (2) transactions in which any beneficiary of weighted voting rights in the issuer has an interest; and
- (3) where there is a potential conflict of interest between the issuer, a subsidiary of the issuer and/or shareholders of the issuer (considered as a group) on one hand and any beneficiary of weighted voting rights in the issuer on the other.

Communication with Shareholders

8A.35 An issuer with a WVR structure must comply with Section F “Shareholders Engagement” in Part 2 of Appendix 14 to these rules.

Training

8A.36 A new applicant and its directors must confirm to the Exchange, as part of its listing application, that its directors (including those that are beneficiaries of weighted voting rights and independent non-executive directors), senior management and company secretary have undertaken training on these rules and the risks associated with a WVR structure.

DISCLOSURE

Warnings

8A.37 An issuer with a WVR structure must include the warning “*A company controlled through weighted voting rights*” on the front page of all listing documents, periodic financial reports, circulars, notifications and announcements required by these rules and describe the WVR structure, the issuer’s rationale for having it and the associated risks for shareholders prominently in its listing documents and periodic financial reports. This warning statement must inform prospective investors of the potential risks of investing in an issuer with a WVR structure and that they should make the decision to invest only after due and careful consideration.

8A.38 The documents of or evidencing title for the listed equity securities of an issuer with a WVR structure must prominently include the warning “*A company controlled through weighted voting rights*”.

Disclosure in Listing Documents, Interim and Annual Reports

- 8A.39 An issuer with a WVR structure must identify the beneficiaries of weighted voting rights in its listing documents and in its interim and annual reports.
- 8A.40 An issuer with a WVR structure must disclose the impact of a potential conversion of WVR shares into ordinary shares on its share capital in its listing documents and in its interim and annual reports.
- 8A.41 An issuer with a WVR structure must disclose in its listing documents and in its interim and annual reports all circumstances in which the weighted voting rights attached to its shares will cease.

Stock Marker

- 8A.42 The listed equity securities of an issuer with a WVR structure must have a stock name that ends with the marker “W”.

UNDERTAKING

- 8A.43 At listing, a beneficiary of weighted voting rights must give the issuer an undertaking in a form acceptable to the Exchange that they will comply with rules 8A.09, 8A.14, 8A.15, 8A.17, 8A.18 and 8A.24.

CONSTITUTIONAL DOCUMENTS

- 8A.44 Issuers with WVR structures must give force to the requirements of rules 8A.07, 8A.09, 8A.10, 8A.13, 8A.14, 8A.15, 8A.16, 8A.17, 8A.18, 8A.19, 8A.21, 8A.22, 8A.23, 8A.24, 8A.26, 8A.27, 8A.28, 8A.29, 8A.30, 8A.31, 8A.32, 8A.33, 8A.34, 8A.35, 8A.37, 8A.38, 8A.39, 8A.40 and 8A.41 by incorporating them into their articles of association or equivalent document.

Additional Exceptions to the Rules for Certain Overseas Issuers with a WVR structure

- 8A.45 Rules 8A.04 to 8A.06 do not apply to a Qualifying Issuer with a WVR structure seeking a secondary listing under Chapter 19C.
- 8A.46 Rules 8A.07 to 8A.36, 8A.43 and 8A.44 do not apply to a Grandfathered Greater China Issuer or a Non-Greater China Issuer with a WVR structure that has or is seeking:–
- (a) a dual primary listing on the Exchange under Chapter 19, on the condition that the issuer satisfies the qualification requirements under rule 8A.06 and has a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange of primary listing; or

(b) a secondary listing under Chapter 19C.

Notes:

- (1) *In accordance with Rule 2.06, the Exchange reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer, for example, if its WVR structure represents an extreme case of non-conformance with corporate governance norms.*
- (2) *This exemption is only applicable to the WVR structure in effect at the time of the issuer's dual primary listing or secondary listing on the Exchange.*