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Corporate and Investor Communications Department
Hong Kong Exchanges and Clearing Limited
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Via Email: response@hkex.com.hk

Response to the Consultation Paper: A Listing Regime for Companies from Emerging and Innovative Sectors

Dear Sir or Madam,

We welcome the opportunity to respond to the consultation paper.

British Columbia Investment Management Corporation (BCI) is an asset manager with more than $135 billion Canadian dollars in assets under management, one of the largest institutional investors in Canada. Our investment activities help finance the pensions of approximately 554,000 people in our Canadian province. On behalf of these pension beneficiaries, we provide long term capital to companies around the world that we believe will provide strong and stable financial returns.

As a long-term investor, BCI relies on well-functioning capital markets. We see it as our responsibility to contribute to the overall stability of the financial system. As an active participant in the capital markets, we address systemic risks with the expectation that our efforts will lead to greater stability and integrity within the markets. We regularly engage with regulators and advocate for legal and regulatory changes to ensure that principles of good governance are integrated into the regulatory framework.

As an active and long-time member of the Asian Corporate Governance Association (ACGA) and the International Corporate Governance Network (ICGN), we are fully supportive of these respective organizations' submissions. As a result, we have chosen to direct our response to only chapter 3 of the consultation paper, which relates specifically to Weighted Voting Rights (WVR).

Issuers with WVR Structures

As we stated in our response to the proposed New Board concept paper in August, 2017, WVR or dual class share (DCS) structures result in inequality between classes of shareholders, especially when some shareholders have greater voting rights and powers than others. BCI has long advocated for companies to adopt a single class of shares with a one share one vote structure where economic interest and voting interest are the same, and over the years, we have lobbied for the collapse of such structures in different jurisdictions.

Concerns over WVR are widely held by investors, as evidenced in the decisions last year by the S&P Dow Jones and FTSE Russell to largely bar dual class share companies from inclusion in their benchmark indices – indices that guide the investments of trillions of dollars in assets. Such decisions send a strong signal to the market that the one share one vote principle is the bedrock of corporate governance.

We are therefore disappointed that the Exchange is proposing to allow companies with VWR to list in Hong Kong, albeit with requirements to demonstrate certain characteristics. We are not convinced that the proposed safeguards in place will offer sufficient protection to investors. Our concerns are detailed as follows:

- The Exchange has historically applied bright line listing rules, which has resulted in a much more precise process, whereas the new WVR provisions are concepts and frameworks which give the Exchange wide ranging discretion over listing applications. We are concerned that this will result in an inconsistent approach, and would allow the Exchange to effectively cherry pick listings.
- We are concerned that the heightened role implied for the Exchange Listing Committee in this new regime is at odds with the behavioural norms of the Committee and its governance. The idea that the Listing Committee, as currently configured, will develop new aptitude for careful analysis of business models, patent trends, and R&D programs, and therefore make decisions on listing suitability, seems inconsistent with the bright line, rules-based approach that has existed thus far. At the very least, we believe that the new skillset required for the new regime will take time to develop. We encourage the Exchange to prioritise developing a talent pool of individuals to serve on the Listing Committee, and that have the required knowledge and experience to operate in the interests of the market.
- While the Exchange has identified key matters that will be decided on a one share one vote basis i.e. WVR beneficiaries will not be able to exercise WVR on these matters (paragraph 128 of the consultation paper), we are concerned that the Exchange has failed to implement a one share one vote requirement for major and connected transactions. Such transformative matters clearly affect all shareholders, and as such, the impact of any WVR should be neutralised.

- While the prohibition on transfers of WVR is a positive safeguard, we are concerned at the lack of a time-based sunset clause, whereby the WVR would be converted to ordinary shares at a specific point in time or after a certain number of years. Given the innovative nature of the companies that this new regime is intended to accommodate, we believe that the lack of a time-based sunset clause could lead to extended periods (potentially multiple decades) where WVR apply. In addition, we note with concern the statement in paragraph 159 of the consultation paper, which highlights the potential for a further consultation that would explore the option of allowing corporate entities to hold WVR. BCI is strongly against such a possibility. Not only would this be a significant divergence from the HKEx new board concept conclusions published in December 2017, which determined that WVR would be restricted to eligible persons only (a point that is recognised in the consultation paper), but the aforementioned safeguard would be irrelevant, as allowing corporate entities to hold WVR means such rights would exist in perpetuity.
- We see the implementation of a cap on WVR powers, such that WVR shares carry no more than ten times the voting power of ordinary shares, as a positive step, however, we are concerned that this ratio, now enshrined, will become a de facto norm.
- While we welcome the enhancements to disclosure and corporate governance requirements for issuers with WVR structures, notably the requirement for a corporate governance committee to be made up of solely independent non-executive directors, the predominance of family ownership in Hong Kong's business culture leads us to question how effective such a safeguard will be. Weaknesses in the listing rule definition of an independent director, such that former executives of a company or its holding/subsidiary companies are eligible to become independent directors after a short cooling offer period, raise significant concerns for us.
- The ring-fencing arrangements provide some level of comfort, such that existing issuers will be prohibited from adopting a WVR structure, and any newly listed issuers with WVR structures will be prohibited from increasing the proportion of WVR in issue or from issuing any further WVR. However, we are concerned that spin-off applicants will be eligible to list with WVR, thereby allowing parent companies to gain control. We believe that a loophole such as this, which leads to value leakage for shareholders, will further damage the integrity of the market. We would also argue that this may lead to situations where a company is being spun-off from a well-established corporate entity, and may therefore inherit many of its parent's practices. Consequently, we question whether such a company would meet the listing regime requirements of being emerging and innovative.

To conclude, we would again like to emphasize, as we have done in the past, that Hong Kong has been a leader in the capital markets in part due to the high standards that it requires its listed companies to adhere to. The creation of WVR structures would be a clear departure from this – one which we do not support.

Thank you for the opportunity to respond to this consultation. Please feel free to reach out to our Senior Manager, ESG Integration, Jennifer Coulson (**jennifer.coulson@BCI.ca**) as you consider these comments or if you require further clarification. I appreciate your time and consideration.

Regards,

Daniel Garant
Senior Vice President, Public Markets