



HKEX CONCEPT PAPER ON NEW BOARD

The Law Society's Submissions

Hong Kong Exchanges and Clearing Limited and its subsidiary The Stock Exchange of Hong Kong Limited have on 16 June 2017 launched a public consultation on "The New Board Concept Paper". In response thereto, the Law Society provides the following submissions on the consultation questions posed.

***Question 1:** What are your views on the need for Hong Kong to seek to attract a more diverse range of companies and, in particular, those from New Economy industries to list here? Do you agree that the New Board would have a positive impact on Hong Kong's ability to attract additional New Economy issuers to the Hong Kong market?*

Please give reasons for your views.

Law Society's response:

We fully support the move to enhance the attractiveness of the Hong Kong market, in particular to attract quality New Economy Industries ("NEI") issuers, but we must be careful in deciding whether the establishment of a new board is the solution. One must be mindful of the importance of having liquidity, with a sufficient number of sizable issuers in a market to create an investment hub to make it a success, failing which quality NEI companies with weighted voting rights ("WVR") structure may still opt to list elsewhere.

Creating too many boards is not in the interest of the market. We believe that our priority is to attract top quality NEI issuers. If the New Board PRO is likely to have lower liquidity with higher risk of volatility, then we would have significant reservations with the establishment of New Board PRO.

As set out in the Law Society's response to the concept paper for weighted voting rights ("WVR") listings in 2014 (the "2014 Paper"), WVR listings should be allowed, with sufficiently clear disclosure made to prospective investors. The Law

Society welcomes all methods of allowing WVR listings, whether on the Main Board, the GEM Board or a liquid market in the form of a bolt-on to the Main Board. However, the Law Society is of the view that having too many boards is probably not ideal.

As a separate point which is no less important, the SAR Government should also work with the legal profession to better empower our investors in taking private action against corporate wrongdoings, like introducing class action law suits and deliberating alternative means of litigation funding.

Question 2: *What are your views on whether the targeted companies should be segregated onto a New Board, rather than being included on the Main Board or GEM?*

Please give reasons for your views.

Law Society's response:

See response to Question 1 above.

Question 3: *If a New Board is adopted, what are your views on segmenting the New Board into different segments according to the characteristics described in this paper (e.g. restriction to certain types of investor, financial eligibility etc.)? Should the New Board be specifically restricted to particular industries?*

Please give reasons for your views.

Law Society's response:

See response to Question 1 above.

Question 4: *What are your views on the proposed roles of GEM and the Main Board in the context of the proposed overall listing framework?*

Please give reasons for your views.

Law Society's response:

The Law Society holds no particular view on this except to suggest taking into account the lessons learned in the running of the GEM. Any new board to be established should be liquid and serve a clearly dedicated purpose.

Question 5: *What are your views on the proposed criteria for moving from New Board PRO to the other boards? Should a public offer requirement be imposed for companies moving from New Board PRO to one of the other boards?*

Please give reasons for your views.

Law Society's response:

Agree.

Question 6: *What are your views on the proposed financial and track record requirements that would apply to issuers on New Board PRO and New Board PREMIUM? Do you agree that the proposed admission criteria are appropriate in light of the targeted investors for each segment?*

Please give reasons for your views.

Law Society's response:

The Law Society generally agrees with the proposal but that there should be no "fast track migration" to the Main or the GEM Board.

Question 7: *What are your views on whether the Exchange should reserve the right to refuse an application for listing on New Board PRO if it believes the applicant could meet the eligibility requirements of New Board PREMIUM, GEM or the Main Board?*

Please give reasons for your views.

Law Society's response:

We believe there could be divergent views on this question but the main concern is to strike a balance between the need to allow for freedom of choice and the need to maintain the niche characteristics for each board.

Question 8: *What are your views on the proposed requirements for minimum public float and minimum number of investors at listing? Should additional measures be introduced to ensure sufficient liquidity in the trading of shares listed on New Board PRO? If so, what measures would you suggest?*

Please give reasons for your views.

Law Society's response:

Please refer to our response to Question 1.

***Question 9:** What are your views on whether companies listed on a Recognised US Exchange that apply to list on the New Board should be exempted from the requirement to demonstrate that they are subject to shareholder protection standards equivalent to those of Hong Kong? Should companies listed elsewhere be similarly exempted?*

Please give reasons for your views.

Law Society's response:

No, but WVR companies should be exempted under the same regime for accepting WVR new listings generally in Hong Kong.

***Question 10:** What are your views on whether we should apply a "lighter touch" suitability assessment to new applicants to New Board PRO? If you are supportive of a "lighter touch" approach, what relaxations versus the Main Board's current suitability criteria would you recommend?*

Please give reasons for your views.

Law Society's response:

The Law Society believes that if a "lighter touch" is being considered, one can consider a lighter touch on reliance on connected parties/few major suppliers or customers which is a typical characteristics for many start up companies.

***Question 11:** What are your views on whether the New Board PRO should be restricted to professional investors only? What criteria should we use to define a professional investor for this purpose?*

Please give reasons for your views.

Law Society's response:

See our response to Question 1 above.

Question 12: *Should special measures be imposed on Exchange Participants to ensure that investors in New Board PRO-listed securities meet the eligibility criteria for both the initial placing and secondary trading?*

Please give reasons for your views.

Law Society's response:

Agree.

Question 13: *What are your views on the proposal for a Financial Adviser to be appointed by an applicant to list on New Board PRO, rather than applying the existing sponsor regime? If you would advocate more prescriptive due diligence requirements, what specific requirements would you recommend be imposed?*

Please give reasons for your views.

Law Society's response:

The Law Society supports the proposal to waive the requirement of a sponsor but does not agree to reduce the standard of due diligence expected, in particular for the preparation of the Listing Document.

Question 14: *What are your views on the proposed role of the Listing Committee in respect of each segment of the New Board?*

Please give reasons for your views.

Law Society's response:

No comments.

Question 15: *Do you agree that applicants to listing on New Board PRO should only have to produce a Listing Document that provided accurate information sufficient to enable professional investors to make an informed investment decision, rather than a Prospectus? If you would advocate a more prescriptive approach to disclosure, what specific disclosures would you recommend be required?*

Please give reasons for your views.

Law Society's response:

The Law Society believes the Exchange should generally consider steering away from a prescriptive mode. It should expand the current disclosure based regime with post vetting enforcement in Hong Kong, and further draw on the successful experience of other markets which have adopted a disclosure based approach for vetting prospectuses/listing documents.

***Question 16:** What are your views on the proposed continuous listing obligations for the New Board? Do you believe that different standards should apply to the different segments?*

Please give reasons for your views.

Law Society's response:

The Law Society supports the view that the same standard should apply to all boards on the Exchange.

***Question 17:** For companies that list on the New Board with a WVR structure, should the Exchange take a disclosure-based approach as described in paragraph 153 of the Concept Paper? Should this approach apply to both segments of the New Board?*

Please give reasons for your views.

Law Society's response:

Agree. Additional mandatory safeguards should apply to all WVR listings. See also our response to Question 18 below.

***Question 18:** If, in addition, you believe that the Exchange should impose mandatory safeguards for companies that list on the New Board with a Weighted Voting Rights structure, what safeguards should we apply? Should the same safeguards apply to both segments of the New Board?*

Please give reasons for your views.

Law Society's response:

The Law Society supports the application of mandatory safeguards suggested in the 2014 Paper (which should not be exhaustive) for accepting WVR listings.

Question 19: *Do you agree that the Stock Exchange of Hong Kong Limited should allow companies with unconventional governance features (including those with a WVR structure) to list on PREMIUM or PRO under the “disclosure only” regime described in paragraph 153 of the Concept Paper, if they have a good compliance record as listed companies on NYSE and NASDAQ? Should companies listed elsewhere be similarly exempted?*

Please give reasons for your views.

Law Society’s response:

No. These companies should be subject to the same mandatory safeguards imposed on new WVR listings in Hong Kong.

Question 20: *What are your views on the suspension and delisting proposals put forward for the New Board?*

Please give reasons for your views.

Law Society’s response:

The Law Society supports a more rigorous approach to combat non-compliant issuers but is mindful that an aggressive delisting regime may do great harm to public investors. It is more effective to be vigilant in gate keeping while at the same time provide for more effective shareholders’ enforcement rights including class actions.

Question 21: *Should New Board-listed companies have to meet quantitative performance criteria to maintain a listing? If so, what criteria should we apply? Do you agree that companies that fail to meet these criteria should be placed on a “watchlist” and delisted if they fail to meet the criteria within a set period of time?*

Please give reasons for your views.

Law Society’s response:

No comment.

Question 22: *Do you consider that an even “lighter touch” enforcement regime should apply to the New Board (e.g. an exchange-regulated platform)?*

Please give reasons for your views.

Law Society's response:

No.

The Law Society of Hong Kong

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