

# Speech by SFST at Speaker Luncheon of Hong Kong Institute of Directors (English only)

Following is the speech by the Secretary for Financial Services and the Treasury, Mr James Lau, at the Speaker Luncheon of the Hong Kong Institute of Directors (HKIoD) today (May 17):

Henry (Chairman of the HKIoD, Mr Henry Lai), distinguished guests, ladies and gentlemen,

Good afternoon. I am delighted to join you all at today's luncheon hosted by the Hong Kong Institute of Directors. Corporate governance is a priority subject for the HKIoD. It is a very timely topic today in light of the new listing regime that came into effect on April 30, allowing high growth and innovative companies to list with a weighted voting rights (WVR) structure on the main board of the Stock Exchange of Hong Kong.

The unstoppable wave of innovation and technology, so-called Industrial Revolution 4.0, is a global phenomenon that has fundamentally changed the world's economic structure and way of living. Many sizable new economy companies have emerged around the world, and also many unicorns with a valuation over US\$1 billion. An estimate suggests that at end-March 2018, China alone had more than 150 unicorns, and over 30 of them appeared in the first quarter of this year. So you can see the pace of development. In Hong Kong, we are conscious that our capital markets and economy need to evolve to keep pace with such a sea change.

The new listing regime was adopted following two rounds of consultation conducted by the Stock Exchange. In the first round, the Exchange put forward a concept paper on a "New Board." A total of 360 valid responses were received, and an overwhelming majority was supportive of the need to widen the listing criteria on the current board to attract a more diverse range of issuers.

In the second round, the Exchange put forward specific proposals to amend its listing rules to facilitate the listing of companies from emerging and innovative sectors. Again, most of the 283 responses received supported the Exchange's proposals in general. In the end, the Exchange also made some modifications to address concerns from the industry.

Let me now do a brief recap on the WVR regime, and then I'd like to address in particular the safeguards in place and also a certain critique on the adequacy of the safeguards provisions. Under the amended listing rules, companies with a WVR structure would be required to have a minimum expected market capitalisation of HK\$10 billion at listing and, if below HK\$40 billion of market capitalisation, would need to have at least HK\$1 billion of revenue in their most recent audited financial year. This market cap requirement is

higher than conventional listing entities.

Also, the company must be an innovative company, and the applicant must demonstrate a track record of high business growth. The applicant must also have previously received meaningful third party investment from at least one sophisticated investor, which must remain at IPO.

While the listing door is opened to companies with a WVR structure, what is equally important are the appropriate safeguards we have put in place to protect the investing public.

The first safeguard is ringfencing. Only new applicants will be able to list with a WVR structure, and the Exchange will seek to ensure that companies do not use artificial means to circumvent this. After listing, issuers with WVR structures will be prohibited from increasing the proportion of WVRs in issue.

Secondly, restrictions for WVR beneficiaries. At present, WVR beneficiaries must be an individual who has an active executive role within the business, and is contributing to a material extent to the growth of the business. WVR beneficiaries must be directors of the issuer at listing and remain as directors afterwards.

Thirdly, limits on the power of WVR beneficiaries. A class of shares conferring WVRs in a listed issuer must not entitle the beneficiary to more than 10 times the voting power of ordinary shares. In relation to the question of a possible privatisation, I should add that WVR shareholders, as controlling shareholders, will not be able to vote, and a privatisation proposal can be blocked by one tenth of the independent shareholders.

Fourthly, protection of non-WVR shareholders' right to vote. 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 be no higher than 10 per cent of the voting rights on a one-share one-vote basis.

Fifthly, a number of key matters must be decided on a one-share one-vote basis. These include changes to the listed issuer's constitutional documents, whichever forms they are; variation of rights attached to any class of shares; the appointment or removal of independent non-executive directors; the appointment or removal of auditors; and the voluntary winding-up of the issuer.

Sixthly, an issuer with a WVR structure must establish a corporate governance committee that comprises only independent non-executive directors. This committee will review and monitor potential conflict of interest between the issuer, a subsidiary of the issuer or shareholders of the issuer on the one hand and any beneficiary of weighted voting rights on the other. The board of directors needs to consider the recommendations of the corporate governance committee fully, and it needs to comply or explain. This is a requirement that we have strengthened after the consultation exercise in light of concerns expressed.

Seventhly, enhanced disclosure. The listed equity securities of an issuer with a WVR structure must have a stock name that ends with the stock marker "W". An issuer with a WVR structure must also 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.

The issuer should 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. And an issuer with a WVR structure must also identify the beneficiaries of WVRs, disclose the impact of a potential conversion of WVR shares into ordinary shares on its share capital, and disclose all circumstances in which the WVRs attached to its shares will cease in its listing documents and in its interim and annual reports.

Last but not least, we have built in event-based sunset clauses. The WVRs attached to a beneficiary's shares will cease upon transfer of the beneficial ownership of those shares or the control over the voting rights attached to them.

The WVRs attached to beneficiaries' shares will also lapse permanently if a WVR beneficiary dies, ceases to be a director, or is deemed by the Stock Exchange to be incapacitated for the purpose of performing his or her duties as a director, or is deemed to no longer meet the requirements of a director set out in the listing rules.

Now let me turn to the question of adequacy of these safeguards. Some in the investor community are concerned that there is still not enough protection for investors. This is particularly true in light of the increasing popularity of passive funds that invest in indices by default without consideration of share class structures. In fact, the IPO of a technology company in the US last year which offered shares with no voting rights at all triggered various index companies to launch consultations on the inclusion of WVR shares in their indices. By the way, such zero voting right WVR structure is not permitted in Hong Kong.

Now, market index companies have taken different approaches on this subject. FTSE Russell concluded that new constituents in their indices would be required to have no less than 5 per cent of the company's aggregate voting rights owned by unrestricted shareholders. S&P Dow Jones announced that it would not allow companies with dual-class structures to be part of some of its high-profile indices, such as the S&P 500 Index. And the MSCI suggested that it would adjust the weights of stocks with WVR structures in their indices so as to reflect the unequal voting rights. These measures would to a certain extent mitigate the issue for passive index funds.

Another issue often raised by investors is the absence of a class action regime in Hong Kong, which some believe will provide the answer to what it means for investor protection. Having said that, only a small number of respondents to the Exchange's consultation considered the introduction of a class action regime to be a pre-requisite for permitting the listing of WVR

companies in our market.

On the contrary, some market participants are concerned that there is a higher risk of frivolous cases being brought forward if a class action regime was introduced in Hong Kong. I would also note that class action cases in the US were most often brought in relation to the disclosure of information, and not for the abuse of control that possibly arose under a WVR structure. In the UK, class action is limited to cases in the Competition Appeal Tribunal, a specialist judicial body whose function is to hear and decide cases involving competition or economic regulatory issues.

When it comes to the practice in Hong Kong, the courts in Hong Kong have unfettered discretion under the existing rules to issue appropriate orders to try actions involving decisions made by the management of the WVR companies. The court may, by order, consolidate or try two or more claims on the same occasion. Relevant court cases indicate that the court has discretion in deciding whether or not to consolidate the actions.

In addition, the court can handle proceedings involving the same interest of numerous persons through "representative proceedings" when a plaintiff proposed to represent in the proceeding meets the threefold test of establishing "a common interest, a common grievance and a remedy which is beneficial to all the plaintiffs".

The court is also empowered, on the application of the plaintiffs, to appoint a defendant to act as representative of the other defendants being sued. A judgment or order given in representative proceedings will be binding on all persons so represented. So this is quite close in a way to the effect of a class action.

A third issue sometimes raised by investors is the absence of a time-defined sunset clause for WVR beneficiaries in our listing regime. I would like to point out that the US and the UK do not have a requirement of compulsory sunset clauses. And there are also views in Hong Kong that a time-defined sunset clause may not be in the best interest of the company or its shareholders because it may trigger a change in control at a listed issuer at an arbitrary date in future. This could potentially create excessive uncertainty for shareholders and prospective investors as that date approaches. The Exchange had taken these various views into account and come up with a set of event-based sunset provisions in order to provide a right balance in protecting investors and the WVR beneficiaries.

There are others who think that the current safeguards we have in place are too tight. Some suggest corporate beneficiaries of WVRs should be allowed. This is a very complex subject. And questions arise on whether there is appropriate ringfencing for corporate WVR holders, better protection for investors against such "perpetual" rights, the availability of a suitable sunset requirement, and other restrictions on the exercise of corporate WVR rights. The Stock Exchange of Hong Kong plans to launch a consultation later this year to further explore this option, and we would welcome your comments and contributions.

Ladies and gentlemen, in conclusion, we will continue to keep in view the global economic environment and conduct timely reviews of our listing regime, so as to maintain the competitiveness and quality of our market. Enhanced corporate governance is an integral part of the safeguards in our expanded listing regime, and I look forward to the HKIoD's continued participation in such conversation on how we can achieve a proper balance between encouraging market evolution to meet development needs and maintaining market quality and investor protection. Thank you.

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## [S for IT visits Wong Tai Sin District \(with photos\)](#)

The Secretary for Innovation and Technology, Mr Nicholas W Yang, today (May 17) visited a primary school and Wong Tai Sin Temple to get a better grasp of technological application in the community and the promotion of popular science education. A meeting with members of the Wong Tai Sin District Council (WTSDC) was also held.

Accompanied by the Chairman of the WTSDC, Mr Li Tak-hong, and the District Officer (Wong Tai Sin), Ms Annie Kong, Mr Yang started his visit at Baptist Rainbow Primary School to learn more about the "happy learning" and "flipped classroom" teaching concepts through watching students' participation in self-directed project-based learning. The school integrates science, technology, engineering and mathematics (STEM) education in its school-based curriculum and implements the DreamStarter programme. Academic curricula are scheduled for the morning session and self-directed learning activities are held after lunch. Such an approach is conducive to enhancing students' creativity, communication and problem-solving skills.

Mr Yang then went to Wong Tai Sin Temple, where he visited the Taisui Yuenchen Hall and received a briefing on e-services that assist worshippers through application of technology. These include green worshipping at the Taisui Yuenchen Hall with the use of sensors, online prayer, online enquiry on fortune-telling sticks and one's "tai sui" of birth as well as Chinese zodiac sign. With Sik Sik Yuen's mobile application, visitors can enjoy GPS navigation and information on architectural features of the temple by scanning QR codes or NFC chips. A counting machine was also developed by Sik Sik Yuen to ensure that there are 100 fortune-telling sticks in every stick holder.

Sik Sik Yuen is dedicated to promoting science among the general public. It funded the Sik Sik Yuen Biotechnology Mobile Laboratory (MobileLab), which was built on a bus chassis. The MobileLab travels to primary and secondary schools in Hong Kong on weekdays. Students learn about microbiology, biochemistry, DNA and genetics through hands-on experiments. Outreach

activities are held on the MobileLab during weekends and school holidays to reach out to the public. As a partner of the annual large-scale popular science event InnoCarnival, the MobileLab held over 30 biotechnology workshops at the InnoCarnival held last year. Mr Yang toured the MobileLab and thanked Sik Sik Yuen for joining hands with the Government in promoting science in the community. He noted that the application of technology and the promotion of popular science are equally important. The Government is committed to collaborating with various stakeholders to cultivate an ecosystem favourable for innovation and technology development.

Before concluding the district visit, Mr Yang met with members of the WTSDC to exchange views on issues related to innovation and technology, as well as district facilities and services.



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## Unemployment and underemployment statistics for February – April 2018

According to the latest labour force statistics (i.e. provisional figures for February – April 2018) released today (May 17) by the Census and Statistics Department (C&SD), the seasonally adjusted unemployment rate decreased from 2.9% in January – March 2018 to 2.8% in February – April 2018. The underemployment rate remained unchanged at 1.0% in the two periods.

Comparing February – April 2018 with January – March 2018, movements in the unemployment rate (not seasonally adjusted) in different industry sectors varied, with a relatively notable decrease observed in the education sector.

Total employment decreased by around 5 800 from 3 872 400 in January – March 2018 to 3 866 600 in February – April 2018. Over the same period, the labour force also decreased by around 4 900 from 3 984 400 to 3 979 500.

The number of unemployed persons (not seasonally adjusted) increased by around 800 from 112 100 in January – March 2018 to 112 900 in February – April 2018. Over the same period, the number of underemployed persons also increased by around 2 200 from 38 900 to 41 100.

### Commentary

Commenting on the latest unemployment figures, the Secretary for Labour and Welfare, Dr Law Chi-kwong, said, "The labour market tightened further in February – April 2018 on the back of robust economic conditions. The unemployment rate (seasonally adjusted) edged down by 0.1 percentage point to 2.8%, the lowest level in more than 20 years. The underemployment rate likewise stayed low at 1.0%. Total employment continued to record appreciable growth on a year-on-year basis."

"Compared to the preceding three-month period, a more notable decrease in unemployment rate was seen in the education sector. On a year-on-year comparison to net out seasonal influences, most major service sectors showed visible improvement in unemployment situation. In particular, jobless rates in the financing sector as well as the trade- and tourism-related segments posted discernible declines, thanks to the buoyant economic environment and continued recovery of tourist arrivals."

Looking ahead, Dr Law said, "Overall labour market conditions will likely remain tight in the near term amid the prevailing positive economic environment. Yet, we will stay vigilant and closely monitor the relevant developments."

He noted that the Labour Department (LD) launched a special programme

–"Career Let's go" from May to August to help this year's secondary school leavers find suitable work through a series of tailor-made activities. The "Youth Employment Start" resource centres will organise various training courses and an interactive drama to enhance the job-hunting skills of graduates as well as help them unleash their potential at work and learn the true value of working; and provide school leavers with career assessment and career consultation services. The LD will also canvass job vacancies suitable for secondary school leavers and organise a number of large-scale and district-based job fairs during which job-seekers may have on-the-spot job interviews with the recruiting employers.

On large-scale job fairs, the LD will co-organise the Hong Kong International Airport Career Expo 2018 with the Airport Authority Hong Kong at the Hong Kong Convention and Exhibition Centre from June 29 to July 1. Ample vacancies involving the aviation industry and airport operation will be provided. Moreover, a dedicated job expo for elderly care and rehabilitation services will be held on July 18 and 19 at MacPherson Stadium, Mong Kok. In addition, industry-based or district-based job fairs are regularly organised at the LD's industry-based recruitment centres and job centres located across the territory.

#### Further Information

The unemployment and underemployment statistics were compiled from the findings of the continuous General Household Survey.

The survey for February – April 2018 covered a sample of some 25 000 households or 75 000 persons, selected in accordance with a scientifically designed sampling scheme to represent the population of Hong Kong.

Data on labour force characteristics were obtained from the survey by interviewing each member aged 15 or over in the sampled households.

In the survey, the definitions used in measuring unemployment and underemployment follow closely those recommended by the International Labour Organization.

Detailed analysis of labour force characteristics is given in the "Quarterly Report on General Household Survey" which is published four times a year. The latest issue of the publication contains statistics for the quarter October – December 2017 while the next issue covering the quarter January – March 2018 will be available by end-May 2018. Users can download this publication free of charge at the website of the C&SD ([www.censtatd.gov.hk/hkstat/sub/sp200.jsp?productCode=B1050001](http://www.censtatd.gov.hk/hkstat/sub/sp200.jsp?productCode=B1050001)).

For enquiries about labour force statistics, please contact the Social Analysis and Research Section (2) of the C&SD (Tel: 2887 5508 or email: [ghs@censtatd.gov.hk](mailto:ghs@censtatd.gov.hk)).



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## **Composite Interest Rate: End of April 2018**

The following is issued on behalf of the Hong Kong Monetary Authority:

The Hong Kong Monetary Authority (HKMA) announced today (May 17) the composite interest rate at the end of April 2018.\*

The composite interest rate, which is a measure of the average cost of funds of banks, increased by 2 basis points to 0.40% at the end of April 2018, from 0.38% at the end of March 2018 (see Chart 1 in the Annex). The rise in composite interest rate reflected increases in the weighted funding costs for both deposits and interbank funds during the month (see Chart 2 in the Annex).

The historical data of the composite interest rate from the end of the fourth quarter of 2003 to the end of April 2018 are available in the Monthly Statistical Bulletin on the HKMA website ([www.hkma.gov.hk](http://www.hkma.gov.hk)). The next data release is scheduled for June 20, 2018 and will provide the composite interest rate at the end of May 2018.

\* The composite interest rate is a weighted average interest rate of all Hong Kong dollar interest bearing liabilities, which include deposits from customers, amounts due to banks, negotiable certificates of deposit and other debt instruments, and Hong Kong dollar non-interest bearing demand deposits on the books of banks. Data from retail banks, which account for about 90% of the total customers' deposits in the banking sector, are used in the calculation. It should be noted that the composite interest rate represents only average interest expenses. There are various other costs involved in the making of a loan, such as operating costs (e.g. staff and rental expenses), credit cost and hedging cost, which are not covered by the composite interest rate.

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## **Auctions of traditional vehicle registration marks to be held on June 2 and 3**

The Transport Department today (May 17) announced that two auctions of traditional vehicle registration marks will be held on June 2 (Saturday) and

3 (Sunday), in Meeting Room S221, L2, Hong Kong Convention and Exhibition Centre, Wan Chai.

"A total of 280 vehicle registration marks will be put up for public sale at each auction. The lists of marks have been posted at the department's website, [www.td.gov.hk](http://www.td.gov.hk)," a department spokesman said.

Applicants who have paid a deposit of \$1,000 to reserve a mark for auction should also participate in the bidding (including the first bid at the reserve price of \$1,000). Otherwise, the mark may be sold to another bidder at the reserve price.

People who wish to participate in the bidding at the auction should take note of the following important points:

(a) Successful bidders are required to produce the following documents for completion of registration and payment procedures immediately after the successful bidding:

- (i) the identity document of the successful bidder;
  - (ii) the identity document of the purchaser if it is different from the successful bidder;
  - (iii) a copy of the Certificate of Incorporation if the purchaser is a body corporate; and
  - (iv) a crossed cheque made payable to "The Government of the Hong Kong Special Administrative Region" or "The Government of the HKSAR". (For an auctioned mark paid for by cheque, the first three working days after the date of auction will be required for cheque clearance confirmation before processing of the application for mark assignment can be completed.)
- Successful bidders can also pay through the Easy Pay System (EPS). Payment by post-dated cheques, cash or other methods will not be accepted.

(b) Purchasers must make payment of the purchase price through EPS or by crossed cheque and complete the Memorandum of Sale of Registration Mark immediately after the bidding. Subsequent alteration of the particulars in the memorandum will not be permitted.

(c) A vehicle registration mark can only be assigned to a motor vehicle which is registered in the name of the purchaser. The Certificate of Incorporation must be produced immediately by the purchaser if a vehicle registration mark purchased is to be registered under the name of a body corporate.

(d) Special registration marks are non-transferable. Where the ownership of a motor vehicle with a special registration mark is transferred, the allocation of the special registration mark shall be cancelled.

(e) The purchaser shall, within 12 months after the date of auction, apply to the Commissioner for Transport for the registration mark to be assigned to a motor vehicle registered in the name of the purchaser. If the purchaser fails to assign the registration mark within 12 months, allocation of the mark will be cancelled and arranged for re-allocation in accordance with the statutory

provision without prior notice to the purchaser.

For other auction details, please refer to the Guidance Notes – Auction of Vehicle Registration Marks, which can be downloaded from the department's website, [www.td.gov.hk](http://www.td.gov.hk).