

**STRICTLY PRIVATE AND CONFIDENTIAL**

23 April 2020

Hong Kong Exchanges and Clearing Limited  
8<sup>th</sup> Floor, Two Exchange Square  
8 Connaught Place  
Central  
Hong Kong

**Re: Corporate WVR CP**

Dear Sirs or Madam,

The Hong Kong Independent Non-Executive Director Association Limited (HKiNEDA) would like to provide comments on the Consultation Paper in relation to Corporate WVR Beneficiaries.

We generally support HKEX's continuous review on the current listing regime and Listing Rules and the introduction of Corporate WVR beneficiary regime. There are risks that shareholders' interests could be misaligned and WVRs could be exercised by corporates without owing fiduciary duties to the WVR issuer and its shareholders. Therefore, we are of the opinion that Corporate Governance practices should be strengthened in order to mitigate these risks.

Under the existing Listing Rules, a WVR issuer must establish a Corporate Governance Committee which comprises solely of Independent Non-executive Directors (INEDs), however, the current requirements about the number of INEDs and Board Composition are not upgraded in order to cope with this requirement. We strongly recommend that the Board of Directors should be made up of by not less than 50% of INEDs, so that adequate resources could be allocated to the INEDs of the WVR issuer for them to discharge their directors' duties.

Our detailed responses and comments on the Consultation Paper are set out in the questionnaire attached to this letter. Should you have any questions on the above comments, please do not hesitate to contact [REDACTED].

Yours faithfully,

[REDACTED]  
The Hong Kong Independent Non-Executive Director Association Limited

## Part B Consultation Questions

Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at: <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/January-2020-Corporate-WVR/Consultation-Paper/cp202001.pdf>. Please indicate your preference by ticking the appropriate boxes.

Where there is insufficient space provided for your comments, please attach additional pages.

**We encourage you to read all of the following questions before responding.**

1. Do you agree, in principle, that the Exchange should expand the existing WVR regime to enable corporate entities to benefit from WVR provided that they meet appropriate conditions and safeguards?

Yes

No

Please give reasons for your views. If your agreement is conditional upon particular aspect(s) of the proposed regime being implemented, please state what those aspect(s) are.

Our response:

There could be certain risks associated with listed companies with WVR regime where the WVR beneficiary is either an individual WVR beneficiary or a corporate WVR beneficiary.

Risks such as misalignment of shareholders' interests and WVRs could be exercised by corporates without owing fiduciary duties to the issuer and its shareholders, could be more significant in an issuer with a corporate WVR beneficiary than an individual WVR beneficiary. Therefore, good corporate governance practices are important for WVR issuers, especially for issuers with corporate WVR beneficiaries, as well as other listed companies.

One major measurement to mitigate those risks mentioned above is to increase the number of Independent Non-Executive Directors (INEDs), so that the Board comprises of at least 51% of INEDs. Increasing the number of INEDs in the Board Composition could minimize the possibility that the corporate WVR beneficiary may influence decision making processes of the WVR issuer which may lead to misalignment of the interests of minority shareholders.

2. Do you agree that a corporate WVR beneficiary must be either the Eligible Entity or a wholly owned subsidiary of the Eligible Entity?

Yes

No

Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

Our response:

We consider that a corporate WVR beneficiary must be either the Eligible Entity or a wholly owned subsidiary of the Eligible Entity, so that both the WVR issuer and the corporate WVR beneficiary could be subject to the same or materially the same level of corporate governance.

3. Recognising that, with at least a 30% economic interest, the corporate WVR beneficiary would be regarded as having "de facto control" of the relevant listing applicant even without WVR and would be considered a Controlling Shareholder under both the Listing Rules and the Takeovers Code, the Exchange has proposed a minimum shareholding requirement for a corporate WVR beneficiary to own at least 30% of the economic interest in the listing applicant.

(a) Do you agree with the proposed requirement for a corporate WVR beneficiary to own at least 30% of the economic interest in the listing applicant and be the single largest shareholder at listing?

Yes

No

Please give reasons for your views.

Our response:

We consider that the corporate WVR beneficiary with at least a 30% economic interest would normally be regarded as having de facto control which could minimise a certain level of misalignment of minority shareholders' interests.

(b) Do you agree that a corporate WVR beneficiary's shares should lapse if it fails to maintain at least a 30% economic interest on an ongoing basis?

Yes

No

Please give reasons for your views.

Our response:

We consider that a corporate WVR beneficiary's shares should lapse if it fails to maintain at least a 30% economic interest on an ongoing basis, as the de facto control does not exist anymore.

4. (a) If your answer to Question 3(a) is "no", do you propose a different economic interest in order for the applicant to benefit from WVR and, if so, what this should be?

Yes

No

If so, please state these conditions/requirements.

- Not applicable -

(b) Do you believe that any other conditions and requirements should be imposed if a lower economic interest threshold is allowed?

Yes

No

If so, please state these conditions/requirements. Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

- Not applicable -

5. Do you agree with the proposed exception from the Rules to permit an issuance of shares on a non-pre-emptive basis to a corporate WVR beneficiary without shareholders' approval if the below conditions are satisfied?

(a) The subscription is solely for the purpose and to the extent necessary to allow the corporate WVR beneficiary to comply with the 30% economic interest requirement;

(b) such shares do not carry WVR;

(c) the subscription will be on the same terms or better (from the perspective of the listed issuer) as the original issuance that triggered the need for the corporate WVR beneficiary to subscribe for additional shares in order to comply with the 30% economic interest requirement; and

(d) the subscription price paid by the corporate WVR beneficiary for the anti-dilution shares is fair and reasonable (having regard, among other things, to the average trading price of the listed issuer's stock over the preceding three months).

Yes

No

Please give reasons for your views. If your answer to Question 5 is "no", and you agree with the requirement for the corporate WVR beneficiary to hold at least 30% of economic interest in the issuer on an ongoing basis, what alternative measures would you propose to enable such minimum economic interest to be maintained on an ongoing basis? In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

Our response:

In order to be in line with existing requirements under the Listing Rules (which is to be fair to all shareholders and to minimize potential misalignment of shareholders' interests due to WVR), we consider that issuance of shares on a non-pre-emptive basis to a corporate WVR beneficiary without remaining shareholders' approval should not be permitted.

6. Do you agree with the proposed requirement that a corporate WVR beneficiary must have held an economic interest of at least 10% in, and have been materially involved in the management or the business of, the listing applicant for a period of at least two financial years prior the date of its application for listing?

Yes

No

Please give reasons for your views. If your answer to 6 is "no", do you agree that a historical holding requirement should be imposed? If so what alternative threshold or holding period would you propose?

In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

Our response:

The corporate WVR beneficiary should demonstrate a stronger commitment in provision of an ecosystem to the listing applicant by holding a higher stake in the listing applicant.

We recommend that an average of 20% economic interest in the listing applicant should be maintained by the corporate WVR beneficiary over the last three years prior to the date the listing applicant submits its Form A1 - Listing Application Form to HKEX.

7. (a) Do you agree that the maximum ratio of weighted votes permitted for shares of a corporate WVR beneficiary should be lower than the maximum ratio permitted for individual WVR beneficiaries?

Yes

No

Please give reasons for your views.

Our response:

Individual WVR beneficiaries are usually the founder and main contributor of the success of the business. Therefore, there is a stronger commitment for the Individual WVR beneficiaries to keep the business running successfully.

In respect of the corporate WVR beneficiary, a corporate WVR beneficiary may not be the founder of the listing applicant and its main contribution could be provision of a business ecosystem to the listing applicant so that synergistic benefits may be applicable to the listing applicant.

Therefore, we agree that the maximum ratio of weighted votes permitted for shares of a corporate WVR beneficiary should be lower than the maximum ratio permitted for individual WVR beneficiaries.

(b) Do you agree that this ratio should be set at no more than five times the voting power of ordinary shares?

Yes

No

If not, what is the maximum ratio that you would propose? Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

- Not applicable -

8. In summary, the Exchange recognises that the synergistic benefits of the ecosystem and the strategy and vision of the leader in developing the ecosystem may be difficult for a listing applicant to replicate on its own or with other business partners; and that this provides a basis for the listing applicant to determine that it is in its interest to issue WVR shares to the lead company within the ecosystem in order to reinforce its own role within the ecosystem. Accordingly, the Exchange has proposed that a corporate WVR beneficiary should be required to demonstrate its contribution through the inclusion of the listing applicant in its ecosystem in order to benefit from WVR. Do you agree with the Exchange's proposal in relation to the ecosystem requirement?

Yes

No

Please give reasons for your views.

Our response:

The WVR was issued to the corporate WVR beneficiary on the basis that the WVR issuer's business strategy, development and prospects after its IPO will continue to be materially influenced by the strategy and vision of the ecosystem leader, i.e. the WVR beneficiary.

It is in the interest of the WVR issuer to be able to continue to co-evolve with the companies and other components in the ecosystem.

Therefore, we consider that the WVR attached to a corporate WVR beneficiary's shares should lapse permanently when the corporate's contribution to the WVR issuer is substantially terminated or materially disrupted or suspended for a period exceeding 12 months.

9. Do you agree with the required characteristics of an ecosystem as set out below:
- (a) a community of companies (which includes the listing applicant) and other components (which may be non-legal entities such as business units of the corporate shareholder, user or customer bases, applications, programs or other technological applications) that has grown and co-evolved around a technology or know-how platform or a set of core products or services, owned or operated by the prospective corporate WVR beneficiary (for the avoidance of doubt, such platform or products or services does not need to represent the main business of the prospective corporate WVR beneficiary);
  - (b) the components within the ecosystem (including the listing applicant) both benefit from, and contribute to, the ecosystem by sharing certain data, users and/or technology (for example, software, applications, proprietary know-how or patents);
  - (c) the ecosystem must have attained meaningful scale, which will normally be measured by reference to indicators such as the number and technological sophistication of the components connected to the ecosystem, the size of its (combined) user base, or the frequency and extent of cross-interaction between the users or customers of different components;
  - (d) the core components within the ecosystem, and the listing applicant, are in substance controlled by the corporate WVR beneficiary; and



- (e) the growth and success of the listing applicant was materially attributable to its participation in and co-evolvement with the ecosystem; and the applicant is expected to continue to benefit materially from being part of that ecosystem.

Yes

No

Please give reasons for your views. Please elaborate if you wish to propose an alternative or additional criteria.

Our response:

"Ecosystems have three defining characteristics: Sustainability, Self-governance and Evolution. In order to be called an ecosystem, a network must fulfil each of those criteria." According to Mari Sako, Professor of Management Studies, Saïd Business School, University of Oxford.

We agree with the required characteristics of the ecosystem as outlined in paragraph 156 of the Consultation Paper. However, we would like to emphasize that a good governance environment is also an important factor for a WVR listed issuer.

10. Are there other circumstances relevant to innovative companies that, in your view, could either (a) justify granting WVR to a corporate WVR beneficiary; or (b) be required as a pre-requisite to being granted WVR?

Yes

No

Please give reasons for your views.

Our response:

We don't have other suggestion in relation to this matter.

11. Do you agree that the corporate WVR beneficiary can be a traditional economy company provided that it develops a similar ecosystem which can satisfy the eligibility criteria?

Yes

No

Please give reasons for your views.

Our response:

We consider that a traditional economy company can also develop a similarly complex network of innovative companies and other components around a technology-enabled platform or a set of core products or services to form such an ecosystem.

12. If your answer to 8 is "yes", do you agree that the corporate WVR beneficiary should be required to provide a contribution to the WVR issuer (e.g. by facilitating the applicant's participation in the ecosystem and including the applicant in its vision and planning for the ecosystem) on an ongoing basis and that its WVR should lapse if the corporate's contribution to the WVR issuer is substantially terminated or materially disrupted or suspended for a period exceeding 12 months?

Yes

No

Please give reasons for your views.

Our response:

The WVR was issued on the basis that the WVR issuer's business strategy, development and prospects after its IPO will continue to be materially influenced by the strategy and vision of the ecosystem leader, i.e. the WVR beneficiary, and it would be in the interest of the WVR issuer to continue to co-evolve with the companies and other components in the ecosystem.

Therefore, we consider that the WVR attached to a corporate WVR beneficiary's shares should lapse permanently when the corporate's contribution to the WVR issuer is substantially terminated or materially disrupted or suspended for a period exceeding 12 months.

13. Are there alternative or additional conditions or requirements that you would propose for the corporate WVR beneficiary or the WVR issuer on an ongoing basis?

Yes

No

Please give reasons for your views.

Our response:

Good corporate governance is important for every business, especially WVR listed issuers.

Section 24 of Chapter 8A of the Listing Rules governs certain resolutions that requires voting on a one vote per share basis. In addition, a Corporate Governance Committee which comprises entirely of Independent Non-executive Directors (INEDs) must be established under Sections 30 and Section 31 of Chapter 8A of the Listing Rules. However, we suggest that these provisions could be upgraded in order to cope with market expectation for good corporate governance practices.

We suggest that the Board of Directors of a WVR issuer should be made up by at least 51% of INEDs. For example, unlike INEDs, the appointment or removal of director(s) of a WVR issuer could be achieved without seeking approval by shareholders on a one vote per share basis. A director being appointed may only follow the instructions of the controlling shareholder (i.e. the corporate WVR beneficiary) when carrying out the duties. Therefore, if the Board comprise of not less than 51% INEDs, this could reduce the chance that the controlling shareholder could dominate or influence decision making processes in the Board.

14. (a) If your answer to 12 is "yes", do you agree that a WVR issuer's corporate governance committee should (after making due enquiries) confirm, on a six month and annual basis, that there has been no termination or material disruption, etc., to the corporate WVR beneficiary's contribution to the listing applicant and that this requirement be set out in the committee's terms of reference?

Yes

No

Please give reasons for your views.

Our response:

As the WVR issuer's business strategy, development and prospects after its IPO will continue to be materially influenced by the strategy and vision of the corporate WVR beneficiary, we agree that the WVR issuer's Corporate Governance Committee should confirm, on a six month and annual basis, that there has been no termination or material disruption to the corporate WVR beneficiary's contribution to the WVR issuer.

- (b) Alternatively, would you prefer there to be a different mechanism to check that this requirement is being met?

Yes

No

If so, please state what this should be. Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

Our response:

In addition to Corporate Governance Committee's confirmation, we suggest an annual confirmation should be sought from an independent third-party to confirm that there has been no termination or material disruption to the corporate WVR beneficiary's contribution to the WVR issuer.

15. Balancing the need to ring-fence corporate WVR beneficiary on a fair, rational and justifiable basis to avoid a proliferation of WVR structures, and the risk that a high market capitalisation requirement may be seen as creating an uneven playing field, the Exchange has proposed that a prospective corporate WVR beneficiary must have an expected market capitalisation of at least HK\$200 billion at the time of the WVR issuer's listing. Do you agree with the proposed minimum market capitalisation requirement of HK\$200 billion for a prospective corporate WVR beneficiary?

Yes

No

Please give reasons for your views.

Our response:

We consider that a prospective corporate WVR beneficiary must have an expected market capitalisation of not less than HK\$200 billion both on the day of listing and based on its average market capitalisation over the preceding three months as outlined in paragraph 48 of the Consultation Paper.

16. Do you consider that any exceptions to the market capitalisation requirement should be provided?

Yes

No

If your answer to this question is "yes", please explain the reason(s) for your view and state under what circumstances, and the factors that you consider to be relevant. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

- Not applicable -

17. Do you agree with the proposed requirement that to be suitable to benefit from WVR, a corporate WVR beneficiary must be either: (a) an Innovative Company or (b) have business experience in one or more emerging and innovative sectors as well as a track record of investments in, and contributions to, innovative companies?

Yes

No

Please give reasons for your views.

Our response:

We consider that the corporate WVR beneficiary must be either an Innovative Company or have business experience in one or more emerging and innovative sectors as well as a track record of investments in and contributions to innovative companies, as it is expected that the the WVR issuer's business strategy, development and prospects after its IPO will continue to be materially influenced by the strategy and vision of the WVR beneficiary.

18. Do you agree with the proposed requirement that to benefit from WVR, a corporate beneficiary must have and maintain a primary listing on the Exchange or a Qualifying Exchange?

Yes

No

Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

Our response:

We consider that the corporate beneficiary must have a primary listing on the Exchange or a Qualifying Exchange, so that both the corporate beneficiary and the WVR issuer would be subject to the same or materially the same level of corporate governance.

19. Do you agree with the requirement that a listing applicant must not represent more than 30% of the corporate WVR beneficiary in terms of market capitalisation at the time of its listing?

Yes

No

If not, do you prefer an alternative threshold? Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

Our response:

We consider that the listing applicant must not represent more than 30% of the corporate WVR beneficiary in terms of market capitalisation at the time of its listing.

20. (a) Do you agree with the proposed requirement that at least one director of the listing applicant must be a Corporate Representative?

Yes

No

Please give reasons for your views.

Our response:

We consider that at least one director of the listing applicant must be a Corporate Representative of the corporate WVR beneficiary at the time of listing in order to mitigate the risk that a corporate WVR beneficiary avoids responsibility and accountability for the performance of the issuer, as the director(s) who is/are Corporate Representative(s) of the corporate WVR beneficiary would owe(s) fiduciary duties to the listing applicant.

- (b) Are there any alternative or additional measures that you would propose to increase a corporate WVR beneficiary's responsibility and accountability for how it exercises its control?

Yes

No

Please give reasons for your views.

Our response:

In addition to the requirement that at least one director of the listing applicant must be a Corporate Representative of the corporate WVR beneficiary, we suggest that the director who is a Corporate Representative of the corporate WVR beneficiary must continue to hold office as a member of the Board of Directors in the WVR issuer as long as the corporate WVR beneficiary still possesses the WVR.

Also, the Corporate Representative should report annually to the Board of Directors of the WVR issuer and confirm whether the business ecosystem still exist. We also recommend that such content of the report should be endorsed by all INEDs and disclosed in the Annual Report of the WVR issuer.

21. Do you agree that the WVR attached to a corporate WVR beneficiary's shares must lapse permanently if:

- (a) the beneficiary no longer has a Corporate Representative on the listed issuer's board of directors for a continuous period of 30 days;



- (b) the Corporate Representative is disqualified as a director or found unsuitable by the Exchange as a result of an action or decision taken in his or her capacity as director of the listed issuer save where the corporate WVR beneficiary is able to demonstrate to the Exchange's satisfaction that the action or decision was taken outside of the authority granted by the corporate WVR beneficiary to the Corporate Representative; or
- (c) the corporate WVR beneficiary has been convicted of an offence involving a finding that the beneficiary acted fraudulently or dishonestly?

Yes

No

If not do you suggest any alternative criteria? Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

Our response:

We agree with the requirements outlined in paragraph 174 of the Consultation Paper.

22. Do you agree that the Exchange should impose a time-defined sunset on the WVR of a corporate WVR beneficiary?

Yes

No

Please give reasons for your views.

Our response:

We agree that a time-defined sunset clause is appropriate.

23. If your answer to 22 is "yes", do you agree with the proposed maximum 10 year length of the initial "sunset period"?

Yes

No

If not, what length of period would you prefer? Please give reasons for your views.

Our response:

We suggest that a time-defined sunset of not more than 5 years is more appropriate in order to encourage listing applicants to build up their own business ecosystems after listing.

The WVR issuer carries on business in the emerging and innovative sector, at this fast-changing information technology based sector, they are expected to be able to develop their own networks and new business ecosystems soon after listing. Also, they are expected to be innovative on a continual basis and cannot rely entirely on the ecosystems provided by the WVR beneficiary.

We therefore consider a time-defined sunset of not more than 5 years would be appropriate for innovative companies.

24. (a) Do you agree that the WVR of a corporate WVR beneficiary could be renewed at the end of the sunset period with the approval of independent shareholders?

Yes

No

Please give reasons for your views.

Our response:

We expect that the issuer to be able to expand its business and operate independently after listing.

Therefore, we consider that the WVR of a corporate WVR beneficiary could not be renewed at the end of the sunset period with the approval of independent shareholders, as the existing business ecosystems may be lapsed by the time it has reached the time-defined sunset.

- (b) If so, do you agree with the maximum five year length of the renewal period or would you prefer an alternative renewal period length?

Yes

No

Please give reasons for your views.

Our response:

As mentioned in Question 24.(a), we consider that the WVR of a corporate WVR beneficiary could not be renewed at the end of the sunset period.

25. Do you agree that there should be no limit on the number of times that the WVR of a corporate WVR beneficiary could be renewed?

Yes

No

If not, what is the limit that you would propose? Please give reasons for your views.

Our response:

We suggest that the WVR of a corporate WVR beneficiary could not be renewed at the end of the sunset period.

26. Should the Exchange impose any other requirements on a corporate WVR beneficiary as of a condition of renewing its WVR?

Yes

No

If so, please provide details of the suggested requirement. Please give reasons for your views. In your response, you may propose additional or alternative measure to the ones discussed in the Consultation Paper.

- Not applicable -

27. Do you agree that the Exchange should not restrict an issuer from granting WVR to both corporate and individual beneficiaries provided that each meets the requisite suitability requirement?

Yes

No

Please give reasons for your views.

Our response:

We agree that the Exchange should not restrict an issuer from granting WVR to both corporate and individual beneficiaries provided that both the corporate beneficiary and the individual beneficiary meet the requisite suitability requirements.

28. Are there any additional measures that you would propose for the WVR beneficiaries or the WVR issuer to safeguard the interests of the WVR issuer (e.g. prevent a deadlock) if there were both corporate and individual beneficiaries?

Yes

No

Please give reasons for your views.

Our response:

We strongly recommend that the Board of Directors should be made up of not less than 51% of INEDs so as to enhance corporate governance practices. Such INEDs will also enhance the smooth working of the ecosystem and the balancing of interests between corporate WVR beneficiaries, individual WVR beneficiaries and other shareholders.

29. Do you agree that where an issuer has both a corporate WVR beneficiary and individual WVR beneficiaries, the time-defined sunset should only apply to the corporate WVR beneficiary?

Yes

No

Please give reasons for your views.

Our response:

We consider that the time-defined sunset should only be applicable to the corporate WVR beneficiary, as a corporation has a perpetual life time.

30. Do you agree that, in the event that the WVR of the corporate WVR beneficiary falls away as a result of its time-defined sunset, the individual beneficiary should be required to convert part of his or her WVR shares into ordinary shares such that the individual beneficiary will control the same proportion of voting power in the issuer both before and after the corporate WVR beneficiary's WVR fall away?

Yes

No

Please give reasons for your views. In your response, you may propose additional or alternative measure to the ones discussed in the Consultation Paper.

Our response:

We agree that the individual beneficiary should be required to convert part of his or her WVR shares into ordinary shares such that the individual beneficiary will control the same proportion of voting power in the issuer both before and after the corporate WVR beneficiary's WVR fall away.

31. Do you agree that the Listing Rules need not mandate that, if an individual beneficiary's WVR falls away before a corporate WVR beneficiary's WVR, the corporate WVR beneficiary should convert part of its WVR shares into ordinary shares such that the corporate WVR beneficiary will control the same proportion of voting power in the issuer both before and after the individual beneficiary's WVR fall away?

Yes

No

Please give reasons for your views. In your response, you may propose additional or alternative measure to the ones discussed in the Consultation Paper.

Our response:

We agree that the Listing Rules need not mandate that if an individual beneficiary's WVR falls away before a corporate WVR beneficiary's WVR, the corporate WVR beneficiary should convert part of its WVR shares into ordinary shares such that the corporate WVR beneficiary will control the same proportion of voting power in the issuer both before and after the individual beneficiary's WVR fall away.

- End -