

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.

We, as an investment manager, are responding to this consultation taking the angle of our clients who are often ordinary pension savers and minority shareholders of those companies that would potentially be eligible to the proposed corporate WVR regime.

We fully understand and respect that it is HKEX's mission to promote the financial market. Even though we share HKEX's view that this regime could potentially facilitate more listings and enhance the competitiveness of the Exchange, it is, however, our concern that the proposed weighted voting right regime would work against the important, basic principle of treating all investors equally according to their economic interests. We hold the view that all companies should adopt a "one-share one-vote" structure.

We also believe that the existing design of the safeguard mechanism in this regime is not strong enough to protect minority shareholders' rights. In our response below, we encourage reconsideration on several key areas in addition to those explicitly covered in this survey, including but not limited to the co-existence of corporate and individual WVRs, the lack of restriction on exercising corporate WVRs on particular management proposals and the proposed sunset clause. We would also like to reference the submissions by the Asian Corporate Governance Association (ACGA) and the Council of Institutional Investors (CII), which provide even in-depth analysis of the key areas in need of further safeguard measures.

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.

While we believe that all shareholders should only be granted the voting rights proportionated to their economic interests, the negative impacts on governance standards and on shareholder rights could be lessened if the sole beneficiary of WVR is the eligible entity itself.

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.

While we believe that all shareholders should only be granted the voting rights proportionated to their economic interests, setting the threshold at 30% of economic interest would likely ensure meaningful and material role taken by the beneficiary on issuer's business growth.

(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.

We believe that all shareholders should only be granted the voting rights proportionated to their economic interests. Furthermore, we don't see any reason allowing for continued WVR if the required economic interest is not maintained. We fear that minority shareholders' rights would be further infringed if the controlling beneficiaries were able to exercise their WVRs whilst continued to minimise their economic interests at the issuers.

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.

We do not have a view on this.

(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.

We do not believe that a lower economic interest threshold should be allowed, even if this regime is to be implemented.

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.

We do not agree with the spirit implied in this clause that minority shareholders should bear the impacts of having their voting rights diluted for the benefits of corporate WVR holders to maintain their economic interests for WVR. Listed companies in Hong Kong are already allowed to issue 20% new shares without pre-emptive rights per year whilst there is no cumulative cap of such issuance on a rolling basis across AGMs. We fear that this will further dilute minority shareholders' economic interests.

We would also like to highlight the possible risk of deteriorated corporate governance standard from the excessive voting right dilution allowed for in this corporate WVR regime as currently proposed. We believe that WVR holders should abstain from, or vote on a "one share one vote" basis on, all management proposals related to director nominations by controlling shareholders, appointments of auditors, share issuance requests without pre-emptive rights and approvals of related-party transactions.

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.

If this regime is to be implemented, we believe that the beneficiary should have held an economic interest of at least 30% prior to WVR initiation, which is the same threshold as required to maintain on an ongoing basis. We recommend to extend the period to at least five financial years prior to WVR initiation as it would normally require more than two financial years for any innovative solution to be grown to the scale of IPO within an ecosystem materially contributing to the success of the issuer.

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.

We believe that it is only fair and effective to protect investor rights for voting rights to be in line with their economic interests.

Moreover, the co-existence of the corporate and individual WVR regimes could mean that controlling shareholders are effectively granted too great a voting power as compared to their economic interests.

(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.

We believe that it is only fair and effective to protect investor rights for voting rights to be in line with their economic interests. We also believe that the WVRs, no matter what the maximum ratio might be, should not be exercised when voting on the management proposals related to director nominations by controlling shareholders, appointments of auditors, share issuance requests without pre-emptive rights and approvals of related-party transactions. We believe that utilising WVRs in these proposals would create conflict of interest and that WVR beneficiaries should abstain. This is in line with measures protecting minority shareholder interests in other markets.

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.

If this regime is to be implemented, we believe that issuers should be part of the ecosystem built by the beneficiary. However, we consider the current definition of "ecosystem" to be subjective which requires issuers to justify and may potentially lead to abuses. We would appreciate further guideline by the Exchange on how this would be assessed in application stage and whether there would be sufficient policing on an on-going basis. We have recommended alternatives in the following answers.

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.

We do have concern on the inclusion of other components (including non-legal entities, user bases etc) of the beneficiary as part of the ecosystem definition. We fear that this could be subjectively defined and believe that the Exchange should issue a detailed guideline with additional eligibility criteria concerning this.

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.

We believe that all shareholders should be granted voting rights as proportionated to their economic interests.

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.

We believe that all companies should implement an "one-share one-vote" structure. Moreover, the suggestion here of granting WVRs to even more types of companies ("the traditional economy company") may weaken the already subjective standard of having innovative issuers supported by an existing, competitive and scalable ecosystem as set out in the eligibility criteria.

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.

If this regime is to be implemented, we believe the corporate WVR should be lapsed if such contribution has changed. We however do not have great confidence that this could be policed subjectively across all types of "ecosystems" and all "innovative companies" by the current design of this regime. Please see alternatives proposed in the following answers.

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.

We believe that, if such regime is to be implemented, issuers should seek shareholder approval, by supermajority on an "one-share one-vote" basis, on the continuation of the corporate WVR at the company annual general meetings.

14. (a) If your answer to 0 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.

If this regime is to be implemented, we don't principally object to have the corporate governance committee to review the suitability of the contribution by the WVR beneficiary on a six month basis. We are however disappointed by the absence of a clause requiring 100% independence of the corporate governance committee.

We believe that issuers should also seek shareholder approval, by supermajority rule on an "one-share one-vote" basis, on the continuation of the corporate WVR at the company annual general meetings.

(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.

We believe that issuers should seek shareholder approval, by supermajority rule on an "one-share one-vote" basis, on the continuation of the corporate WVR at the company annual general meetings.

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.

We believe that the HK\$200 billion threshold should be reviewed and adjusted on an on-going basis as the innovative segment has seen significant growth of market capitalisation during a rather short timeframe in the past.

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.

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.

We believe that all shareholders should be granted voting rights as proportionated to their economic interests.

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.

We believe that all shareholders should be granted voting rights as proportionated to their economic interests.

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.

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.

We believe that the re-nomination should be subject to supermajority vote on a "one-share one-vote" basis at the annual general meeting. However, we have concern that the lack of fiduciary duty as attached to the current governance system of WVR would risk investor rights.

(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.

We believe that the re-nomination should be subject to supermajority vote on a "one-share one-vote" basis at the annual general meeting.

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.

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.

We believe that there should be an one-off sunset period of 7 years without any possibility of renewal. As stated previously, we also believe that shareholders should be consulted on the continuation of the corporate WVR at the annual general meeting. The corporate WVR should be subject to supermajority vote on a "one-share one-vote" basis at the annual general meeting.

23. If your answer to 0 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.

We believe that there should be an one-off sunset period of 7 years without any possibility of renewal. As stated previously, we also believe that shareholders should be consulted on the continuation of the corporate WVR at the annual general meeting. The corporate WVR should be subject to supermajority vote on a "one-share one-vote" basis at the annual general meeting.

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.

We believe that there should be an one-off sunset period of 7 years without any possibility of renewal.

(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.

We do not believe that there is a legitimate reason to allow for renewal. We believe that, if this regime is to be implemented, there should be an one-off sunset period of 7 years without any possibility of renewal. Shareholders should also be consulted on the continuation of the corporate WVR at the annual general meetings. The corporate WVR should be subject to supermajority vote on a "one-share one-vote" basis at the annual general meeting.

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.

We believe that shareholders should be consulted for the approval of the WVR at the annual general meetings. Moreover, we do fear that there is a risk of WVR becoming perpetual if this was allowed.

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.

We believe that, if this regime is to be implemented, shareholders should be consulted on the continuation of the corporate WVR at the annual general meetings. The corporate WVR should be subject to supermajority vote on a "one-share one-vote" basis.

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.

We believe that the co-existence of the corporate and individual WVRs would create too big a voting power for the beneficiaries.

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.

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.

We believe that both the individual and corporate WVRs should subject to the same requirements as suggested in our answers above.

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.

We believe that all shareholders should be granted the voting rights proportionated to their economic interests.

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.

We believe that all shareholders should be granted the voting rights proportionated to their economic interests.

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