



By email (response@hkex.com.hk) and by post

11 May 2020

Our Ref.: [REDACTED]

Corporate and Investor Communications Department
Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place
Central
Hong Kong

Dear Sirs,

Re: Consultation Paper on Corporate Weighted Voting Right Beneficiaries

The Hong Kong Institute of Certified Public Accountants (“the Institute”)’s Corporate Finance Advisory Panel (“CFAP”) and corporate governance specialists have reviewed the Consultation Paper on Corporate WVR Beneficiaries, and we are pleased to provide our comments on the proposals.

While CFAP members generally see the proposal to introduce corporate WVRs (“CWVRs”) as a reasonable and acceptable further development of WVR in Hong Kong, subject to providing adequate investor safeguards, corporate governance practitioners within the Institute have concerns, similar to the views expressed by other corporate governance advocates and some institutional investors, regarding the implications for minority shareholders and the potential for abuses. It is clear that, if the proposal for CWVRs is to proceed, specific and sufficient investor protection measures will need to be put in place and will form an important part of the overall package. These measures may distinguish Hong Kong from other markets where CWVRs exist, which reflects the differences in context and culture between markets, including considerations such as the avenues available for investor redress and the powers of the securities regulator to intervene, as well as the practices prevailing in those markets.

We believe that, if Hong Kong is to introduce CWVRs, this should be because, all things considered, it is an appropriate development for Hong Kong given the context of the Hong Kong market. It should not be driven primarily by concerns about possible loss of business to competitors. While, no doubt, competition is one factor, if this is the main consideration, then, logically, Hong Kong would need to compete on the same terms and offer facilities that are at least on a par with those other markets. However, that would mean providing few additional safeguards for investors and greater flexibility for listing applicants, which would not be acceptable to many stakeholders in Hong Kong. It could also precipitate a progressive lowering of corporate governance standards in those markets determined to increase or protect their share of business.



While, given the differing views expressed by members, we take no fixed position on the desirability or otherwise of introducing CWVRs, nevertheless, we have provided our comments and suggestions on most of the detailed questions in the consultation paper, as further elaborated in the attached questionnaire.

If you have any questions on this submission or wish to discuss it further, please do not hesitate to contact me at the Institute by telephone on [REDACTED] or email [REDACTED].

Yours faithfully,

[REDACTED]

[REDACTED]

Encl.

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 understand and appreciate the need for continuing market development in Hong Kong, and also to be aware of developments in, and competition from, other major markets around the world. It is also important to ensure that this is accompanied by an appreciation of the need for good corporate governance and protection of the interests of ordinary investors. An appropriate balance must be found.

As regards the proposals in the consultation paper ("CP"), we are not entirely convinced by the "competitive considerations" arguments, which focus mainly on the United States ("U.S.") markets. These operate in a very different context from Hong Kong. The CP provides statistics to indicate that an increasing number of high-tech/innovative companies prefer to list in overseas markets, like the U.S., rather than Hong Kong. Paragraph 97 of the CP notes that issuers' selection of listing venue takes into account many considerations and that the availability of corporate WVR structures "may form part of their consideration". This alone cannot be said to be a very persuasive argument for introducing corporate WVRs ("CWVRs") in Hong Kong.

We should be cautious about adopting specific practices of other jurisdictions without a fuller understanding of their overall environment, including how those markets protect investors. For example, the options for shareholder actions against listed companies and their directors are, in practical terms, limited in Hong Kong. In the U.S., class actions initiated by private shareholders are not uncommon and can be an effective legal remedy. In contrast, in Hong Kong, class actions are not permitted and private actions are frequently costly and time-consuming, and the outcome is uncertain. They are rarely initiated by minority shareholders in Hong Kong. Statutory derivative actions while permitted are also not common in Hong Kong.

In our view, therefore, the focus should be firmly on the Hong Kong market, the needs and objectives of the market and how it should be developed in the future. We would refer you to the Hong Kong Institute of CPAs ("the Institute")'s "Report on Improving Corporate Governance in Hong Kong" (December 2017) authored by S. Johnstone and S.H. Goo (see: <https://www.hkicpa.org.hk/en/About-us/Advocacy-and-representation/Best-practice-guidance/Publications#y>) and, in particular, Recommendation E4.9.3 on the need to identify the overarching objectives to drive the development of the market and how this may impact on investor protection.

As regards the general thrust of the current proposals, Institute members from the corporate finance sector tend to see CWVRs as a reasonable and acceptable further market development following the introduction of individual WVRs ("IWVRs"), subject to certain investor safeguards being put in place. On the other hand, members whose work focuses more on corporate governance have quite strong concerns about the potential impact of CWVRs on ordinary investors. Clearly, there are differing views among our members and market practitioners, and we take no firm position on the introduction of CWVRs. It is evident, however, that, if the proposal for CWVRs is to proceed, the investor protection measures put in place around them will be very important.

Structural and upfront safeguards are seen as a core element of the Hong Kong securities market, in a way that may differ from markets such as the U.S., where the powers of the securities regulator are more extensive and avenues for legal and regulatory redress are well developed. If the existing WVR regime is to be extended to corporate shareholders in Hong Kong, there need to be mechanisms to require listing applicants to justify their adoption of a CWVR structure, explain clearly how they meet the eligibility criteria and the measures that they have, or will implement, to protect the interests of ordinary shareholders and safeguard minority shareholders against abuses.

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.

We understand that the original intention of granting IWVRs in the WVR issuer was to recognise the beneficiary's critical contribution to the founding/ creation and development of the issuer's business and ensure that his/ her controlling interest would not be significantly diluted by, e.g., subsequent issuances of new shares. By the same token, in principle, only the Eligible Entity should be entitled to the WVR status given its vital contribution to the ecosystem of which the WVR issuer is a part.

However, we note that HKEX aims to provide the CWVR beneficiary with a degree of flexibility in terms of its corporate structure and to allow it to hold WVR shares through a special purpose vehicle ("SPV"), provided that only the Eligible Entity can direct the voting of the WVR shares held by the SPV, which should be its wholly-owned subsidiary. However, this will mean that the entity that controls the votes of WVR beneficiary may not be listed or subject to any regulatory oversight. Therefore, there would need to be a clear indication of how an Eligible Entity of this type could assure the market that it would act responsibly and in the interests of the general body of shareholders of the listing applicant. Furthermore, after providing for the possibility of a CWVR beneficiary being an SPV, when discussing subsequent proposals, the CP seems to conflate the Eligible Entity and the CWVR beneficiary. As such, we consider that HKEX needs to provide a clearer explanation of how an SPV that is a CWVR beneficiary could meet the requirements in, e.g., paras. 50, 157 and 164 of the CP.

As regards the suggestion in para. 136 of the CP that a change in control of CWVR beneficiary should not affect the WVRs of the CWVR beneficiary, we disagree with this. If the control of the CWVR beneficiary changes, the core values and strategy of the beneficiary may change significantly. We suggest that the WVR status of the CWVR beneficiary should lapse if it is subject to any change of control. As a minimum, we would propose that an independent shareholder vote should be triggered if there is any change of control in the CWVR beneficiary, to determine whether the issuer should continue to grant WVRs to the beneficiary.

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.

We do not disagree with the proposed threshold but would suggest that some further explanation may be called for. While we understand the rationale for the proposal, to reduce the possible impact on the rights of other shareholders, questions may still be raised as, prima facie, the objective is not that the CWVR beneficiary should need to be a/ the controlling shareholder of the issuer, especially given that the CWVR beneficiary is accorded this advantage because the "synergistic benefits of the ecosystem and the strategy and vision of the ecosystem leader in developing the ecosystem are difficult for a listing applicant to replicate on its own or with other business partners" (CP, para. 43).

Arguably, if it is already a de facto controlling shareholder, the CWVR beneficiary should not need to secure its continuing control through WVRs. So, if for most of the track record period before the listing, an economic interest of only 10% is seen as being sufficient for a corporate shareholder to demonstrate its commitment to the applicant (CP, paras. 33 and 147), should it be necessary for it to triple its stake before the IPO? In fact this seems to be at odds with the statement in para. 33 that "A corporate shareholder that acquires, or materially increases, its stake in a listing applicant shortly before listing in order to benefit from WVR will not be considered suitable to hold WVR." Under the circumstances, an alternative approach might be to suggest that a corporate shareholder be the single largest shareholder and hold a significant stake for a longer period (e.g., the track record period) but not necessarily as much as 30%.

We also note the point raised in para. 140 of the CP, that the U.S. exchanges do not impose a minimum economic interest requirement and that 38% of the CWVR beneficiaries in the U.S. had an economic interest of below 30% at listing. While this may appear to give some support to our suggestion above, we are unclear as to the purpose of raising a point that seems to cast doubt on the merits of the proposal being put forward in the CP. In this regard, we would refer back to our response to Q1 and query whether comparisons with the U.S. market are like for like comparisons.

(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.

The meaning of "on an ongoing basis" needs to be explained further. If the CWVR beneficiary's economic interest falls below the threshold (whatever that may ultimately be), due to unforeseen circumstances and for a short period of time, there may need to be a grace period to enable the CWVR beneficiary to acquire additional shares to reach the threshold again. See also our response to Q3(a).

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.

See our response to Q3(a). We not have a fixed threshold in mind. An alternative suggestion that has been made is that, where issuers have more than one WVR beneficiary (individual and corporate), the minimum economic benefit requirement of each WVR beneficiary may be fixed at 10%. However, the total economic interest of all WVR beneficiaries ("a concert party") may be set at a minimum of 30%, to align their interests with other ordinary shareholders. The independent shareholders could then be allowed to vote on whether the WVRs of the concert party should lapse if their economic interest falls below 30%, for a certain period of time.

(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.

See our response to Q4(a) above.

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.

There needs to be some further explanation and justification for this proposal, and, potentially, further controls around how far the CWVR beneficiary can allow its interest to fall below the threshold, if it is to be given the privilege of acquiring more shares by means of an exception to the rule restricting the issuing of shares on non-preemptive basis. Prima facie, there are other ways available for the CWVR beneficiary to subscribe for shares to satisfy the required threshold economic interest, without having to create an exception to the rule; e.g., by buying shares from the open market or by the WVR issuer obtaining a general mandate to issue new shares. The proposal may create a perception in the market that additional privileges are being granted to CWVR beneficiaries compared with other listed issuers, and that the interests of ordinary shareholders may be increasingly disadvantaged due to dilutions over which they have no control.

As regards the more detailed aspects of some of the proposals, possible scenarios for consideration may be: If the drop in the CWVR beneficiary's interest to below 30% is due to (1) dilution from the issuance of shares for an acquisition, the anti-dilution clause could include a condition that the subscription price should be the higher of (i) original issuance and (ii) cost of the acquisition; (2) the issuance of share options post listing, the subscription price should be the higher of (i) original issuance and (ii) cost of the share options granted.

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.

We broadly agree with this proposal. While we support the rationale for requiring a CWVR beneficiary to hold an economic interest of at least 10%, and to demonstrate that it has been materially involved in the management or the business of the listing applicant for a reasonable period, there is an argument for requiring the CWVR beneficiary to meet the higher threshold required at listing for a longer period before the IPO. With reference to actual examples, there may also a case for extending the track record period beyond two years. For example, Facebook was set up in 2004 and listed under a WVR structure after eight years, in 2012; it is also noted that its chief executive officer owned an interest of around 22% in the company before it was listed. Google, which was established in 1998, went public in 2004, while the two founders in total owned an interest of more than 30% in Google prior to the IPO. These examples suggest that a CWVR beneficiary, either alone or together with one or more IWVR beneficiaries (see the response to Q4(a) above), could be expected to have possessed a substantial economic interest in the WVR issuer, and to have contributed significantly to its business, for a longer period, before its listing.

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.

While this creates an asymmetry between the voting power of IWVR beneficiaries and CWVR beneficiaries, if the threshold of a minimum 30% of the underlying economic interest is adopted, then, for the reasons explained in para. 40, i.e., to cap the control that a CWVR beneficiary can exercise, a five-times limit is reasonable. However, this would suggest that, if the minimum economic interest that a CWVR beneficiary is required to hold were to be set at, say, 20%, there may be a case for aligning the voting power of IWVR beneficiaries and CWVR beneficiaries. In practice, moreover, a CWVR beneficiary's control would not necessarily be limited to 68%, except to the extent that control were exercised through its WVRs. It could progressively acquire more shares without WVR and thereby increase its overall control of the WVR issuer, subject to the requirements of the Hong Kong Code on Takeovers and Mergers ("Takeovers Code").

(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.

Yes, but see our response to Q7(a).

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.

This should represent a minimum requirement for granting CWVRs to a company.

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.

While, in principle, we agree with this, some of the criteria are quite vague and subjective. For example, what is a "community of companies"? What is to be regarded as attaining "a meaningful scale"? Under criterion (e), it is stated that "the growth and success of the listing applicant was materially attributable to its participation in and co-evolvement with the ecosystem." Does "materially attributable to" represent a sufficiently high threshold? Should it not be something more like "substantially and essentially attributable to"?

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.

Other than the comments that we have on the proposed criteria, we do not have any additional suggestions to raise.

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 agree in principle, that a traditional economy company which, for example, sets up a new business, such as a virtual bank, jointly with a new economy company, should not be disadvantaged simply by reason of the fact that it is a traditional economy company. At the same time, we consider that HKEX needs to be vigilant in applying the requirements of Chapter 8A of the Listing Rules ("the Rules"), in particular, Rules 8A.04 and 8.05, to avoid the perception that large traditional economy companies are being given licence to restructure and spin off key assets in a way that could disadvantage general shareholders. Any risk of a significant expansion of CWVRs "through the backdoor" would be inconsistent with the statement in para. 41 of the CP.

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.

It is part of, or should be part of, the definition of an ecosystem in this context that it should be ongoing.

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.

As mentioned in our response to Q2, above, the controlling shareholders of the corporate WVR beneficiary should remain unchanged on an ongoing basis, and any changes in control of the CWVR beneficiary should invalidate the WVR status of the beneficiary, or at least result in the continuing WVR status of the beneficiary being put to a vote of independent shareholders.

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.

We agree. In addition, the WVR issuer should not only confirm there has been no termination or material disruption, but also disclose the underlying process as to how the conclusion has been reached, and what the WVR beneficiary contributed during the year, whether a third party was engaged to help validate the process, etc. Furthermore, we would also refer you to the "Report on Improving Corporate Governance in Hong Kong" (see our response to Q1, above.) Recommendation A4.5.1 of the report proposes that certain corporate governance-related disclosures under the Rules be brought within the scope of section 384(3)(b)(ii) of the Securities and Futures Ordinance ("Cap. 571") on the provision of false or misleading information. We would suggest that this recommendation be explored and that, while Chapter 8A of the Rules was not yet in force at the time of the report, in addition to including the disclosures in Appendix 14 of the Main Board/ Appendix 15 of the Growth Enterprise Market Rules, Chapter 8A and the proposed disclosure in this question, should be covered.

(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.

See our response to Q14(a) and, in particular, the proposal to subject certain corporate governance disclosures by an issuer to the enforcement regime of section 384 of Cap 571.

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.

While we do not disagree with this proposal, it is not entirely clear what is meant by "an expected market capitalisation of at least HK\$200 billion", since it is not the CWVR beneficiary that will be listing and the CWVR beneficiary may be an SPV of the controller of the CWVRs (see our response to Q2, above). Is the proposal that, at the time of the listing applicant's listing, the CWVR beneficiary must have a market capitalisation of at least HK\$200 billion? If so, this only a snapshot. Should HKEX instead look at the average market cap over the track record period during which the CWVR beneficiary is required to have a minimum economic interest in the prospective issuer?

While a high market capitalisation threshold for a CWVR beneficiary could help to curb a proliferation of WVR structures, nevertheless, the threshold of HK\$200 billion may appear to be a somewhat arbitrary figure, without further explanation and justification. Certainly, size alone offers no assurance of good governance or that a company will treat its ordinary shareholders fairly, and any corporate misconduct by an issuer with a large market capitalisation would be likely to affect more investors and have a greater impact on the market.

Under the circumstances, we suggest that (i) HKEX needs to elaborate on the rationale for setting the minimum market capitalisation at HK\$200 billion; and (ii) consider extending the period during which the CWVR beneficiary is required to meet the threshold. For example, it could refer to the average market capitalisation over the two-year track record period during which the corporate shareholder must hold an economic interest of 10% or more in the issuer (CP, para. 147). This may provide a clearer indication of the commitment of the CWVR towards the issuer and minimise the relevance of any short-term volatility on the share price of the prospective CWVR beneficiary.

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.

Generally, we do not agree with providing exceptions to the market capitalisation requirement. This may create loopholes for potential listing applicants to exploit and require HKEX to make subjective judgements, which could lead to disputes. As regards the concern raised about creating an uneven playing field (CP, para. 166), providing for exceptions on a discretionary basis could open the door to inconsistencies and, conceivably, a more uneven playing field. In addition, it could raise questions about the validity of the criteria, if provision were to be made for exceptions to them at the outset.

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 generally agree with this proposal.

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 agree with this proposal, in principle, for the reasons given in para. 168(b) of the CP. However, see also our response to Q2. As the CWVR beneficiary could be an SPV, the votes of which are controlled by an unlisted Eligible Entity, the objective set out in para. 168(b) could be defeated.

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.

We agree with the proposal and rationale.

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 agree with the proposal.

- (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 consider that the Corporate Representative should be an executive director of the corporate WVR beneficiary to increase its responsibility and accountability for how it exercises control.

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.

We agree, but consider that (c) should also cover the situation where a regulatory complaint involving dishonesty or serious misconduct is upheld against the CWVR beneficiary by the Securities and Futures Commission, Market Misconduct Tribunal, etc.

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.

Yes, to make clear the principle that CWVRs do not exist in perpetuity, even though the beneficiary company may do so.

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 would suggest a period of five to seven years initially. As issuers often come to the market at a later point in their life cycle and are already large, five to seven years should be sufficient for the CWVR to help develop any new initiatives. On the one hand, this safeguard provides enough time for founding shareholders to execute their strategy and create value, without having to worry unduly about the vagaries of the market; on the other hand, it protects general shareholders against entrenchment of CWVRs.

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.

Yes, for a certain maximum period.

(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 would suggest a maximum renewal period of three years, except for the first renewal, which could be up to another five years, where the original sunset period was five years (i.e. to bring the period up to 10 years in total, including the first renewal period; see our response to Q23). Shorter periods protect general shareholders, in particular minority shareholders, from entrenchment and require the issuer and the CWVR beneficiary to continue to explain and justify the need for this arrangement on a regular basis. This creates a better balance between investor protection and allowing time for founding shareholders to create value for the benefit of other shareholders of the WVR issuer.

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.

There should be a limit, otherwise a CWVR could in practice be perpetual. We would suggest a maximum of, say, 16 years, allowing up to two further 3-year renewal periods after the first renewal, based on the proposal in our responses to Q23 and Q24 above. If the CWVR beneficiary is still considered to be a necessary part of the ecosystem beyond 16 years, even if it cannot control the vote in a general meeting, it would seem unlikely that the general body of shareholders would vote against their own interests to prevent the issuer from maintaining a close relationship with the former CWVR beneficiary. The CWVR beneficiary would also have been able to increase its non-WVR shareholding during this period if it wished to do so.

A limit on renewals of the sunset provision would also help guard against a situation in which minority shareholders are asked to vote on renewals of the sunset provision without adequate information and may continue to vote affirmatively for a control structure that appears to be detrimental to their own ownership stake. They may be "persuaded" to approve a renewal by, e.g., the issuer providing limited information for decision making and also bundling it with unrelated proposals that shareholders may find attractive, such as an incremental dividend increase.

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.

The CWVR beneficiary should be required to continue to be an Eligible Entity or wholly-owned subsidiary and should be expected to provide a report for distribution to other shareholders detailing its contribution to the ecosystem during the previous period and how it expects to contribute in the forthcoming period.

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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 agree, for the reasons given in paras.181-182 of the CP.

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.

It is important to consider and, potentially, to limit the overall aggregate level of control that can be exercised by CWVR and IWVR beneficiaries, to no more than, say, 80%, of the total vote, to discourage abuse of minority shareholders. This should also make deadlocks between CWVR and IWVR beneficiaries less likely. However, if a serious deadlock does occur, this would suggest that the ecosystem is not functioning properly and that the board of the issuer may need to deliberate on further action, without the presence of the IWVR beneficiary and the Corporate Representative of the CWVR beneficiary. Ultimately, if it is a major issue, an independent shareholders' vote may be called for and it is for consideration whether, at this time, independent shareholders's should have the right to terminate the WVRs of the CWVR or the IWVR beneficiary or both.

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.

In principle, a time-defined sunset should apply to both CWVR and WVR beneficiaries for consistency. We are not aware that other stock exchanges which allow for both types of WVRs, such as the U.S. markets, have in place different regulations for CWVR and IWVR beneficiaries in this respect.

Time-defined sunset clauses would seem to be preferable to event-driven clauses as they are more predictable.

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.

Yes, for the reasons given in paras. 184 -185 of the CP and to prevent a change of control of the issuer by default, which could prejudice the interests of other ordinary shareholders.

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 disagree with this proposal. We do not see the rationale for treating CWVR and IWVR beneficiaries differently in this respect. As indicated in our response to Q30, it would not be appropriate to allow a change in the degree of control of the issuer by default, which could prejudice the interests of other ordinary shareholders; in this case because the CWVR beneficiary would obtain more voting power automatically upon the fading away of the IWVR beneficiary's WVRs. This proposal would seem to allow a CWVR beneficiary to obtain greater control without the need to make general offer under the Takovers Code. Furthermore, it should not be the aim or outcome of the proposed arrangements to allow a CWVR beneficiary to gain greater control over a unicorn enterprise, in a situation where, e.g., the founder/ creator has passed away, simply because it invested in the enterprise early on and perhaps shared certain intellectual property with it.

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