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 agree with the proposal set out in the Consultation Paper.

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 agree with the proposal but the definition of "Eligible Entity" must be defined clearly. But we don't think it is necessary to allow corporate WVR beneficiary to hold WVR shares through a special purpose vehichle. If it is the SEHK's intention to ensure that management and the board of directors of the Eligible Entity are the only persons to control the voting of WVR shares, we believe it would be most desirable for corporate WVR beneficiary to hold WVR shares directly.

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.

Yes, we agree that corporate WVR beneficiary should hold at least 30% and be the single largest shareholder at the time of listing.

(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 agree that corporate WVR beneficiary should hold at least 30% economic interest at the time of listing but on an ongoing basis, the threshold can be lowered to 20% to provide a "buffer zone" after listing for equity fundraising exercises and employee incentive schemes.

Under the current proposal, and assuming that the maximum WVR ratio of 5 votes per weighted share is taken, if a corporate WVR beneficiary held 30% economic interest at the time of listing, the effective voting rights for its WVR shares is about 68.2%. After listing, if the listed company was to exercise its 20% general mandate to issue new shares, the economic interest of the corporate WVR beneficiary would be reduced to 25.0% and its WVR voting rights would be down to 62.5%. Please see Appendix 1 for detailed calculations. From the corporate WVR beneficiary's perspective, the corporate WVR beneficiary would still be holding more than 60% of the voting rights, and therefore majority control. However, if the corporate WVR beneficiary is required to top up its economic interest to meet the 30% threshold, the total voting rights of the corporate WVR beneficiary will only be increased from 62.5% to 63.8% only. Please see Appendix 1 for detailed calculations.

We therefore believe that a 20% threshold on an ongoing basis should offer competitive advantage for the SEHK when compared with its US counterpart where there is no economic interest requirement.

If this "buffer zone" is provided for, even if the listed issuer further makes use of its general mandate to issue new shares in subsequent years up to a maximum of 50% of the listed issuer's share capital at the time of listing, the corporate WVR beneficiary's economic interest will be reduced to 20% but its WVR voting rights will stand at 55.6% which is still above 50%. That means the corporate WVR beneficiary can still control the majority of the voting rights of the listed issuer. Please see Appendix 2 for a detailed calculations.

Taking one step further, if the listed issuer issues an aggregate of 60% of the its share capital at the time of listing, the corporate WVR beneficiary's economic interest will fall to 18.8%. The corporate WVR beneficiary should then be required to top up its economic interest by subscribing new shares (without carrying WVR) in order to maintain its 20% economic interest. Under this scenario, the corporate WVR beneficiary's voting rights will stand at 54.0% which is still well above 50%. Please see Appendix 3 for detailed calculations.

Based on the above analysis, we agree that the corporate WVR beneficiary should hold at least 30% economic interest at the time of listing but propose that it is more appropriate to require the corporate WVR beneficiary to hold at least 20% economic interest after listing on an ongoing basis rather than 30%.

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.

As above, we agree that corporate WVR beneficiary should hold at least 30% economic interest at the time of listing but on an ongoing basis, the threshold can be lowered to 20%. Please see the analysis set out in our response to Question 3(b) above.

(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.

Please see our response to Question 5 below.

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.

After listing, the corporate WVR beneficiary would become a connected person as defined under Chapter 14A of the Listing Rules. Issue of new shares to a connected person is a connected transaction which is subject to disclosure and independent shareholders' approval unless it is exempted under Chapter 14A of the Listing Rules.

Allowing issuance of shares on a non-pre-emptive basis to a corporate WVR beneficiary without shareholders' prior approval would contradict the intention of connected transaction rules.

The conditions set out in paragraph 144 of the Consultation Paper amounts to an anti-dilution provision for the corporate WVR beneficiary economic interest in the listed issuer which bundles the interest of third party subscribers in the original issuance that triggered the anti-dilution provision with the interest of the corporate WVR beneficiary.

On one hand, the listed issuer wishes to determine the best possible share price for the subscription of shares by the third party subscribers. On the other hand, the corporate WVR beneficiary may wish to seek a lower subscription price for topping up to meet the minimum threshold for economic interest requirement as referred to in paragraph 138 of the Consultation Paper. In other words, any exercise which requires a share issuance that causes a dilution of the corporate WVR beneficiary's economic interest below 30% will translate into a proportionate cost for such beneficiary in its top-up share subscription. This situation is highly undesirable and introduces a counteractive pressure on future fundraising exercises by way of share issuances or commercially beneficial employee incentive schemes. This is the reason we consider the "buffer zone" between 20% and 30% to be reasonble and attractive to issuers with corporate WVR beneficiaires.

We also consider that the anti-dilution proposal must be tabled to an EGM/SGM for independent shareholders' consideration and approval. Independent board committee must give voting advice to independent shareholders after seeking advice from independent financial adviser.

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 agree with the proposal in this respect.

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 agree with the rationale behind this proposal.

(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, we agree that the ratio of 1 weighted share to 5 votes is appropriate.

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.

Yes, we agree with the proposed approach to this issue.

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.

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 do not see any other circumstances relevant to innovative companies that justify granting WVR to corporate.

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.

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.

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 propose that the SEHK should seek a confirmation on an annual basis from each of the board of directors of the WVR issuer and the corporate WVR beneficiary that it has duly complied with the relevant Listing Rules concerning their respective obligations

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 with this requirement.

(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.

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.

It should be considered whether market capitalization should be the only test, rather than a starting point. Market capitalization is often influenced by many factors and subject, particularly in relation to innovative companies, to substantial fluctuations in value. Accordingly, it should be used as a helpful starting point of reference, and the SEHK should remain open-minded to other metrics as well, such as revenue and relative market position.

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.

Please see the elaboration provided in response to Question 15.

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.

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.

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.

However, there should be an allowance to relax or waive this requirement on a case by case basis, due to (i) the inflexibility of the current formulation of this ring-fencing measure and (ii) the fact that market capitalisation (as mentioned in response to Question 15) is not always the most appropriate measure.

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.

Yes, we believe that the director must be an executive director of the WVR issuer.

(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.

It should be clarified that the Corporate Representative must be an executive officer of the Eligible Entity itself (and not, for instance, of the wholly-owned susbdiary of the Eligibile Entity being the corporate WVR beneficiary). However as set out in our response to Question 2, we believe that it is not necessary to provide for Eligible Entities to hold WVR shares through a wholly-owned special purpose vehicle.

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.

Yes, we agree with this.

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.

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.

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.

(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 believe that five years are too long. Perhaps, the SEHK should consider renewal period is limited to three years.

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.

If the renewal period is three years, we think there should not be any limit on the number of times for renewal.

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.

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.

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.

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.

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.

The current proposal suggests that, in the event that a corporate shareholder's WVR falls away, a portion of the individual beneficiary's WVR (if there is one in addition to the corporate WVR beneficiary) shall be converted to ordinary shares so as to preserve his or her previous voting power at the same level as before the lapse of the corporate beneficiary's WVR. However, the proposal clearly states that the same need not be applied in the opposite scenario: that is, the lapse of an individual beneficiary's WVR will not trigger a proportionate conversion of a corporate beneficiary's WVR to prevent its voting power from disproportionately increasing. Reasons given by the SEHK are that there is no such adjustment mechanism for issuers with multiple individual WVR beneficiaries in the event one individual's WVR lapses and that this risk is already currently tolerated, and that in any case corporate WVR beneficiaries are already subject to time-based sunsets. However, the treatment of corporate shareholders should be in line with those of individual shareholders in this regard, as the "sunset" of an individual beneficiary's WVR without an adjustment on the WVRs of the corporate beneficiary may cause a material disruption and change in the control structure of the issuer, even if this is only for a limited period of time.

Further, beyond the scope herewith, we believe the same adjustment provisions should be mandated even as between multiple individual WVR beneficiaries.

We note that although in April 2018 the SEHK stated, after consultation with the Securities and Futures Commission, that if a shareholder's voting rights increases above 30%, or increases by more than 2% in the case of a shareholder holding 30% or more but less than 50% of the voting rights, in each case solely due to another entity's WVRs attaching to WVR shares falling away (for example owing to the event-based sunset of an individual WVR beneficiary), a mandatory general offer under the Takeovers Code will not normally be required, although in all cases the Executive Director of the Corporate Finance Division of the SFC should be consulted. This can incur uncertainty and costs for the relevant shareholders. There is also a question of whether it is fair that a WVR beneficiary can so greatly increase its relative voting power without making a mandatory general offer. In other words, it is unclear why a default waiver should be granted in this particular situation as an exemption to Rule 26. By ensuring that automatic adjustment mechanisms are applied comprehensively regardless of the mix of WVR beneficiaries (be they multiple individuals or individuals with corporates), this issue will also be appropriately resolved.

Taking this one step further, assuming that an individual beneficiary's WVR has fallen away and a corporate WVR beneficiary's voting rights has automatically increased as a result, when the time comes for a vote on whether to renew the corporate beneficiary's WVRs, the question that will be put before independent shareholders is whether or not the corporate beneficiary's WVRs should subsist at that level or not at all. It is an all or nothing vote: the independent shareholders will have to decide whether or not the corporate WVR beneficiary should continue holding its outsized voting power, or none at all. There is no option for a vote to return the corporate WVR shareholder's voting power to the level it was at upon listing.

Accordingly our view is that it might be more appropriate to apply the automatic adjustment mechanism comprehensively across all WVR beneficiary mixes.

- End -

Corporate WVR beneficiary to hold at least 30% economic interests at the time of listing

Appendix 1

	Number of shares	Economic Interests %	ratio 1: 5	Voting Rights %
Current position				
Corp WVR	30	30.0%	150	68.2%
Others	70	70.0%	70	31.8%
Total	100	100.0%	220	100.0%
issue of new shares to Others	20			
Corp WVR	30	25.0%	150	62.5%
Others	90	75.0%	90	37.5%
Total	120	100.0%	240	100.0%
Top up for WVR beneficiary				
(i) additional shares to be issued to maintain economic interests	9			
Corp WVR	39	30.0%	159	63.8%
Others	90	70.0%	90	36.2%
Total	129	100.0%	249	100.0%

Corporate WVR beneficiary to hold at least 30% economic interests at the time of listing				Appendix 2
			ratio 1: 5	
Current position	**Number of shares**	**Economic Interests %**		**Voting Rights %**
Corp WVR	30	30.0%	150	68.2%
Others	70	70.0%	70	31.8%
Total	100	100.0%	220	100.0%
issue of new shares to Others	50			
Corp WVR	30	20.0%	150	55.6%
Others	120	80.0%	120	44.4%
Total	150	100.0%	270	100.0%
Top up for WVR beneficiary				
(i) additional shares to be issued to maintain economic interests	0			
Corp WVR	30	20.0%	150	55.6%
Others	120	80.0%	120	44.4%
Total	150	100.0%	270	100.0%

Corporate WVR beneficiary to hold at least 30% economic interests at the time of listing **Appendix 3**

			ratio 1: 5	
Current position	**Number of shares**	**Economic Interests %**		**Voting Rights %**
Corp WVR	30	30.0%	150	68.2%
Others	70	70.0%	70	31.8%
Total	100	100.0%	220	100.0%
issue of new shares to Others	60			
Corp WVR	30	18.8%	150	53.6%
Others	130	81.3%	130	46.4%
Total	160	100.0%	280	100.0%
Top up for WVR beneficiary				
(i) additional shares to be issued to maintain economic interests	3			
Corp WVR	33	20.0%	153	54.0%
Others	130	80.0%	130	46.0%
Total	163	100.0%	283	100.0%