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28 May 2020

By email to response@hkex.com.hk

Dear Sir/Madam

Re: Consultation Paper on Corporate WVR Beneficiaries (the Consultation Paper)

Thank you for the opportunity to comment on the Consultation Paper. Fidelity International is a global institutional investor with over US\$400 billion in total client assets and is an active investor in the Hong Kong market.

As we have previously communicated to the Exchange in our submissions dated 23 March 2018, 18 August 2017 and 24 November 2014, we are opposed to weighted voting rights (**WVR**), which we consider is a short term measure to boost the attractiveness of the Exchange as a listing venue but will build structural corporate governance deficits in the long term and is counter to global sustainability movement of institutional investors being enabled to conduct effective stewardship of, and hold accountable, the conduct of their investee companies.

We therefore strongly oppose the idea of extending the WVR franchise to corporate holders, which undermines even the initial premise of the Exchange in proposing WVR, being the unique and irreplaceable contribution of founders to the businesses they created. In our view, the argument for the benefit to the listing applicant is fundamentally flawed and is principally only justified as a further measure to improve the commercial attractiveness of the Exchange as a listing venue. The proposed measures in addressing the associated risks do not provide sufficient assurance or protection, and in some cases open new channels, for the unfair treatment of public shareholders.

We have responded to each of the consultation questions in the enclosed questionnaire. In



this cover letter, we wish to draw your attention to the following key points:

1. **Whilst we understand the synergistic benefits and value add proposition to an early stage innovative company of being associated with an established platform or infrastructure, we consider that the “ecosystem” concept is fundamentally flawed, both in principle and in practice.**

In principle, we do not agree that a shareholder that is able to provide business advantages to a listed company should be rewarded with superior control rights over other shareholders - if those advantages are sustainable, then those arrangements must ultimately be justifiable on an arm's length commercial basis for both companies and their shareholders. On a practical level, we consider that this concept lacks certainty and definability and we can envisage numerous situations where it would be relatively simple for a listing applicant to make the case that it enjoys a beneficial relationship with a technology leader when in reality it is simply part of an overall value chain, no different from any other industry. We therefore do not anticipate that this concept can be implemented in an objective, consistent and transparent manner.

2. **Interests of the ecosystem leader and the listing applicant are not necessarily aligned - and even if they are at the time of the IPO, it may not remain so over the next 10 years.**

Whilst the maintenance of a minimum economic interest of 30% provides a degree of alignment of interests at the outset, it cannot guarantee this, given the likely disparity in the size of the corporate WVR holder and the relative economic significance of the listing applicant to the ecosystem of which it is part. It is likely that the interests of the listing applicant will be subordinated to the interests of the ecosystem and in the event of a conflict of interest, the corporate WVR holder is incentivized to exercise its control rights in favour of the ecosystem at the expense of the listing applicant. As such we do not think it is in the interest of the listing applicant, or its public shareholders, to grant WVR shares to a corporate entity.

3. **The minimum economic interest requirement of 30% offers the principal tangible assurance to minority shareholders that the corporate WVR holder will act in the best interests of the listing applicant, particularly as corporate WVR holders are not subject to any fiduciary duty in respect of their behaviour towards the listing applicant.**



Given the centrality of this requirement and the potential for divergence of interests between the corporate WVR holder and the listing applicant, the corporate WVR shares should lose their superior voting rights if this minimum stake is not maintained on an on-going basis. We consider that this requirement should be harmonized and applied equally for both the corporate WVR and individual WVR regimes.

- 4. We strongly believe all non-pre-emptive share issuances, including the general mandate and any share issuance to the corporate WVR holder, should be subject to the approval of independent shareholders at a general meeting.**

Although we are supportive of requiring the minimum economic interest on an on-going basis, the proposed exception from the Rules to permit non-pre-emptive issuance of new ordinary shares to a corporate WVR beneficiary without shareholder approval (the Proposed Exception) exposes minorities to significant dilution risk. There are numerous ways, including through the general mandate, that a corporate WVR holder is able to direct a non-preemptive issue of new shares (at up to 20% of issued share capital at a 20% discount) to third parties, whilst maintaining their 30% interest through the Proposed Exception. In this scenario, minority shareholders bear the cost of dilutive equity issuance with no recourse.

The practical reality the corporate WVR holder is well positioned by virtue of their superior voting power to ensure that their pre-emption rights are well protected at the outset of the transaction. It is likely that a listing applicant will require either the explicit or implicit sanction of their corporate WVR holder to issue new shares, and even if not, a corporate WVR holder is free to purchase shares in the open market in order to maintain the minimum economic interest.

We recommend that the issue of shares to a corporate WVR holder under the Proposed Exception is made subject to the approval of independent shareholders at a general meeting. There is no reason for independent shareholders to deny the approval provided that the pre-emption rights of independent shareholders are equivalently protected.

- 5. We recommend a time-defined sunset period of five-years with a one-time renewal up to another five years, if a renewal is to be implemented.**

A time-defined sunset of the corporate WVR regime is essential to avoid the permanent

entrenchment of insider interests in HK listed public assets. However, the practical experience in other markets of allowing sunsets to be extended on independent shareholder approval make us wary of recommending such an approach, as companies are likely to adopt any explicit or implicit tactics necessary to ensure the continuation of the structure, and shareholders will generally be keen to avoid significant disruption to management or operations. In our view, the time-defined sunset should represent a permanent hard stop, allowing companies to implement, and shareholders to expect, appropriate continuity arrangements beyond the life of the corporate WVR arrangement. We therefore do not agree with the principle of renewal. However, if one is to be implemented, we believe the maximum period should be five years following an initial period of 5 years, and that no further extensions should be permitted after an aggregate ten-year period.

6. The corporate WVR structure should lapse in the event of a change of control at the corporate WVR holder.

We disagree with the rationale put out in Paragraph 136 in the Consultation Paper that “eligibility for WVR was established by the corporate WVR beneficiary and not by its controller”. Our practical experience in this sector is that a company’s major decision-making and corporate behaviour are heavily influenced if not completely controlled by its controller. A change of control at the corporate WVR beneficiary should at least call for a re-evaluation of the validity of the corporate WVRs and for independent shareholders should be given the final say as to whether the WVR structure deserves to carry on. The Consultation Paper’s argument of this amounting to a poison pill is inconsistent with the primary premise of the corporate WVR regime in the first place, that the ecosystem is so critical to the interests of the listing applicant that the interests of the ecosystem leader ought to be permanently entrenched, be it through WVRs or poison pills.

7. We do not think mixed WVR structures should be permitted.

We are highly concerned of the governance consequences of allowing a company to have both corporate and individual WVR holders, both subject to separate regimes and requirements. In the event that the corporate and individual WVR holders are connected, it is unclear on what policy basis this is appropriate, other than as a way to permit insiders to arbitrage between the requirements of the two regimes to maximize their benefit. In the event of a genuinely mixed WVR structure, we are concerned about



unintended consequences and the potential for divergence of interests between different WVR holders which could leave independent shareholders caught in the middle of a destructive and damaging conflict. Finally, mixed WVR structures are likely to create further complexity and opacity in the governance structures of the listed applicant, to doubtful incremental benefit from a market perspective. In our view, listed applicants should be required to nominate up-front whether they intend to pursue an individual or corporate WVR structure.

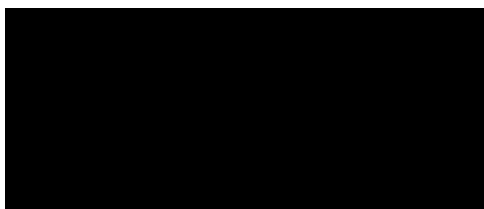
In the event that mixed WVR structure is introduced, mechanisms should be introduced to avoid the passive increase of the voting power of one WVR beneficiary as a result of the lapse of the WVR shares held by the other.

8. In light of the exacerbated misalignment of interest as a result of the grant of WVRs, we believe an enhanced level of board independence is warranted.

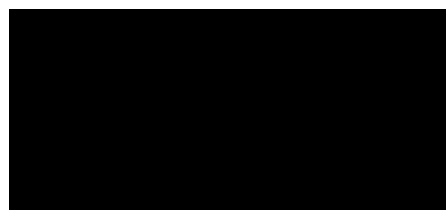
Independent directors should represent more than 50% of the board of the listed applicant and the election and removal of independent directors should be by the approval of independent shareholders only. The Board should appoint a lead or senior independent director who has primary responsibility for engagement with independent shareholders on long term issues including environmental, social and governance.

We thank you for your consideration of our views and we remain at your disposal should you wish to discuss these matters with us further.

Yours faithfully



Jenn-Hui Tan
Global Head of Stewardship and Sustainable
Investing



Flora Wang
Director, Sustainable Investing

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 are fundamentally opposed to the principle of weighted voting rights, whether it is held by a corporate or an individual. We do not consider that the safeguards adequately mitigate against the further erosion of minority shareholder rights or offer sufficient protection. In the long term, we consider that this will result in the accumulation of structural corporate governance deficits in the Hong Kong listed market. We also highlight that this extension of WVR rights runs counter to the broad global movement of empowering and requiring institutional investors to conduct stewardship of public listed assets, by reducing the collective ability of the public markets to hold investee companies to account.

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 and agree that a corporate WVR holder should be an Eligible Entity in principle but we see no reason for the franchise to be extended to unlicensed and regulated subsidiaries of Eligible Entities.

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.

A minimum economic stake is the principal tangible factor that offers a relative degree of alignment between the interests of the corporate WVR holder and the listing applicant (although, for reasons stated in our covering letter, it is insufficient of itself to provide a clear incentive for the corporate WVR holder to ensure the continued success of the listing applicant, particularly in cases where there is a conflict of interest between the listing applicant and the broader ecosystem of which they are a part). We consider that the 30% threshold should be harmonised and applied equally as between the corporate WVR and individual WVR holders.

(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 failure to maintain a minimum economic interest can exacerbate potential divergence in interests between the corporate WVR holder and the listing applicant, facilitating an abuse of their controlling power at the expense of minority shareholders of the listing applicant. However, we note that there is no equivalent lapse requirement for individual WVR holders and we recommend harmonisation of this requirement.

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

Yes

No

If so, please state these conditions/requirements.

Not applicable

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

Yes

No

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

We do not consider that the HKEx should allow a lower economic interest threshold.

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.

Minority shareholders are exposed to significant dilution risk as a result of this proposed exception. There are numerous ways, including through the general mandate, that a corporate WVR holder is able to direct a non-preemptive issue of new shares (at up to 20% of issued share capital at a 20% discount) to third parties, whilst maintaining their 30% interest through the proposed exception. In this scenario, minority shareholders bear the cost of dilutive equity issuance with no recourse.

The practical reality is that a listing applicant is likely going to require either the explicit or implicit sanction of their WVR holder(s) to issue new shares. Any measures to enable the corporate WVR holder to maintain their minimum economic interest should start with an acknowledgement that the corporate WVR holder is well positioned by virtue of its superior voting power to ensure that their pre-emption rights are protected at the outset of the transaction and even if not, to purchase shares in the open market in order to maintain the minimum economic interest.

The only way to equivalently protect the pre-emption rights of minority shareholders is to ensure that any issue of shares to a corporate WVR holder is subject to the approval of independent shareholders at a general meeting. This is our strong recommendation.

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.

The general proposition of a "business ecosystem" pre-supposes that a degree of material involvement between the corporate WVR holder and the listing applicant prior to the listing applicant. We question whether 2 years is sufficient to establish that material involvement or whether a period of the lower of 5 years or the formation of the listing applicant's business is more appropriate.

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 do not have a view on this. From a practical perspective, it does not matter much what the maximum ratio of weighted votes is, as control over board composition and major shareholder votes is assured irrespective of the upper theoretical limit.

- (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.

The maximum ratio is irrelevant in our view as this mechanism offers no minority shareholder protection once control of the corporate WVR over the listing applicant is established in excess of their proportionate ownership

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.

Whilst we understand the synergistic benefits and value add proposition to an early stage innovative company of being associated with an established platform or infrastructure, we consider that this concept is fundamentally flawed, both in principle and in practice. In principle, we do not agree that a shareholder that is able to provide business advantages to a listed company should be rewarded with superior control rights over other shareholders - if those advantages are sustainable, then those arrangements must ultimately be justifiable on an arm's length commercial basis for both companies and each set of shareholders. On a practical level, we consider that this concept lacks certainty and definability and we can envisage numerous situations where it would be relatively simple for a listing applicant to make the case that it enjoys a beneficial relationship with a technology leader when in reality it is simply part of an overall value chain, no different from any other industry. We therefore do not anticipate that this concept can be implemented in an objective, consistent and transparent manner.

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 consider that these characteristics are inherently subjective and is not implementable in an objective, consistent and transparent manner.

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.

As stated above, we are opposed to the concept of weighted voting rights in its entirety.

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 do not agree that the corporate WVR franchise should be extended to "traditional" economy companies, howsoever defined - however, we consider that the concept of an ecosystem is so broad and vague that any company in any industry can provide arguments that it is able to satisfy the criteria. The question itself illustrates the practical issues the Exchange will face if it chooses to proceed with this proposal.

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.

Whilst we provided the answer to question 8 of "no", we agree with the principle that any corporate WVR rights should lapse (or be suspended pending resumption of the contribution) as soon as the corporate WVR holder's contribution to the WVR issuer is substantially terminated or materially disrupted or suspended.

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.

In our view, the minimum safeguards for minority shareholders are as follows:

1. Maintenance of the minimum economic interest of 30% by the corporate WVR holder.
2. All non-preemptive share issuances, including the general mandate, should be subject to the approval of independent shareholders. In the event of issuance necessary to maintain the minimum economic interest of the corporate WVR holder, this should also be subject to the approval of independent shareholders.
3. A time-defined sunset period of not more than five years, preferably with no renewal option but if that is adopted, then a one-off renewal for further (and final) 5 year period.
4. A lapse of the corporate WVR structure in the event of a change of control of the corporate WVR holder.
5. Independent directors should represent more than 50% of the board of the listing applicant and the election and removal of independent directors should be by the approval of independent shareholders only. The Board should appoint a lead or senior independent director who has primary responsibility for engagement with independent shareholders on long term issues including environmental, social and governance.
6. Harmonisation of the requirements as between corporate and individual WVR holders, so as to minimise the potential for regulatory arbitrage.

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.

Yes we agree with the principle of a regular six month confirmation by the corporate governance committee of the listing applicant of the above statement. We agree that this requirement should be formally embedded in the committee's terms of reference. We further recommend that the corporate governance committee be empowered to convene and report on an ad hoc basis in the event circumstances require.

- (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.

Not applicable

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.

Although there is no clear reason in principle for this arbitrary cut-off, we agree that it is a sensible and practical measure in order to limit the proliferation of corporate WVR holders on the Exchange.

We note however that similar to the maximum 30% cap on the market capitalisation of listing applicant in Q19, this requirement is a one-off imposed at the time of listing and that it is perfectly possible that over an extended period of time for the relative sizes of the listing applicant and the corporate WVR holder is reversed.

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

Yes

No

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

Not applicable

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

Yes

No

Please give reasons for your views.

We have previously commented on the difficulties of defining an Innovative Company and the experience to date has not changed our view on this. However, we think it is sensible to limit the corporate WVR franchise to certain specific sectors given the underlying commercial rationale for this regime and a broader desire to limit the proliferation of this structure across the Exchange.

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.

Yes in principle but it is unclear to us on why and on what basis only three particular listing regimes have been selected as Qualifying Exchanges.

If the rationale is investor protection, then a better test in principle would be to ensure that these Qualifying Exchanges meet in all material respects the same governance and continuing obligations of a listed company as would be applicable were they to be primary listed in Hong Kong.

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.

Yes provided this is not classified as an independent director.

- (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.

As stated above, corporate WVR holders should be subject to materially the same governance standards and continuing obligations applicable to those companies with a primary listing in Hong Kong.

We have also proposed that the Board of the listing applicant be comprised of a majority of independent directors, and the appointment and removal of these directors be reserved for approval by independent shareholders only. In addition, we recommend that one such independent director be nominated as the lead or senior director with responsibility for engaging with independent shareholders on long term issues including environmental, social and governance.

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.

A time-defined sunset of the corporate WVR regime is essential to avoid the permanent entrenchment of insider interests in HK listed public assets. However, practical experience in other markets of allowing sunsets to be extended on independent shareholder approval make us wary of recommending such an approach, as companies are likely to adopt any explicit or implicit tactics necessary to ensure the continuation of the structure, and shareholders will generally be keen to avoid significant disruption to management or operations. In our view, the time-defined sunset should represent a permanent hard stop, allowing for companies to implement, and shareholders to expect, appropriate continuity arrangements beyond the life of the corporate WVR arrangement.

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.

In our view, 10 years is a disproportionate length of time for a sunset period. We recommend a period of 5 years.

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.

Please see our response to Q22 above.

(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.

As stated above, we do not agree with the principle of renewal. However, if one is to be implemented, we believe the maximum period should be five years following an initial period of 5 years, and that no further extensions should be permitted after an aggregate 10 year period.

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

Yes

No

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

We propose a one time renewal of not more than 5 years, if a renewal is to be implemented at all.

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 do not support a renewal of corporate WVR rights. However, if it is to be implemented we think it would make sense to apply the same requirements to a renewal as are applied at the time of listing, including the minimum market capitalisation requirement for the corporate WVR holder and maximum 30% cap on the market capitalisation of the listing applicant.

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 are highly concerned of the governance consequences of allowing a company to have both corporate and individual WVR holders, both subject to separate regimes and requirements. In the event that the corporate and individual WVR holders are connected, it is unclear on what policy basis this is appropriate, other than as a way to permit insiders to arbitrage between the requirements of the two regimes to maximise their benefit. In the event of a genuinely mixed WVR structure, we are concerned about unintended consequences and the potential for divergence of interests between different WVR holders which could leave independent shareholders caught in the middle of a destructive and damaging conflict. Finally, mixed WVR structures are likely to create significant complexity and opacity in the governance structures of the listing applicant, to doubtful incremental benefit from a market perspective. In our view, listing applicants should be required to nominate up-front whether they intend to pursue an individual or corporate WVR structure.

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.

We do not think that mixed WVR structures should be permitted.

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.

This question illustrates one of the many potential issues which could occur in a mixed WVR structure. In our view, the principle of a time-defined sunset should apply equally for both individual and corporate WVR structures, for the reasons we stated above, to prevent the permanent disproportionate entrenchment of insider interests in public listed assets.

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 in principle, although we do not consider that a company should have a mixed WVR structure.

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.

It does not seem appropriate to us that a corporate WVR holder should be permitted to passively increase its voting power because of the lapse the individual WVR holder's voting rights. It therefore seems to us that the Exchange should mandate that in the event of a lapse of individual WVR rights, the corporate WVR holding should be converted into such proportion of ordinary shares as would enable them to maintain the same overall voting percentage pre and post the lapse event.

- End -