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BY EMAIL (response@hkex.com.hk)

Hong Kong Exchanges and Clearing Limited

8th Floor, Two Exchange Square

8 Connaught Place

Central

Hong Kong

Dear Sirs,

Re: Consultation Paper on Corporate WVR PC

We write to submit our response to the consultation paper on corporate weighted voting rights (“WVR”) beneficiaries and enclose herewith our responses to your consultation paper.

Patrick Chu, Conti Wong Lawyers LLP is a Hong Kong-based full-service law firm. As legal advisor to corporations from a broad spectrum of industries, we understand how companies and their management are concerning the balance between autonomy and going public while we support our clients to achieve commercial goals at different stages with comprehensive and thorough guidance in compliance.

We appreciate that the Exchange further considers to expand the WVR regime to corporate WVR beneficiaries as this may represent that the WVR regime has become familiar to relevant stakeholders in the market and among intended investors. While the WVR regime is getting more and more mature in Hong Kong, the balance between different interests of all stakeholders from founders of enterprises to any intended investors of listed companies shall not be overlooked. We consider that the proposals in the consultation paper explained the Exchange’s views and measures to balance the potential impacts on expanding the scope of WVR beneficiaries from individuals to corporates. We are pleased to have the opportunities to share our thoughts through our responses to your consultation paper.

Should you have any queries, please feel free to contact our [REDACTED] at [REDACTED]

Yours faithfully,

[REDACTED]

Encl.

In association with:

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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, in principle, that the Exchange should expand the existing WVR regime to corporate entities. Companies listed on the Exchange suffer from a lack of diversity, particularly in the area of companies from emerging and innovative sectors which make up only 10% of the total market capitalisation (if Alibaba excluded). The nature of innovative companies is such that they may need to operate in a business ecosystem that may involve other so-called unicorn companies. The listing applicant and such unicorn companies are co-dependent with the latter providing "strategic guidance, channelling users and sharing synergistic benefits." It is in the interest of the listing applicants to allow such unicorn companies to continue its control even after listing through WVR so that they can share a vision that may mutually benefit the listing applicants and unicorn companies.

One of the general principles of the Exchange is to have all holders of listed securities to be treated fairly and equally and the use of WVR does go against this general principle. So it is important that there are appropriate conditions and safeguards which will be discussed in the other questions to protect the non WVR shareholders. In general, it should include high entry requirement on market capitalisation, sunset provisions and enhanced corporate governance and disclosure requirements.

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.

Yes, we agree that a corporate WVR beneficiary must be either the Eligible Entity or a wholly owned subsidiary of the Eligible Entity. The latter allows the use of special purpose vehicle to hold WVR shares. The Exchange proposes that a corporate WVR beneficiary must have held an economic interest of not less than 10% in, and have been materially involved in the management or the business of, the listing applicant (for example, through the inclusion of the business of the applicant in its ecosystem) for a period of not less than two financial years prior to the date of the listing application. A company who owns 10% of the shares of the listing applicant is a substantial shareholder and it shows that the Eligible Entity has a genuine interest in the listing applicant and has substantial control of its operation.

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 agree. WVR shares consolidate control of the listing applicant and it is fair that the corporate WVR beneficiary is at least a Controlling Shareholder having “de facto control” so that it is not using the WVR shares as a backdoor to gain control.

(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.

Please refer to our views on Question 3(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.

Not applicable.

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

Yes

No

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

Not applicable.

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

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

(b) such shares do not carry WVR;

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

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

Yes

No

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

Yes. With the conditions set out in paragraph 144 of the consultation paper, the subscription by a corporate WVR beneficiary is solely for the purpose and to the extent necessary to allow such beneficiary to comply with the 30% economic interest requirement and is not a privilege given to a corporate WVR beneficiary over the other shareholders.

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.

Please refer to our views on Question 2.

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.

Yes, we agree that the maximum ratio of weighted votes permitted for shares of a corporate WVR beneficiary should be lower than the maximum ratio for individual WVR beneficiaries. First, an individual WVR beneficiary, by being a director of the listing applicant, will probably have more direct contribution than a corporate WVR beneficiary. Second, despite the time-based sunset clauses, it is likely for a corporate WVR beneficiary to last in perpetuity if they can be successfully renewed by shareholders under the proposed listing rules (we suggest below that we should put a restriction on the number of times it can be renewed). The present ratio is half of those permitted for individual WVR beneficiaries and it should be reasonable. As it is a maximum of 68% voting power at a general meeting for a holder of 30% economic interest, it should give the corporate WVR beneficiary a solid control of the listing applicant.

- (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.

Please refer to our views on Question 7(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.

Yes, we agree. It is not fair for a venture capital company to become a corporate WVR beneficiary maximising their control with less capital injection. So it is important that a corporate WVR beneficiary should contribute to the ecosystem upon which the listing applicant operates.

The use of the word "ecosystem" has its own strengths and weaknesses. As the word is vague, it is all encompassing, allowing the listing applicant to prove its existence based on its own fact. However as the word is vague, it may be difficult to understand whether such ecosystem is in existence so the required characteristics of the ecosystem as outlined in paragraph 156 is necessary (see our suggestion re Question 9).

The word "ecosystem" has to be used because one cannot use the traditional terms like "suppliers" or "customers" as the listing applicant should not over-rely on any supplier or customer but it can rely on the ecosystem within which a corporate WVR beneficiary operates. However within the ecosystem, many transactions, probably in the form of the connected transactions, between the WVR issuer and WVR beneficiary may create a supplier or customer relationship between them. The Exchange may need to relax the rule of over-reliance in such case if it benefits the ecosystem and all the companies within the ecosystem as a whole.

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.

Please see the suggestions with the italicized and emboldened words:

(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, hardware, software, networking, applications, proprietary know-how or patents);

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

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 have any further suggestion but we should keep the guidelines flexible - there should be a clause to allow corporate WVR beneficiaries even if the guidelines are not strictly followed based on the fact of each case so long as the principle of ecosystem is addressed adequately and the interest of the company is fully protected.

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.

Such requirement may provide flexibility as there may be unknown development of certain traditional economy company. However at the moment, all the guidelines provided for establishing an ecosystem clearly have innovative companies in mind that may or may not apply to traditional economy company. As a corporate WVR can seriously endanger minority interests if it is not applied properly, it is better to err on the side of caution not to extend to other traditional companies until the application of this ecosystem concept to innovative companies is a success. It is still unknown how a traditional economy company can make use of it to ultimately benefit the listing applicant and its shareholders, so more research may be needed.

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.

Yes, we agree. The benefit from the corporate WVR beneficiary should only be granted because it can enhance shareholders’ interest as a whole and at any point when advantages to the listing applicant disappear, the undue voting powers of the WVR beneficiary should be withdrawn. If not, the interest of the minority shareholders may be adversely affected and compromised.

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 an ongoing obligation, if any of the benefit conveyed by a corporate WVR beneficiary has materially changed, it should immediately make an announcement to the public. Even though minority shareholders may not be able to exercise control of the company through their voting power, with the announcement, they can at least have to the choice to sell their shares if they do not approve of the change.

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.

A corporate WVR beneficiary, with its voting power, will have control over the listing applicants and the appointment of its directors. Yet according to the Listing Rules, all the directors in the corporate governance committee comprises independent non-executive directors so that the issuer can rely on their independent judgement. The Corporate Representative nominated by the corporate WVR beneficiary should not be in the corporate governance committee.

(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.

Other than internal review, the Stock Exchange should be given the power to make enquiries based on public information when the ecosystem upon which the issuer is operating is endangered. The issuer should immediately explain to the public by means of announcement why the status of a corporate WVR beneficiary should be maintained. If the reasons given to the Exchange and the public are not satisfactory, the Exchange can issue warning and advise the issuer to cancel the corporate WVR status for the relevant WVR beneficiary.

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.

As stated in the Consultation Paper, there were 297 companies with a market capitalisation of HK\$200 billion or more, which is 4% of the 7,903 companies primary listed on the Exchange or a Qualifying Exchange as at December 2019. As such it significantly limits the number of companies that can be a corporate WVR beneficiary and so the corporate WVR status may not be frequently invoked. Such status should only be granted on exceptional circumstances to ensure fairness and equality to all shareholders. It also means that each qualified corporate WVR beneficiary is a fairly successful company and the ecosystem it is operating is able to support the listing applicant.

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.

If a listed applicant is HK\$10 billion, the public float can be lowered to 15% from 25% which implies that the Exchange accepts that a company with HK\$10 billion is a significant company. We therefore suggest that there should be exception granted to a company with a capitalisation of HK\$10 billion if it can demonstrate a strong symbiotic relationship between the listing applicant and the recommended corporate WVR beneficiary based on the guidelines provided by para 156 of the Consultation Paper.

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

Yes

No

Please give reasons for your views.

We would like to rephrase it as the following:
A corporate WVR beneficiary must be either: (a) an Innovative Company or (b) have business experience in one or more innovative sectors as well as a track record of contribution to innovative companies.

We suggest that a corporate WVR beneficiary should be actively involved in contributing to the ecosystem so that it is not purely an investor. As an investor, it should not be given priority over other investors. We would like to refer to our answer to Question 11 that a corporate WVR beneficiary should only be related to an Innovative Company in one way or the other.

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, we agree. It shows that each corporate beneficiary is a respectable company with proper corporate governance and internal control in place. If the listing applicant grants WVR status in a company, it means the listing applicant depends on the ecosystem for its business to prosper so it is important that the company that runs the ecosystem is a solid company.

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.

Yes, we agree. This restriction can ensure that existing issuers cannot introduce a WVR structure over a material part of its business/assets which will then give them unfair control disproportionate to its investment.

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 agree. An individual WVR is required to be a director because such a person tends to be the founder who understands the industry and has his vision and expertise. His/her contribution to the issuer is valuable and indispensable to its success. As for a corporate WVR beneficiary, the Corporate Representative needs to fulfil similar role by relaying the vision, strategies and expertise of the corporate WVR beneficiary to the issuer. By definition, Corporate Representative is an officer (as defined under the SFO) of the corporate WVR beneficiary who, in his or her capacity as a member of the board of directors of a WVR issuer, acts as a representative of the corporate WVR beneficiary. A Corporate Representative, being an officer of the corporate WVR beneficiary, and a member of the board of directors of a WVR issuer may have a conflict of interests – it should be made clear that as a director of the issuer, a Corporate Representative should be acting in the best interest of the WVR issuer rather than the WVR beneficiary.

- (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.

The Exchange should also relax the rule concerning listing applicant independent from the Controlling Shareholders. When reviewing whether an applicant can carry on its business independently of its controlling shareholder, the Exchange ordinarily considers the applicant's specific circumstances, including financial independence, operational independence and management independence (HKEx-GL68-13). However in this case, we expect a corporate WVR beneficiary to have a Corporate Representative that actively contribute to the issuer, so it may have impact on the management independence of the issuer.

To increase the accountability of the corporate WVR beneficiary, the issuer should disclose in the periodic financial reports the contribution made by the corporate WVR beneficiary either through the Corporate Representative or directly through certain corporate action.

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 but we suggest (a) and (b) should be slightly amended as follows:

(a) the beneficiary no longer has a Corporate Representative on the listed issuer's board of directors for a continuous period of 30 days without reasonable excuse acceptable by the Exchange;

(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 and a replacement is appointed to take up the role of the Corporate Representative within 30 days.

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, we agree. An individual WVR may die and when he/she deceases, WVR status is lapsed but a corporation may exist in perpetuity. However a corporate WVR beneficiary can only be justified as long as they can be of benefit to the issuer as a whole. Such privilege should not be entrenched and it is not meant to last forever.

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.

As the issuer is an innovative company, the symbiotic relationship between WVR issuer and beneficiary should be based on the technology life cycle. Technology changes rapidly nowadays and the life cycle of a technology can be as short as five years. We therefore suggest five year as the initial "sunset period".

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

Yes

No

Please give reasons for your views.

We agree that the WVR could be renewed at the end of the sunset period as each company may depend on its own fact and some issuer may want to depend on a corporate WVR beneficiary longer than the others. We agree that it can only be renewed with the approval of independent shareholders. We also agree that each renewal should not be more than five years but the independent shareholders can determine a period of shorter than five years.

- (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.

Please refer to our views on Question 24(a).

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.

Innovative companies should develop fairly quickly and a listed issuer should not depend on the corporate WVR beneficiary for long. We therefore suggest that there should be a limit on the number of times the WVR could be renewed. The WVR should not be renewed more than twice.

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 most important corporate question of an issuer should be decided by its shareholders and in this case, the renewal should be decided by independent shareholders. As such, it should be adequate.

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 that the issuer can have both a corporate WVR (it should be made clear whether an issuer can have more than one corporate WVR beneficiary – we suggest there should not be more than one) and individual WVR beneficiaries. An issuer may benefit from both a corporate WVR beneficiary in terms of symbiotic development within an ecosystem and individual founders with their vision and insight. In such a case, the WVR of the corporate WVR beneficiary and individual WVR beneficiaries may dilute each other's voting power. As for the minority OSOV public shareholders, their voting rights may even dilute further. Listing rules require the public float to be at least 25% of the issued share capital unless the market capitalisation of the listing applicant exceeds HK\$10 billion with the lowest public float to be 15%, the assumption at that time is that the public may at least exercise 25% of the voting right with their investment. The question is what the purpose of the public float requirement is. The 15% public float indicates the public demand for the listing shares and facilitates liquidity in the secondary market. But does it also want to protect the minority shareholders' rights by ensuring that at least they can have 25% of the voting rights and as such to have a say to protect their interest? We understand that there may probably be a warning similar to Listing Rules 8A.37 (individual WVR beneficiaries) for corporate WVR beneficiaries. We suggest that there can be a standard strongly worded warning template in addition to rationale for having it and associated risks for shareholders at the prominent place of the listing documents, financial reports and announcements so that the retail investors can fully appreciate the risks of investing in such companies.

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 agree that the issuer can have both a corporate WVR and individual WVR beneficiaries as long as non-WVR shareholders should at least hold 10% of the voting power.

Individual WVR beneficiaries cannot hold more than 50% economic interest (i.e. not more than 88% of the voting power at a general meeting) and Listing Rules 8A.08 states that “Non-WVR shareholders must be entitled to cast at least 10% of the votes that are eligible to be cast on resolutions at the listed issuer’s general meetings” and Listing Rules 8A.23 states that “Non-WVR shareholders must be able to convene an extraordinary general meeting and add resolutions to the meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights on a one vote per share basis in the share capital of the listed issuer”. We suggest there should be a maximum economic interest for a corporate WVR beneficiary similar to individual WVR beneficiaries so that the non-WVR beneficiaries should at least control 10% of the voting rights.

If there is a deadlock in the issuer between the corporate and individual beneficiaries, the independent shareholders should vote on the issue concerned.

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.

Please refer to our views on Question 22.

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

Yes

No

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

We agree. The time-defined sunset for the corporate WVR beneficiary can be renewed by independent shareholders. If the corporate WVR is not renewed, the voting right of individual WVR shares will increase. Independent shareholders may be forced to renew the corporate WVR if they do not want to upset the balance of voting power between the corporate WVR and individual WVR. However the independent shareholders' decision on whether to renew the corporate WVR should be purely based on whether the issuer still needs the special favour from the corporate WVR beneficiary. So by not affecting the balance of voting power, the independent shareholders can make a better decision in the renewal of time-defined sunset.

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 agree. It should be a decision left for the issuer. If the issuer decides to link the "event-based" WVR sunset of individuals with those of a corporate WVR beneficiary, it should be allowed to do so by making the sunsets inter-conditional. If not, as event-based WVR sunset does not need any voting from shareholders, the argument in our reply to Question 30 does not apply.

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