

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.

Please see our comments in Appendix.

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.

The corporate WVR beneficiary must be the corporate leader of the ecosystem within which the listing applicant operates and be part of the core shareholders of the listing applicant upon listing.

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.

It is more appropriate to have a range of between 20%-29% economic interest. As noted in the Consultation Paper, 38% of the corporate WVR on the US stock exchanges have an economic interest of less than 30%. This may cause HKEX a competitive disadvantage.

(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 see our answer to Question 4 below.

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.

20%-29% is considered to be appropriate as this range would still be regarded as a significant shareholding and is consistent with the range in the above US example in the answer to Question 3.

(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.

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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.

Independent shareholders' approval on the basis of a recommendation by the independent board committee of INEDs (supported by a report by the issuers' corporate governance committee on the advice of the IFA) is, in our view, an appropriate control mechanism.
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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.

It is important for the corporate WVR beneficiary to be at least a substantial shareholder to exert some form of control over the listing applicant. It is also important for the (proposed) corporate WVR beneficiary to demonstrably prove that it has had a significant influence on the business development of the listing applicant.

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.

Agreed that that the extent of control should be capped.

- (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.

Five times appears to be a reasonable ratio when compared to the ten times ratio granted to an individual WVR beneficiary.

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.

The ecosystem lead company should be required to produce evidence that it has been materially responsible for the growth and development of the listing applicant.

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 agree that this is a comprehensive description of our general understanding of what an ecosystem is.

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.

11. Do you agree that the corporate WVR beneficiary can be a traditional economy company provided that it develops a similar ecosystem which can satisfy the eligibility criteria?

☒ Yes

☐ No

Please give reasons for your views.

We agree. Companies in the traditional economy should be given an opportunity to benefit from corporate WVR beneficiary status provided that they have developed a similar ecosystem which can satisfy the Stock Exchange's eligibility criteria. The Stock Exchange may consider issuing further guidance on this issue.

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.

Given the importance of the corporate WVR beneficiary to the issuer and the viability of its business model, the former should be required to demonstrate its contribution to the issuer on an ongoing basis, and the WVR benefits should lapse permanently if the contribution is terminated etc longer than a 12-month period.

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 agree that constant monitoring is necessary. In addition, the corporate WVR beneficiary should provide assurance and undertake that it will not grant similar benefits to other companies outside the listing applicant and will not facilitate other companies or companies controlled by the corporate WVR beneficiary to conduct business using its ecosystem that would compete directly or indirectly with that of the listing applicant.

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 that a 6-month and annual review by the corporate governance committee is appropriate. In addition, the corporate governance committee should be required to review and assess the corporate WVR beneficiary's contribution to the listing applicant with reference to what has been disclosed in the prospectus and underlying documents at the time of listing to ensure no material variation or disruption has occurred.

- (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.

Please see our answer to Question 14(a).

15. Balancing the need to ring-fence corporate WVR beneficiary on a fair, rational and justifiable basis to avoid a proliferation of WVR structures, and the risk that a high market capitalisation requirement may be seen as creating an uneven playing field, the Exchange has proposed that a prospective corporate WVR beneficiary must have an expected market capitalisation of at least HK\$200 billion at the time of the WVR issuer's listing. Do you agree with the proposed minimum market capitalisation requirement of HK\$200 billion for a prospective corporate WVR beneficiary?

☒ Yes

☐ No

Please give reasons for your views.

We agree that this is one of the necessary requirements to attract the most well-established corporate WVR beneficiaries and to ensure that only companies of substantial scale and experience that are committed and able to provide and sustain the ecosystem within which the listing applicant operates.

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.

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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.

This is a reasonable requirement as the Stock Exchange is seeking to enhance the quality and attractiveness of its market by attracting innovative companies to get listed on it.

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.

This is a reasonable requirement as the corporate WVR beneficiaries act as directors in the issuer and they do not therefore owe fiduciary duty towards the issuer. A listing of the corporate WVR beneficiary on the Stock Exchange or a Qualifying Exchange would enhance regulatory comfort and ensure greater transparency about underlying business performance of the corporate WVR beneficiary and its ecosystem.

19. Do you agree with the requirement that a listing applicant must not represent more than 30% of the corporate WVR beneficiary in terms of market capitalisation at the time of its listing?

☒ Yes

☐ No

If not, do you prefer an alternative threshold? Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

20. (a) Do you agree with the proposed requirement that at least one director of the listing applicant must be a Corporate Representative?

☒ Yes

☐ No

Please give reasons for your views.

We agree as this ensures that the corporate WVR beneficiary would not be able to avoid responsibility and accountability for the issuer's performance.

- (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.

Similar to the answer to the Question 20(a) above, appoint more directors of the issuer to the board and committees of the corporate WVR beneficiary.

21. Do you agree that the WVR attached to a corporate WVR beneficiary's shares must lapse permanently if:

- (a) the beneficiary no longer has a Corporate Representative on the listed issuer's board of directors for a continuous period of 30 days;
- (b) the Corporate Representative is disqualified as a director or found unsuitable by the Exchange as a result of an action or decision taken in his or her capacity as director of the listed issuer save where the corporate WVR beneficiary is able to demonstrate to the Exchange's satisfaction that the action or decision was taken outside of the authority granted by the corporate WVR beneficiary to the Corporate Representative; or
- (c) the corporate WVR beneficiary has been convicted of an offence involving a finding that the beneficiary acted fraudulently or dishonestly?

☒ Yes

☐ No

If not do you suggest any alternative criteria? Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

22. Do you agree that the Exchange should impose a time-defined sunset on the WVR of a corporate WVR beneficiary?

☒ Yes

☐ No

Please give reasons for your views.

We agree that a time-defined sunset should be imposed so as not to give the corporate WVR beneficiary an impression that the WVR benefit would last forever since it does not have, unlike an individual WVR beneficiary, a natural lifespan.

23. If your answer to 0 is "yes", do you agree with the proposed maximum 10 year length of the initial "sunset period"?

☒ Yes

☐ No

If not, what length of period would you prefer? Please give reasons for your views.

We agree that at least a 10-year time line should be imposed.

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.

The conditions for renewal should be clearly set out in the Listing Rules. Likewise, an avenue should also be included in the Listing Rules for the Stock Exchange to withdraw the WVR benefits of corporate beneficiary under certain stated circumstances.

- (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 agree that a maximum of 5-year length of the renewal period is appropriate. However, we believe it should also be open to the corporate WVR beneficiary to show cause why it needs a period longer than 5 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.

We believe the independent shareholders' approval is an appropriate control mechanism to prevent abuse.

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 need to have a clearer idea about the renewal conditions that the Stock Exchange might impose before we can say whether or not additional requirements are needed. It is important for the Stock Exchange to ensure a "level playing field".

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 of the view the the Exchange should not restrict an issuer from granting WVR to both individual and corporate beneficiaries. The focus should be on whether a party, be it a natural person or legal person, should be able to meet the stated requirements more than anything else.

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 believe that the proposed rule changes in the consultation paper are adequate.

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.

An individual WVR beneficiary is subject to a "event-based" sunset now and has not been subject to a time-defined sunset clause since WVR companies were listed in April 2018. It would be unfair to impose a time-defined sunset clause on an individual beneficiary now simply because of the introduction of corporate WVR beneficiaries to the permissible shareholding structure of the WVR listing applicants.

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 that the individual beneficiary should be allowed to control the same proportion of voting power in the issuer given that he or she has already been given such entitlement before. Their voting power should not be reduced as a result of the falling away of the corporate WVR beneficiary.

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.

Our view is that the falling away situation should apply to both the individual and corporate WVR beneficiary. If the Listing Rules see the need to mandate the falling away situation as described in this question and the preceding question, the mandate needs to apply to both the individual and corporate WVR beneficiary.

- End -



Appendix

Key proposals in the Consultation Paper

In a nutshell, the Stock Exchange is proposing to broaden Chapter 8A of the Main Board Listing Rules to permit corporate shareholders to also benefit from WVR, subject to a number of additional requirements and safeguards in addition to the existing safeguards in Chapter 8A.

Our view in general

As mentioned before, the proposals in the Consultation Paper (“CP”) build upon the earlier reforms of the Stock Exchange to enhance Hong Kong’s competitiveness and attractiveness as a listing venue to “new economy”, “innovative” companies. A majority of the so-called “unicorn companies” based in the PRC have well-established listed companies as corporate shareholders whose support is critical to the success of these unlisted unicorn companies. It is therefore in the interest of the listing applicant to grant WVR to a corporate shareholder, which as the leader of the “ecosystem” within which the listing applicant has grown has materially influenced the historical strategy and business development of the listing applicant, so as to encourage the corporate shareholder to give support to the listing applicant by continuing to include the issuer in the common vision for the ecosystem that provides the issuer with access to, e.g. users and data under the control of the corporate shareholder. It should also be noted that these corporate shareholders often seek WVR with a view to maintaining control over companies in their “ecosystem”. The proposed enhancements to the existing Hong Kong regime in the CP would be a welcome development from the viewpoint of these unicorn companies and for the Hong Kong capital market as a whole.

To strike a balance between the needs of potential issuers and the provision of a sufficient level of shareholder protection, the proposals in the CP aims to confer corporate WVR to a limited number of well-established corporates that control a “business ecosystem” (see details below) of which the listing applicant forms a part.

The above said, we have the following general observations in relation to the proposals contained in the CP. Firstly, the CP acknowledges that a company in traditional economy company could also develop a similarly complex ecosystem and become eligible for WVR even if its main business remains part of the traditional economy. This represents a significant potential opportunity for development for companies in the traditional economy companies, particularly those conglomerates in the financial services sector which have invested significantly in innovation and technology in recent



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years. It would not be difficult to imagine that such a traditional economy company can develop a similarly complex network of innovative companies and other components around a technology-based platform or a set of products and services to form such an ecosystem. However, we note from paragraph 4.2 of HKEX Guidance Letter GL93-18 (“**paragraph 4.2**”) that the Stock Exchange requires a listing applicant to demonstrate that it is an innovative company and that “superficial application of new technology to an otherwise conventional business will not be sufficient to demonstrate the characteristics set out in this paragraph”. Given the reference in the CP which appears to encourage companies in the traditional economy that may have established ecosystem arrangements to consider corporate WVR beneficiaries, we suggest that the Stock Exchange consider appropriate amendment and clarification to paragraph 4.2 to clarify the eligibility criteria regarding traditional economy companies.

Secondly, the CP requires the ecosystem to be made up of a community of companies and other components, which would also include non-legal entities such as business units of the corporate shareholder. This suggests that an eligible ecosystem could be made up of just the listing applicant and the corporate shareholder (with different business units focusing on different parts of the ecosystem), so that corporate shareholders whose ecosystem is at an earlier stage of development could also potentially benefit from WVR.

Thirdly, in addition to the strict eligibility requirements, the CP also includes a number of limitations on WVR which may not appeal to some issuers and corporate shareholders. In particular, corporate shareholders may be unwilling to be subject to a time-defined sunset of ten years. Further, the requirement for an individual beneficiary of WVR to convert part of the WVR upon the sunset of the corporate WVR shareholder (in the event that a listing applicant has both an individual WVR beneficiary and a corporate WVR beneficiary) may be opposed by some of the individual beneficiaries.

Finally, it is noted that the proposals in the CP is for an issuer seeking a primary listing on the Stock Exchange. For eligible issuers seeking a secondary listing under Chapter 19C of the Main Board Listing Rules, their existing corporate shareholders could continue to benefit from WVR without being subject to the proposed eligibility requirements and safeguards in the CP.

Everything considered, we are, on balance, in support of the extension of WVR to corporate beneficiaries provided that appropriate control measures are in place to prevent potential abuse.