

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.

The Chamber of Hong Kong Listed Companies has always been a key advocate for market development and for strengthening the competitiveness of Hong Kong's stock market. We believe our market should attract and accommodate different types of companies to maintain its position as a leading fund raising center as well as widening investment choices for investors. For this reason, back in 2017-18, we had strongly pushed for the acceptance of companies with weighted voting rights (WVR) share structure for individual directors. In supporting individual WVR, we recognise that the importance of human capital to a company's growth, especially in the New Economy sector, where the personal vision, drive, enthusiasm, creativity and innovativeness matter as much as economic capital, if not more.

However, it is in our view that Corporate WVR is a totally different concept from Individual WVR. Although for the same consideration of market development and competitiveness, the Chamber could support Corporate WVR, we would like to highlight some of our concerns and potential abuses.

First of all, Individual WVR is intended to allow entrepreneurs with little financial power to continue to play a key role in the company they found. But for corporations, this should not be a concern, especially we are talking about listed companies with a market capitalization of HK\$200 billion. For these corporations, if they wish to own a controlling stake in an investee or a subsidiary to maintain continual influence, they could easily raise the financial stake directly.

Secondly, the Corporate WVR arrangement allows a corporation to leverage up its investment in a company to yield disproportionate influence and voting power. That is unfair to other shareholders who co-invest in the company and it deviates from the "One-Share-One-Vote" principle.

Thirdly, the Corporate WVR and the "ecosystem" theory might also prejudice against smaller entrepreneurs in listing their own small WVR companies. It might force smaller companies to fall in line and become a crony company of the big Corporate WVR beneficiary. The equity capital market could become skewed and distorted under this process.

Fourthly, the status of the "eco-leader" might be used by unscrupulous operators as a ploy to create a hyped-up listing, and that may become a share manipulation issue.

While the Chamber would support the Corporate WVR regime for market development and competitiveness' reasons as stated earlier, we feel obliged to point out these issues upfront. The entire market must be fully aware of the possible negative effects it will bring to our market integrity and fairness.

Just as we always support a Disclosure-based regime, full disclosure and transparency for the Corporate and Individual WVR regime is important to let investors interested in those stocks know what they are getting themselves into. It is up to them to make an educated decision and take the risks.

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.

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 the Corporate WVR beneficiary must own a level of stake in the listing applicant that allows it to exert influence on the latter's business growth and development and at the same time ensuring the beneficiary have sufficient long-term financial commitment to the applicant. We agree a 30% economic interest is a fair level serving this purpose.

We understand that overseas markets, such as the US, do not have the same 30% threshold and some may fear this would perhaps weaken Hong Kong's competitiveness against those overseas markets. However, we firmly believe Hong Kong has its own innate market strengths, including a well-developed market infrastructure, sufficient market breadth and depth, and a wide institutional and retail investors base. In addition, many unicorns and their supporters are originated from the Mainland China, with Hong Kong's proximity, we will have a unique competitive advantage for these types of companies.

(b) Do you agree that a corporate WVR beneficiary's shares should lapse if it fails to maintain at least a 30% economic interest on an ongoing basis?

☒ Yes

☐ No

Please give reasons for your views.

We agree that the economic interests at the prescribed level should be maintained on a continual basis but in case of a shortfall, a grace period should be allowed to the Corporate WVR beneficiary to take action to remedy the situation.

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.

(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.

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.

We agree. But for condition (c), the "terms" referred therein should only be related to the subscription price but not other non-monetary conditions which may exist between the listed entity and the prior share subscribers.

6. Do you agree with the proposed requirement that a corporate WVR beneficiary must have held an economic interest of at least 10% in, and have been materially involved in the management or the business of, the listing applicant for a period of at least two financial years prior the date of its application for listing?

☒ Yes

☐ No

Please give reasons for your views. If your answer to 6 is "no", do you agree that a historical holding requirement should be imposed? If so what alternative threshold or holding period would you propose?

In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

We agree that a 10% stake and material involvement for two years is necessary in demonstrating a long-standing relationship, contribution and commitment by the Corporate WVR beneficiary to the listing applicant. But as in many other cases, "material" is subject to interpretation. Clearer definitions or guidelines should be provided. .

7. (a) Do you agree that the maximum ratio of weighted votes permitted for shares of a corporate WVR beneficiary should be lower than the maximum ratio permitted for individual WVR beneficiaries?

☒ Yes

☐ No

Please give reasons for your views.

We agree. In theory, there is a great disparity in the financial strengths between the Corporate and Individual shareholders. As the rationale for individual WVR is to ensure the entrepreneurs could maintain influence over their company, allowing them a higher voting rights ratio would achieve this purpose better, given their smaller capital and likely lower shareholding level.

(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.

We agree that Corporate WVR shares should carry no more than 5 voting rights. We further recommend that this ratio be lowered to a level just sufficient to give the Corporate WVR beneficiary controlling voting power. In the case that each WVR share commands 5 voting rights, as proposed in the Consultation Paper, a 30% economic interests gives 68.2% voting rights, which is well above what is required for a simple majority. We recommend this could be lowered to 3 voting rights for each WVR share, in which case, a 30% economic interests yields 56.3% voting power which still gives the Corporate WVR beneficiary a controlling influence. If the eco-leader wishes to have higher voting power, it can elect to raise its economic stake to a higher level at the time of IPO of the WVR issuer. Given the fact that the Corporate WVR beneficiary are proposed to be listed companies with a minimum market capitalisation of over \$200 billion, they should have little financial constraint in this regard.

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.

We agree. The leading role of the Corporate WVR beneficiary played in the ecosystem and its contribution to the business growth and development of the listing applicant is integral to the concept of Corporate WVR. There must exist clear and demonstrable synergistic values such as technology gateway, co-development platform, customer sharing etc. that are otherwise unavailable to it had it not been part of the ecosystem. Such synergistic values must not be achievable by sheer capital investment. Only under these circumstances would the granting of Corporate WVR shares to the eco-leader be warranted. We would further suggest the Exchange forms an advisory panel composed of members familiar with the functioning of the New Economy and the characteristics of the interplay of the component companies within the ecosystem to participate in the listing approval process, much like the advisory panel for listing of pre-revenue biotech companies. The panel members will advise the Stock Exchange, the SFC or the Listing Committee on the suitability of the applicant, the validity of the ecosystem and confirms the integral role played by the Corporate beneficiary.

9. Do you agree with the required characteristics of an ecosystem as set out below:
- (a) a community of companies (which includes the listing applicant) and other components (which may be non-legal entities such as business units of the corporate shareholder, user or customer bases, applications, programs or other technological applications) that has grown and co-evolved around a technology or know-how platform or a set of core products or services, owned or operated by the prospective corporate WVR beneficiary (for the avoidance of doubt, such platform or products or services does not need to represent the main business of the prospective corporate WVR beneficiary);
 - (b) the components within the ecosystem (including the listing applicant) both benefit from, and contribute to, the ecosystem by sharing certain data, users and/or technology (for example, software, applications, proprietary know-how or patents);
 - (c) the ecosystem must have attained meaningful scale, which will normally be measured by reference to indicators such as the number and technological sophistication of the components connected to the ecosystem, the size of its (combined) user base, or the frequency and extent of cross-interaction between the users or customers of different components;
 - (d) the core components within the ecosystem, and the listing applicant, are in substance controlled by the corporate WVR beneficiary; and

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

☒ Yes

☐ No

Please give reasons for your views. Please elaborate if you wish to propose an alternative or additional criteria.

10. Are there other circumstances relevant to innovative companies that, in your view, could either (a) justify granting WVR to a corporate WVR beneficiary; or (b) be required as a pre-requisite to being granted WVR?

☐ Yes

☒ No

Please give reasons for your views.

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.

With the trend of businesses moving online and digitalised, more and more traditional companies diversify or invest in new economy technologies. Ecosystems that combine online and offline features and led and directed by a traditional company are emerging. We have seen examples in industries like F&B and catering, transportation and logistics, and banking and financial services where traditional companies branch out to develop or invest in technology components that optimise their overall business efficiency, customer acquisition and retention, service delivery and customer experience, and gradually form their own ecosystems. Such ecosystems thrive on the synergistic values of the traditional company's business foundation and the technology applications of the component companies. Traditional companies as the leader of such ecosystems should qualify as Corporate WVR beneficiaries.

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.

The leadership role and contribution from the Corporate WVR beneficiary to the listing applicant is integral to the eligibility for Corporate WVR. If such a relationship is terminated and ceases to exist, the eligibility should end. We believe 12 months is a fair period of time for this purpose.

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.

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.

- (b) Alternatively, would you prefer there to be a different mechanism to check that this requirement is being met?

☐ Yes

☒ No

If so, please state what this should be. Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

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

☒ Yes

☐ No

Please give reasons for your views.

The high market capitalisation threshold is an effective way to limit the proliferation of the Corporate WVR companies. We believe that in order to be qualified as a eco-leader, an entity should manifest strong capital strength, business sophistication, and market power. A high market capitalisation would be a valid indicator of such qualities of the beneficiary.

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

☐ Yes

☒ No

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

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 agree that a Corporate WVR beneficiary can be both an Innovative Company or a traditional company (see our answer to Q.11) If a company is not itself an Innovative Company, it is fair to require it to profess experience in emerging and innovative sectors, not only from an investment angle but also business involvement and having made concrete contribution (the condition (b) in your question here). Such experience of investment and having made contribution should also be applied to Innovative Company. Some innovative companies may perform well in its own business but lack experience in nurturing others. We suggest the experience, investment and contribution requirements be equally applied to all Corporate WVR beneficiaries, irrespective of which sectors they come from. The Exchange should also make it clear that the Corporate beneficiaries should demonstrate successful investment record and positive contribution in their other investment projects or initiatives. New economy is a high risk sector. Investments may go very bad, incurring big losses. A Corporate WVR beneficiary needs to demonstrate its investment and business prowess.

18. Do you agree with the proposed requirement that to benefit from WVR, a corporate beneficiary must have and maintain a primary listing on the Exchange or a Qualifying Exchange?

☒ Yes

☐ No

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

We agree that a Corporate WVR beneficiary must be a listed company on the HKEX or a Qualifying Exchange so that the beneficiary has high business stature and sound corporate governance, and is subject to proper regulation by a Stock Exchange. However, as per your definition, a Qualifying Exchange is limited to NYSE, Nasdaq or the Main Market of the London Stock Exchange (and belonging to the UK Financial Conduct Authority's Premium Listing" segment). The two stock exchanges of China are not included. Yet, China is a major producer of Unicorn companies, many of them might be bred by the ecosystems developed by mainland companies listed on the two mainland stock exchanges. Under the current proposals, companies nurtured by them could not be listed in Hong Kong. We are afraid there will be missed opportunities for Hong Kong. We recommend the Exchange also looks into the possibility of allowing listed companies on the mainland stock exchanges to be eligible as Corporate WVR beneficiaries.

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 are concerned with the definition of the Corporate Representative here. If it means a Board Director or Officer, such as the CEO or CFO of the eco-leader, it may be difficult in practice given the existing level of commitment of these people is already very high. Besides, the eco-leader may have very diverse business and investment interests, the directors or officers at the very top level may not be personally familiar with the operation of every investee. Therefore, it would be more reasonable if the person sitting on the board of the WVR issuer is a senior executive of a business unit of the eco-leader that is closely related to the business of the issuer. This will ensure the person would have strong business input to the issuer and can act as a link between the issuer and the board of the eco-leader for important business decisions.

- (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.

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.

For scenario (b), we would like to clarify that the Corporate WVR beneficiary would have an option to appoint a new Corporate Representative to replace the incumbent who is disqualified or found to be unsuitable, in order to re-comply with the Corporate Representative requirement.

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

☒ Yes

☐ No

Please give reasons for your views.

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

☒ Yes

☐ No

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

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

☒ Yes

☐ No

Please give reasons for your views.

- (b) If so, do you agree with the maximum five year length of the renewal period or would you prefer an alternative renewal period length?

☒ Yes

☐ No

Please give reasons for your views.

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.

As long as the Corporate WVR beneficiary continues to demonstrate its contribution to the listed issuer and such contribution is attested to by the Corporate Governance Committee of the issuer, the WVR benefits should be allowed to continue.

26. Should the Exchange impose any other requirements on a corporate WVR beneficiary as of a condition of renewing its WVR?

☐ Yes

☒ No

If so, please provide details of the suggested requirement. Please give reasons for your views. In your response, you may propose additional or alternative measure to the ones discussed in the Consultation Paper.

27. Do you agree that the Exchange should not restrict an issuer from granting WVR to both corporate and individual beneficiaries provided that each meets the requisite suitability requirement?

☒ Yes

☐ No

Please give reasons for your views.

We agree. The Corporate and Individual WVR beneficiaries can co-exist without contradiction. Both are major contributors to the success of the listing applicant and their on-going presence and involvement are important. They both should be allowed to enjoy the WVR benefits.

28. Are there any additional measures that you would propose for the WVR beneficiaries or the WVR issuer to safeguard the interests of the WVR issuer (e.g. prevent a deadlock) if there were both corporate and individual beneficiaries?

☐ Yes

☒ No

Please give reasons for your views.

29. Do you agree that where an issuer has both a corporate WVR beneficiary and individual WVR beneficiaries, the time-defined sunset should only apply to the corporate WVR beneficiary?

☒ Yes

☐ No

Please give reasons for your views.

We agree. It is sufficient for the Individual WVR beneficiary to be subjected to the event-based sunset and for as long as he/she remains a director and fulfils directors' requirements.

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 this is a reasonable way to prevent the voting power from being too highly concentrated in individual directors.

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 that the changes to the distribution of voting rights caused by the fall away of the WVR of one individual beneficiary may not be material.

- End -