

30 April 2020

Hong Kong Exchanges and Clearing Limited  
8<sup>th</sup> Floor, Two Exchange Square  
8 Connaught Place  
Central  
Hong Kong

**Re: Corporate WVR CP**

Dear Sirs,

We attach to this letter our completed Questionnaire on Corporate WVR Beneficiaries by way of response to the Exchange's Consultation Paper on Corporate WVR Beneficiaries (the "CP").

As stated in our [submission](#) to HKEX on individual WVR in March 2018, our view remains that multiple voting rights, whether held by a corporate or an individual, are incompatible with the principle of fair and equal treatment of all shareholders and represent a danger to minority shareholders. While eligibility conditions and safeguards may go some way to mitigating the risks, they do not eliminate those risks. We are therefore opposed in principle to any form of WVR. In relation to the proposals in the CP, our view is that the various conditions and safeguards that are proposed offer only a limited degree of protection for minority shareholders. There are also some instances in which we are unclear about the practical or legal effect of the proposed conditions and safeguards, and, to that end, it would have been helpful if the CP had been accompanied by a draft of the proposed amendments to the Listing Rules, as was the case with the February 2018 Consultation Paper which dealt with WVR for individual beneficiaries.

While we do not intend to repeat in this letter all of the points that we have made in the Questionnaire, we wish to highlight the following points:

1. **The "ecosystem":** We have strong reservations about the proposed ecosystem concept, viewed from both a conceptual and practical perspective. Conceptually, we reject the proposition that the voting power of an influential shareholder within a listed company should be determined by reference to the perceived value of that shareholder's contribution to the company. The effect is to downgrade the legal status of other shareholders whose contribution the listed company perceives as being less valuable. As a practical matter, we question whether the concept has the degree of precision and legal certainty that is needed in a listing eligibility condition. It is drawn in such loose terms that in practice we doubt that it would act as much of a limitation on the number of eligible applicants for listing. We would therefore urge the Exchange to reflect on the suitability of the ecosystem concept.

2. **Sunset provisions:** In relation to sunset measures, we remain of the view that all provisions of this kind should be subject to a definitive expiry date, which cannot be extended indefinitely by shareholder approval. In our view, the initial maximum term of ten years proposed in the CP is excessive, and sits uneasily with the related proposal that the historic involvement of the corporate WVR beneficiary in the management of the WVR issuer need not be longer than the two financial years prior to listing. We also regard the proposal for an indefinite number of five-year extensions with independent shareholder approval to be potentially a false safeguard. Some independent shareholders may be reluctant to remove a long-established WVR structure because of a concern that the market might react negatively to what it perceived to be an underlying governance or conduct problem that had prompted the decision to return to a unitary capital structure. For these reasons, we are proposing that the initial term of the corporate WVR should be a maximum of five years, with the possibility of a one-time extension for a further five years, with independent shareholder approval.
3. **Corporate or individual WVR, not both:** We do not agree with the proposal that that an issuer should be able to issue WVR to both individual beneficiaries and corporate beneficiaries, and do not see any regulatory policy or business rationale for the proposal. Given the different conditions, both initial and ongoing, that attach to individual WVR and corporate WVR, we think that this proposal has the potential to introduce some degree of confusion and uncertainty into the market, particularly as regards outcomes for non-WVR shareholders in such a “mixed” WVR structure. In addition, the CP does not appear to address the potential for conflicts of interest among WVR beneficiaries which operate to the disadvantage of non-WVR shareholders. Until there is greater market understanding of the legal and practical implications of a mixed WVR structure, we suggest that a WVR issuer be required to choose between issuing either individual WVR or corporate WVR.
4. **Qualifying Exchanges:** We note the proposal that a corporate WVR beneficiary must have its primary listing on the Exchange or on a Qualifying Exchange. We are unclear as to the nature of the regulatory policy rationale which underpins the limited choice of venues within the Qualifying Exchange definition. In addition, we do not think that a primary listing on a Qualifying Exchange in and of itself is a sufficient guarantee of a high standard of corporate governance, in view of various exemptions from listed company continuing obligations that can be accessed in some countries by overseas-incorporated companies. For that reason, we suggest that this condition be amended to provide that the beneficiary have its primary listing on a Qualifying Exchange and that it be subject to corporate governance requirements which are in all material respects at least as high as those which would apply to the beneficiary were it to have its primary listing on the Stock Exchange of Hong Kong.

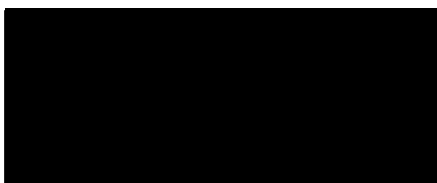
5. **Enhanced minority rights:** At a number of points in the Questionnaire we propose additional or amended safeguards for minority shareholders which concern the role of the WVR issuer's independent non-executive directors (INED). We think that a robust INED function is an important counterweight to the fundamentally inequitable nature of WVR. For this reason, we propose the following Listing Rule amendments:

- (i) An INED of a WVR issuer should be appointed and removed solely on the basis of voting by non-WVR, independent shareholders.
- (ii) An individual should be ineligible for appointment as an INED of a WVR issuer if that individual is a director of any company in the ecosystem shared by the WVR issuer and corporate WVR beneficiary; this should also encompass individuals with close connections to the corporate WVR beneficiary, such as a recently-retired partner of the beneficiary's auditor. Such an exclusion should be for an indefinite duration, hence the normal INED cooling-off period rules should not be applied.
- (iii) A lead INED should be appointed with responsibility for promoting ongoing dialogue with non-WVR shareholders.
- (iv) The corporate governance (CG) committee of the WVR issuer should report periodically to shareholders, in addition to the board, on its assessment of the value (if any) contributed by the corporate WVR beneficiary, through the ecosystem, to the WVR issuer, together with an account of the nature of the enquiries that the committee has undertaken in order to make its assessment.
- (v) The CG committee of the WVR issuer also be given a role in monitoring and reviewing related-party transactions, especially those between the issuer and any other entity in the ecosystem of the corporate WVR beneficiary. We are aware that LR 14A.40 requires the appointment of an independent committee to advise shareholders on the merits of a specific connected transaction. However, given the inherent close commercial proximity between the WVR issuer, the corporate WVR beneficiary and other inhabitants of the ecosystem, we think that this matter deserves a greater degree of INED oversight and on a continuing rather than ad-hoc transaction basis. The committee should monitor and review connected transactions on an ongoing basis and report to shareholders annually on compliance with rules which govern such transactions.

- (vi) Given the broad nature of the CG committee's work, it will require a degree of technical or industry-specific experience on the part of at least some of its members. The Exchange should establish a regulatory expectation that the committee be composed of individuals with relevant technical or industry experience.

We would be happy to discuss any of the points raised in this letter or in our Questionnaire response.

Yours truly,



Jamie Allen  
Secretary General

\*Christopher Mead, Deputy Secretary General, ACGA also contributed to this letter and submission.

## 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.

Our view remains that WVR, whether held by a corporate or an individual, are incompatible with the principle of fair and equal treatment of all shareholders, and represent a danger to minority shareholders. While eligibility conditions and safeguards may go some way to mitigating the risks, they do not eliminate those risks. We are therefore opposed in principle to any form of WVR. In relation to the proposals in the CP, our view is that the various conditions and safeguards that are proposed offer a limited degree of protection for minority shareholders. There are also some instances in which we are unclear about the practical or legal effect of the proposed conditions and safeguards, and, to that end, it would have been helpful if the CP had been accompanied by a draft of the proposed amendments to the Listing Rules, as was the case with the February 2018 CP which dealt with WVR for individual beneficiaries.

2. Do you agree that a corporate WVR beneficiary must be either the Eligible Entity or a wholly owned subsidiary of the Eligible Entity?

☐ Yes

☒ No

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

We consider that a corporate WVR beneficiary must always be an Eligible Entity and should not include a wholly-owned subsidiary of an Eligible Entity. It is proposed that an Eligible Entity should be a company that is listed on one of a number of prescribed listing venues, and therefore is one whose conduct is subject to regulatory scrutiny. In addition, an Eligible Entity is obviously subject to the corporate governance requirements mandated by the listing rules and other ongoing disclosure requirements to which it is subject. We have some reservations (please refer to our reply to Q18 below) about the criteria that are used to define an "Eligible Entity", however we recognise that it does provide some reassurance to minority shareholders in the WVR issuer. That reassurance seems to us to evaporate if the beneficiary can be an unlisted and unregulated entity that happens to be owned by another entity that is listed and regulated.

In addition, it seems unlikely that a subsidiary established for the purpose of holding the WVR (which is what appears to be contemplated in the CP) would in any event be able to satisfy many of the other criteria required of a corporate WVR beneficiary, such as the requirement to have a market capitalisation of HK\$200 billion or more.

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 with the general principle that the Listing Rules should provide for a minimum economic interest on the part of the corporate WVR beneficiary. However, we find it difficult to offer a definitive view on the level of that minimum interest. The CP contemplates the possibility that, at listing, the corporate WVR beneficiary might not in fact be the single largest shareholder if the issuer has issued WVR to an individual beneficiary whose economic interest is greater than that of the intended corporate WVR beneficiary. This highlights a recurring question that we have at various points in the CP, which is about how the individual and corporate WVR regimes, and the eligibility conditions both initial and ongoing, interact with one another. For that reason, it is difficult to offer a firm view on the appropriateness or otherwise of the 30% minimum economic interest figure proposed in this CP because it would seem that de facto control may be achieved at a level of interest below 30% on the part of a corporate WVR beneficiary in circumstances in which it is a connected person in relation to an individual WVR beneficiary.

(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 with the principle that a corporate beneficiary's WVR should lapse if it fails to maintain on an ongoing basis whatever minimum economic interest is mandated by the Listing Rules. However, we note that in relation to individual WVR, there is no requirement to maintain the 10% minimum economic interest on an ongoing basis, and the rules do not provide that a failure to maintain such an interest will cause the WVR to lapse. We continue to believe that a failure to provide in those terms in the individual WVR regime remains a serious omission. From our perspective, the policy case for lapse is strong in each case. This approach appears to create at least the possibility of a situation in which a founder's individual WVR do not lapse but the corporate WVR of a beneficiary of which he is the controlling shareholder do lapse, which appears to us to be an odd regulatory outcome.

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.

Please see our response to 3(a).

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

☐ Yes

☐ No

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

We have no comment on this question.

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 would not support the issuance of additional shares specifically to a corporate WVR beneficiary in the absence of shareholder approval. Furthermore, we would propose that a motion to issue top-up shares in such circumstances should be subject to approval on a one-share one-vote basis. The need to obtain shareholder approval is a valuable safeguard and allows shareholders to decide whether they wish the corporate WVR beneficiary to remain as a controlling shareholder.

Although we are strongly of the opinion that the issue of top-up shares should be subject to specific shareholder approval, since the economic interest does not need to be achieved through WVR, we would think that it should be possible for the corporate WVR beneficiary to top-up its interest to avoid dilution by way of purchase of ordinary shares on the open market.

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

- ☐ Yes
- ☒ No

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

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

We agree with the general proposition that there must be a pre-existing relationship between the listing applicant and the corporate WVR beneficiary prior to listing. However, at 2 years, the minimum duration of that relationship appears to us to be rather short, and is somewhat incongruous with the notion of the shared ecosystem which is advanced elsewhere in the CP. The CP refers to the ecosystem as a "community of companies" including the listing applicant, that have "grown and co-evolved" together. We would question whether 2 years is a sufficiently long time for a listing applicant to grow and evolve within the ecosystem. So, given the terms of the Exchange's ecosystem proposal, we would suggest that 5 years would be a more appropriate measure of the appropriate duration of the relationship between the listing applicant and corporate WVR beneficiary. The exception to this proposition would be where the listing applicant has been in operation for less than 5 years, in which case we suggest that the appropriate duration should be the period from the start of operation.

As we note below, we have some reservations about the ecosystem concept. However, on the assumption that the ecosystem concept will be implemented in some form in the Listing Rules we are offering comments on some features of the CP proposals that rely on or reference the core ecosystem concept. These comments should therefore not be interpreted as support for the ecosystem concept.

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

☐ Yes

☐ No

Please give reasons for your views.

We do not have an in-principle position as to the relative maximum ratios. The amount of damage that can be visited on minority shareholders is as much a function of the quality of the safeguards that operate to protect minority shareholders against holders of WVR. That is to say, a lower maximum ratio with weak safeguards is potentially a worse outcome for minority shareholders versus a higher maximum accompanied by rigorous safeguards.

- (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.

Consistent with our objection in principle to WVR, we are opposed to any degree of weighting.

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.

No, we disagree from both a conceptual and practical perspective. Conceptually, we reject the proposition that the voting power of a shareholder within a listed company should be determined by reference to the perceived value of that shareholder's contribution to the company. The effect is to downgrade the legal status of shareholders whose contribution the listed company perceives as being less valuable than that of others. We would consider such a change as setting a very unwelcome precedent in the Listing Rules. Furthermore, as a matter of principle, we question whether the grant of WVR is indeed necessary for the listing applicant to continue to benefit from whatever advantages are believed to flow from belonging to the ecosystem. If the advantages to the listing applicant of participation in a shared ecosystem and of the vision of the lead company are as obvious as the CP suggests, then such should naturally command the support of all shareholders. A decision to grant outsize influence to the lead company suggests that the listed company may, in truth, doubt whether its ordinary non-WVR shareholders would support the strategic direction and vision advocated by the lead company.

Our reservations are equally strong as regards the practical application of the ecosystem. Fundamentally, we consider that the concept lacks the degree of precision and legal certainty that should be expected of a listing eligibility condition. It is drawn in such loose terms that we would imagine that it would be relatively easy for a listing applicant in a technology group to construct an argument that it enjoys and would like to continue to enjoy a beneficial relationship with its current parent. Consequently we do not think that in practice the requirement that the listing applicant and the intended corporate WVR beneficiary inhabit the same ecosystem would act as much of a limitation on the number of eligible applicants for listing, especially in the technology sector. In addition, it is unclear how the Listing Committee could form a legally robust view on any given listing application as to whether an appropriate business ecosystem exists. This would seem to require a detailed understanding of the business primarily of the corporate WVR beneficiary and an assessment of the benefits both tangible and intangible that might flow to the applicant through the ecosystem. We question whether the Listing Committee would be in a position to make an informed assessment of the nature of the business of a technology group, potentially with a listed parent in the US or the UK as the proposed corporate WVR beneficiary, and of the degree of materiality of any benefit which it is claimed by the applicant may flow from belonging to that ecosystem.

In summary therefore we regard this proposal as introducing a very unwelcome concept into the Listing Rules, and as doing so in a way that cannot be sensibly applied in practice given the looseness of the ecosystem notion.

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.

For the reasons noted above, we regard the notion that voting power should be distributed according to the perceived value of some shareholders over others to be objectionable in principle.

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 have no comments on this question.

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 think that the premise of this question demonstrates the inherent woolliness of the ecosystem concept. In our view, independent shareholders in, for example, an innovative technology sector listing applicant might be sceptical as to the degree of materiality of benefit that could be attributed to the "strategy and vision" of the executive management of a parent/leading entity that is an insurance company or a bank. To the extent that the ecosystem concept is implemented in the Listing Rules, we think that it would be more prudent to confine it initially to a community of companies operating in the same sector of the economy.

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.

While we disagree fundamentally with the ecosystem concept as detailed above, to the extent that it is adopted by the Exchange, we think that provision should be made for the immediate lapse of the WVR in the event that the ecosystem no longer operates to the benefit of the listing applicant. In that respect we would consider that lapse only after a 12-month period in which the issuer receives no benefit from the WVR beneficiary to be excessively generous. Instead, we would suggest that on becoming aware of the existence of a material disruption, etc. the WVR issuer's corporate governance committee should convene on an ad hoc basis and report to shareholders on its assessment of the matter. Where the committee concludes that there is a material disruption, etc. our view is that the WVR should lapse forthwith. It is possible that the Listing Rules could make provision for the temporary suspension of the WVR during the period of material disruption, etc. with the WVR lapsing if the disruption continued for more than specified number of months. However, we think that independent shareholders are unlikely to support what amounts to a year's grace period during which the corporate WVR beneficiary enjoys the benefits of the WVR at no cost.

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.

The CP devotes a considerable amount of space to the minimum economic interest expected to be held by a corporate WVR beneficiary, and notes at para 152 that the proposed 30% minimum interest would equate to a voting interest of 68%. From our perspective, we would prefer to see a focus on the maximum voting power that can be exercised by a corporate WVR beneficiary as much as on its ongoing economic interest. We note that in respect of individual WVR, LR 8A.09 provides that non-WVR shareholders must have at least 10% of the voting power at a general meeting. We continue to believe that this figure is far too low. The effect of setting the non-WVR minimum at 10% of the voting power will in some circumstances neutralise the effect of the one-share one-vote reserved matters in LR 8A.24 some of which require at least 25% of the voting power to block.

We are particularly concerned that an issuer may grant WVR to more than one corporate WVR beneficiary or to a corporate WVR beneficiary and to an individual WVR beneficiary, including where the WVR beneficiaries are also connected persons. Given the potential for there to be multiple holders of WVR in an issuer, we think that the risks to minority shareholders, especially as regards potential conflicts of interest between WVR shareholders, increase correspondingly. We would therefore suggest that the aggregate voting power of WVR beneficiaries should be subject to a cap, perhaps at a level such as would allow non-WVR shareholders to block a special resolution.

We assume that LR 8A.24 or a provision in similar terms will apply in respect of a corporate WVR structure. As noted above, we also believe that a decision to issue more shares to a corporate WVR beneficiary by way of anti-dilution should be subject to approval on a one-share one-vote basis. In addition, we believe that for LR 8A.24 to offer reliable protection to minority shareholders, the minimum level of non-WVR voting power specified in LR 8A.09 should be increased to at least 25%.

We remain of the view that the fundamentally inequitable nature of WVR requires special measures to protect non-WVR minority shareholders. In our view, robustly independent INEDs should be a cornerstone of those measures. For that reason, we propose that LR 8A.24 and any similar provision that is to be applied to a corporate WVR structure should provide that the appointment or removal of an independent director be subject to approval not only on a one-share one-vote basis, but on the basis of votes cast solely by independent, non-WVR shareholders. Given that a WVR shareholder may exercise considerable voting power even when his votes have been unweighted, we think that it is reasonable to exclude such a shareholder from votes concerning the appointment or removal of an independent director.

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.

As noted in our response to Q8, we think it is important that the committee should also be required to convene and report on an ad hoc basis should circumstances require.

However, it is unclear from the question, and from the CP, as to whom the committee's confirmation is to be addressed. In our view, the rules should provide that the committee is to report to the issuer's shareholders on this matter, on each occasion that it falls to the committee to consider whether there has been termination or material disruption, etc. The report should be accompanied by an account of the enquiries that the committee has made in order to form a view about the nature of the corporate WVR beneficiary's contribution to the issuer during the period in question.

We note that LR 8A.30 sets out requirements for the corporate governance committee of an issuer which issues WVR to an individual WVR beneficiary. While LR 8A.30(4) provides for the review and monitoring of potential conflicts of interest between a number of named parties, we would suggest that this provision should be extended to include conflicts of interest that might arise as between an individual WVR beneficiary and a corporate WVR beneficiary, or as between one individual (or corporate) WVR beneficiary and another WVR beneficiary of the same type.

- (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 refer to our response to Q14(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 think that it is important to set the threshold at a sufficiently high level to ensure that there is a relatively small number of beneficiaries that are Eligible Entities, and thereby to prevent a proliferation of WVR issuers on the Exchange. We agree that HK\$200 billion is a sensible threshold in this respect. We note, however, that the threshold is expressed to apply on the day of the listing, but not after listing. We would suggest that some thought be given to the addition of an ongoing market capitalisation condition, perhaps assessed annually.

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.

We have no additional comment to make on Q16.

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

☐ Yes

☐ No

Please give reasons for your views.

We have no additional comment to make on Q17.

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 do not consider that having and maintaining a primary listing on a Qualifying Exchange is a sufficient requirement in and of itself. While not wishing to expand the range of entities that may be able to act as corporate WVR beneficiaries, we do not see why only NYSE, NASDAQ and LSE Premium Listing segment should be considered as affording "regulatory oversight under a reputable legal and regulatory regime". It would be helpful if the Exchange could illuminate the regulatory rationale for selecting only those particular listing venues.

However, in relation to the degree of regulatory oversight over a corporate WVR beneficiary not listed on the Exchange, we would propose a different test, which is that it be listed on a Qualifying Exchange and be subject, in its capacity as a listed company, to continuing obligations which are in all material respects equivalent to those to which it would be subject were it to have its primary listing on the Exchange. For example, not all issuers listed in the US are subject to the same standards of corporate governance, and depending on their country of incorporation may avail of various exemptions from some US corporate governance requirements. We think that it is important that all corporate WVR beneficiaries are subject to equivalent corporate governance standards, irrespective of the location of their primary listing.

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.

We have no additional comments on Q19.

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, provided that the Corporate Representative director is not to be treated as an independent director of the WVR issuer.
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- (b) Are there any alternative or additional measures that you would propose to increase a corporate WVR beneficiary's responsibility and accountability for how it exercises its control?

☒ Yes

☐ No

Please give reasons for your views.

As noted above, we think it is important that a listing applicant be able to demonstrate that a corporate WVR beneficiary with a primary listing not on the Exchange is nevertheless subject to corporate governance standards which are in all material respects equivalent to those that are applied by the Exchange to an issuer with a primary listing on the Exchange. We have also proposed that the appointment or removal of an independent director should be exclusively a matter for non-WVR, independent shareholders.

In addition, and building on our earlier recommendation in relation to independent directors, we would suggest the following additional governance measures:

(i) Given the role of the INED corporate governance committee in assessing the ongoing contribution of the corporate WVR beneficiary to the issuer, we think that this requires a degree of technical or industry-specific experience on the part of at least some of the committee's members. We therefore think that the Exchange should establish a regulatory expectation that the committee be composed of individuals with sufficient technical or industry experience;

(ii) We think that it should be made clear that a director, including an INED, of the corporate WVR beneficiary or of any of its ecosystem companies should be ineligible to serve as an INED of the WVR issuer. Moreover, we would further suggest that this exclusion should encompass individuals with close connections to the corporate WVR beneficiary, such as a recently-retired partner of the beneficiary's auditor; we believe that such an exclusion should be of an indefinite duration and that therefore the INED cooling-off period rules should not be applied.

(iii) Given that the need to ensure effective communication with independent shareholders becomes more important still in an issuer which has adopted a WVR structure, we would suggest that consideration be given to requiring an INED to be appointed to act as the primary point of contact for minority shareholders and to engage in regular dialogue with them.

(iv) We would also propose that the WVR issuer corporate governance committee be given a role in monitoring and reviewing related party transactions, especially those between the issuer and any other entity in the ecosystem of the corporate WVR beneficiary. We are aware that LR 14A.40 requires the appointment of an independent committee to advise shareholders on the merits of a specific connected transaction. However, given the inherent close commercial proximity between the WVR issuer, the corporate WVR beneficiary and other inhabitants of the ecosystem, we think that this matter deserves a greater degree of INED oversight, on a continuing rather than on an ad hoc transaction-specific basis. We would therefore suggest that the corporate governance committee be given an additional function, namely to monitor and review connected transactions on an ongoing basis and to report to shareholders annually on compliance with rules which govern such transactions.

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.

We have no additional comments on Q21.

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 remain of the view that a time-based sunset is an essential protection for minority shareholders in WVR/DCS regimes, in order to avoid the permanent entrenchment of insider interests. There is growing evidence of mismanagement and poor corporate behaviour in some prominent companies that have adopted WVR/DCS structures, principally in the US. Our view is that these events have sensitised investors to the inherent risks of granting WVR without a hard-stop provision. We believe that making renewal subject to approval by independent shareholders is likely to be a false comfort. The reality is that once a WVR structure is in place, some independent shareholders will be reluctant to vote for its removal out of a concern that to do so will be interpreted negatively by the market, for example as an indication of misgovernance within the issuer, and would therefore depress the share price of the issuer.

23. If your answer to Q 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.

Given that the proposals elsewhere envisage that a corporate WVR beneficiary need only have been materially involved in the business of the listing applicant for 2 years, the grant of WVR for 10 years seems quite disproportionate. Set against the 2 year material involvement requirement, an initial sunset of 5 years would seem more appropriate.

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.

Our view is that the WVR should lapse permanently at the end of their 5-year term. However, if there is to be provision made for renewal, then we would support the proposition that only independent shareholders voting shares on a one-share one-vote basis should be eligible to vote on a motion to renew.

- (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 have no additional comments on Q24(b).

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

☐ Yes

☒ No

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

If the Exchange chooses to implement a renewal provision, we would suggest that it be limited to a one-time renewal for a further period of 5 years. In India, the 2019 framework for issuance of DVR shares adopted a 5+5 approach, and while that framework is applicable to individual WVR beneficiaries, we nevertheless think that it would be an appropriate structure to adopt in a corporate WVR setting if the Exchange chooses to proceed with a renewal option.

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 have no comments on Q26.

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.

The CP does not appear to offer a regulatory policy rationale for allowing an issuer to grant WVR to both corporate and individual beneficiaries, and it would therefore be helpful for investors to understand why the Exchange considers this to be either necessary or desirable from a policy perspective. In relation to a potential individual and a potential corporate beneficiary which are connected persons one with the other, we cannot see a policy rationale of any sort for permitting the grant of WVR to both parties. Moreover, viewed from the perspective of the Exchange's overall WVR policy which seeks to justify discrimination against non-WVR shareholders by reference to the perceived value contribution of a WVR beneficiary, it is unclear to us what separate value might be contributed by a founder exercising his individual WVR that is not also contributed by a corporate WVR beneficiary that is controlled by the same individual. That is to say, there appear to be circumstances in which the Exchange's overall WVR policy might in its own terms exclude the possibility of a "mixed" WVR beneficiary structure.

In addition, we believe that the introduction of a mixed WVR structure, with each type of WVR being subject to materially distinct conditions, would cause confusion among investors. In particular, from an investor perspective, we believe that such an untested and unclear regime would lead to unpredictable outcomes for minority shareholders, encourage regulatory arbitrage, and risk unleashing unmanaged conflicts of interest which operate to the prejudice of those shareholders. We therefore think, especially at the outset of a corporate WVR regime, that the individual and corporate WVR regimes should be kept separate, with an issuer being obliged to choose one or the other as its adopted WVR structure.

Should the Exchange nevertheless opt to introduce a mixed WVR beneficiary regime, our comments above refer to the effect that we consider that corporate and individual WVR beneficiaries should be subject to a maximum limit on their combined voting power within the WVR issuer.

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 have no comments on this question.

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.

No, we would suggest that where they are connected persons, the individual WVR should also be subject to the same time-based sunset provisions. It would be an odd outcome if the founder of a company could hold WVR in his own name indefinitely, but hold those in a company which he controls on a temporary basis only.

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.

In principle we agree. However, the question seems to assume that there is only one individual WVR beneficiary and only one corporate WVR beneficiary at the point at which the WVR of the corporate WVR beneficiary fall away. There does not seem to be anything in the CP to suggest that a WVR issuer could not issue WVR to more than one corporate WVR beneficiary (though we recognise that the minimum economic interest figure is relevant here) or indeed to several individual WVR beneficiaries.

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 do not see why the Exchange would, from a listing policy perspective, wish to allow a corporate WVR beneficiary to passively increase its voting power in circumstances in which an individual WVR beneficiary would be prohibited from doing so. WVR are issued before listing in a defined amount to specific individuals and entities, and investors subscribe at listing on that basis. Independent shareholders may have very strong views about the precise amount of influence they wish any given corporate WVR beneficiary to wield within the WVR issuer. It seems to be unconscionable for independent shareholders to be forced to accept an increase in the voting power of a corporate WVR beneficiary.

- End -