

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.

Unless otherwise noted, terms used in our responses herein shall have the same meanings as those defined in the Consultation Paper.

For the purpose of enhancing the Hong Kong capital market's competitiveness in attracting companies in innovative sectors to list in the city, we agree with the proposal to expand the existing WVR regime to enable corporate entities to benefit from WVR on the condition that adequate safeguards are in place. The proposals set out in the Consultation Paper would strike an appropriate balance between market development and shareholder protection.

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 agree a corporate WVR beneficiary must be an Eligible Entity or a wholly owned subsidiary of the Eligible Entity to avoid WVR structure proliferating and becoming commonplace in Hong Kong while a "one-share, one-vote" structure is considered optimal for most cases. Only those corporates significantly contributing to the success and growth of potential issuers that are "innovative companies" would be justified in being entitled to WVR shares post-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.

We agree that 30% is an appropriate minimum level of economic interest.

(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 proposal for a corporate WVR beneficiary to maintain at least 30% economic interest in the listing applicant on an ongoing basis. This would help reduce the risk of potential misalignment of interests between the ultimate controlling shareholders of the corporate WVR beneficiary and other independent shareholders.

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.

N/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.

N/A

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 a corporate WVR beneficiary should maintain at least 30% economic interest on an ongoing basis to avoid misalignment of interest. The proposed issuance of shares on a non-pre-emptive basis to a corporate WVR beneficiary without a specific or general mandate approved by shareholders would provide flexibility to issuers in conducting follow-on offerings to raise capital.

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.

Whilst we agree with the general principle that a corporate WVR beneficiary should hold a certain level of economic interest in the listing applicant prior to listing, and we have no objection to the adoption of “bright-line” thresholds in this regard (i.e. at least 10% for at least two financial years), we would like to see further clarifications and explanations of these requirements in the context of the requirements of ownership continuity under Rule 8.05 and the ecosystem requirements under paragraph 44 of the Consultation Paper, as further elaborated below.

Rule 8.05 requires the listing applicant to demonstrate ownership continuity and control for at least the most recent audited financial year. If a party increases its economic interest and voting power in the listing applicant to at least 30% in the most recent audited financial year, technically there would be a change in ownership as that party would be considered a new Controlling Shareholder under the Listing Rules and Takeover Codes.

As suggested in Guidance Letter (“GL”) 89-16, the ownership continuity and control requirement is intended to ensure the listing applicant’s financial performance resulted from the actual dynamics between the controlling shareholder(s) and the management for at least the last financial year of the track record, and a listing applicant can rebut this presumption and suggest there is ownership continuity and control by demonstrating there was no material change in influence on management despite the technical change in controlling shareholder(s).

It would be helpful if the Exchange could provide further guidance on how the proposed “bright-line” shareholding requirements for a corporate WVR beneficiary interact with the ownership continuity requirement.

In paragraph 44(d) of the Consultation Paper, a corporate is eligible to be a corporate WVR beneficiary when it is “in substance” controlling the core components within the ecosystem and the listing applicant. The meaning of “in substance” with respect to controlling appears ambiguous and is open to interpretation. Accordingly, listing applicants may look for guidance as to the definition of “in substance control” and whether it has a similar meaning as “control” for the purpose of ownership continuity and control assessment under Rule 8.05, or “de facto control” under the Takeovers Codes.

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 have no objection to the proposal to lower the maximum ratio permitted from 10 times for individual WVR beneficiaries to five times for a corporate WVR beneficiary, considering that the minimum economic interest requirement for a corporate WVR beneficiary is at least 30%, which is higher than that for an individual WVR beneficiary of 10%. If a corporate WVR beneficiary held a minimum of 30% of economic interest, it could still achieve a controlling power of the listing applicant (i.e. a maximum of 68% of voting power) even if the ratio was set at five times.

(b) Do you agree that this ratio should be set at no more than five times the voting power of ordinary shares?

Yes

No

If not, what is the maximum ratio that you would propose? Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

Please refer to the response in Q7(a).

8. In summary, the Exchange recognises that the synergistic benefits of the ecosystem and the strategy and vision of the leader in developing the ecosystem may be difficult for a listing applicant to replicate on its own or with other business partners; and that this provides a basis for the listing applicant to determine that it is in its interest to issue WVR shares to the lead company within the ecosystem in order to reinforce its own role within the ecosystem. Accordingly, the Exchange has proposed that a corporate WVR beneficiary should be required to demonstrate its contribution through the inclusion of the listing applicant in its ecosystem in order to benefit from WVR. Do you agree with the Exchange's proposal in relation to the ecosystem requirement?

Yes

No

Please give reasons for your views.

We agree with the proposal in relation to the ecosystem requirement. Unlike individual WVR beneficiaries whose unique personal contributions can be demonstrated by their active executive roles in managing the business of the listing applicants during the track record period, the contribution from a corporate WVR beneficiary is predicated on the ecosystem it provides to the listing applicant to develop and operate its products and services. The contribution of a corporate WVR beneficiary should not be simply in the form of operational and financial support.

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 generally agree with the required characteristics of an ecosystem as stated above. The uniqueness of the ecosystem and the difficult-to-replicate nature of the contribution by the corporate WVR beneficiary would be core to the eligibility of a corporate WVR beneficiary.

As set out in the response to Q6, we would like to seek further guidance from the Exchange on the requirement of "in substance control" set up in paragraph 44(d) of the Consultation Paper.

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 further comment in this regard.

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 with the proposal that a corporate WVR beneficiary can be any company developing and maintaining the ecosystem that can satisfy the eligibility criteria, regardless of whether the corporate WVR beneficiary is a “traditional” company or an “innovative” company. A traditional company is not restricted by any means to develop an ecosystem in a similar fashion to those innovative companies providing a unique contribution to the listing applicant for its success and growth. A traditional company may also evolve and transform into an innovative company over time.

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.

We agree with the proposal that the contribution from a corporate WVR beneficiary should be on an ongoing basis to justify an entitlement to WVR shares post-listing. This is consistent with the requirement for individual WVR beneficiaries for whom the WVR will lapse when they cannot provide their unique personal contributions to the WVR issuer (e.g. no longer meeting the requirements of a director, death or incapacitation).

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 have no further comment in this regard.

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 with this proposal as it serves as a safeguard to monitor the eligibility of a corporate WVR beneficiary from time to time, and it should not be unduly burdensome to the WVR issuer's corporate governance committee.

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

Yes

No

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

We have no further comment in this regard.

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 with the proposal to set a high market capitalisation requirement (i.e. at least HK\$200 billion) for the corporate WVR beneficiary. There is always a balance to strike between market competitiveness and investor protection. To avoid opening the floodgate for companies adopting a WVR structure, a higher threshold would eliminate market concerns to a certain extent.

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 are open to this if there is clear guidance as to when the exceptions would be granted. Even so, it should be rare for companies to be eligible for the exceptions, otherwise it will defeat the purpose of having a minimum market capitalisation requirement.

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.

As explained in the response to Q11, we believe the eligibility of a corporate WVR beneficiary should not be bound only by the traditional/innovative categorisation, but, more importantly, by its contributions to the ecosystem as well as the success and growth of the listing applicant. If the corporate WVR beneficiary is not an innovative company, it should at least have sufficient experience in emerging and innovative sectors in order to demonstrate its ability to provide a unique contribution to the listing applicant on an ongoing basis rather than simply in the form of operational and financial support.

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 with the proposal as heightened regulatory oversight over corporate WVR beneficiaries could add a layer of protection to other investors. This also provides transparency about the business, financial performance and market capitalisation of the 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.

We agree with the proposal as this restriction could help to ensure existing issuers cannot in substance introduce a WVR structure by way of a spin-off of a significant part of its business/assets.

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 with the proposed requirement for a Corporate Representative. It serves as a safeguard to mitigate the risk that the corporate WVR beneficiary is acting like a passive investor and avoiding responsibility and accountability for the performance of the WVR issuer. The corporate WVR beneficiary should contribute to the WVR issuer on an ongoing basis in order for it to be entitled to WVR.

(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.

We have no further comment in this regard.

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 agree with the proposal to remove the WVR attached to the corporate WVR beneficiary's share in the above-mentioned conditions.

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 with the proposal to impose a time-defined sunset on the WVR of a corporate WVR beneficiary. Unlike individual WVR beneficiaries that are subject to an "event-based" sunset, such as no longer meeting the requirements of a director, death or incapacitation, a corporate can in theory have an unlimited lifespan and continue to contribute to the success of the issuer indefinitely. The "event-based" sunset cannot be migrated without modifications for corporate WVR beneficiaries. As a safeguard measure, it is important for independent shareholders to have a means to influence the decision over renewal of a corporate WVR beneficiary based on the evaluation of its performance and suitability.

23. If your answer to Q 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 consider the proposed initial "sunset period" of 10 years maximum length to be a reasonable time frame.

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.

As explained in response to Q22, we agree with the proposal as a safeguard for independent shareholders.

(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 consider the proposed renewal period of five years maximum length to be a reasonable time frame.

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.

Please see the response for Q22.

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 further comment in this regard.

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 generally agree with the proposal allowing a WVR issuer to grant WVR to both corporate and individual beneficiaries provided that each meets the respective requisite suitability requirement. Granting WVR to both corporate and individual beneficiaries does not contradict the overarching principle of allowing only shareholders who can provide unique contributions to the WVR issuer to hold WVR shares.

For issuers that simultaneously have individual and corporate WVR beneficiaries, and, assuming the respective requirements for the maximum ratios of weighted votes apply, these shares would entitle them to 10 times and five times their voting rights respectively. The Exchange could provide further clarifications in respect of the differential rights attached to these classes of shares. There can hardly be objective measures to compare the contributions by individual and corporate WVR beneficiaries to the issuer, and therefore concerns could arise as to why one class of shares would have more privileged rights than another.

It would be useful if the Exchange could conduct an empirical study on the requirements of other markets allowing both corporate and individual WVR beneficiaries, and benchmark against the proposal.

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 further comment in this regard.

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.

As explained in the response to Q22, different sunset clauses should be applied for individual and corporate WVR beneficiaries with regard to their unique characteristics.

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 with the proposal as the decision on renewal of a corporate WVR beneficiary for another term should be independent of the interest of the individual WVR beneficiary and based on evaluations of its suitability and contribution to the issuer by the independent shareholders. The voting power of an individual WVR beneficiary should not be magnified or jeopardised as a result of such a decision.

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 with the proposal as the "event-based" sunset is not subject to a shareholder vote. The concern about factors influencing independent shareholders' decision on renewal of a corporate WVR beneficiary in Q30 does not apply.

- End -