

13th May 2020

Corporate and Investor Communications Department
Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place
Central, Hong Kong

Submitted via email to: response@hkex.com.hk

RE: Corporate Weighted Voting Rights Consultation response

Dear Sir/Madam,

BlackRock¹ welcomes the opportunity to respond to the Consultation Paper on Corporate WVR Beneficiaries (Consultation Paper)², issued by the Hong Kong Exchanges and Clearing Limited (Exchange) on 31st January 2020.

BlackRock supports a regulatory regime that increases transparency, protects investors and facilitates responsible growth of capital markets while preserving consumer choice and assessing benefits versus implementation costs. We appreciate this opportunity to comment on the issues raised by this Consultation Paper and are grateful for the opportunity to contribute to the discussion to help shape a final outcome that balances and protects the interests of all relevant stakeholders.

Unless otherwise indicated, the terms used in this letter shall mean the same as in the Consultation Paper.

WVR and the OSOV principle

As an institutional investor managing US\$6.5 trillion as at 31st March 2020 for a wide array of clients including public pension funds and other long-term investors, BlackRock firmly believes in “one-share, one-vote” (OSOV) as the foundation for protecting the rights of all shareholders on an equitable basis. It is worth reiterating that the OSOV proportionality principle is based on two fundamental premises: 1) shareholders, as the residual claimants of economic value, have the strongest interest in maximizing firm value, and 2) voting power should match economic exposure or risk.

Allowing weighted voting rights (WVR) violates the fundamental corporate governance principle of proportionality. Granting WVR to corporates in addition to individuals as proposed in the Consultation exacerbates the concerns by introducing additional misalignment risks. In principle, we disagree with WVR regimes and the extension proposed for the Exchange to enable corporate entities to benefit from disproportionate voting rights. We view it as unnecessary; given a scheme as complex

¹ BlackRock is one of the world’s leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

²https://www.hkex.com.hk/News/News-Release/2020/200131news?sc_lang=en

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and challenging to regulate as proposed in the Consultation, the mitigation of disenfranchisement risks is unlikely to be fail-safe.

Assuming the Exchange is to proceed with expanding the WVR regime to allow corporate entities this privilege, we should like to summarise our views on several key topics: the eligibility criteria, safeguards, minimum economic interest and voting power, sunset terms as well as arrangements for issuers that may have both individual and corporate WVR beneficiaries. We wish to underscore that we make these suggestions only on the basis that should the Exchange permit corporate WVR the proposed approach needs to be strengthened to protect the interests of independent shareholders.

Corporate WVR eligibility requirement

By the Consultation proposal, large companies with a market capitalisation above HK\$200 billion could be allowed the privilege of a skew in voting rights significantly above their economic interest when these companies list an affiliate provided that the WVR issuer is no more than 30% of the promoter company's market value. The size criterion for corporates to be eligible to enjoy this privilege is to ensure that smaller companies which do not have a robust ecosystem to benefit proposed issuers are not eligible for such disproportionate voting rights. However, the size criterion raises the question of the need for such a privilege for large companies.

These large market capitalisation companies should have the economic wherewithal to own just over 50% economic interest of the issuer if they wish to maintain majority voting rights of affiliates they propose to list. To maintain majority voting rights without the corporate WVR arrangement for spinoffs that are up to 30% of the market capitalisation of the promoter corporate, it would need to commit capital equivalent to only 15% of its own market capitalisation or less. We acknowledge that smaller companies may not have a robust ecosystem to justify disproportionate voting rights. This does not justify making WVR available to companies with market capitalisation above HK\$200 billion that, given their correspondingly greater financial resources, in general would not need this disproportionate voting privilege. In our view, the Exchange should not be inclined to grant outsized voting rights to achieve majority voting power which large companies could easily obtain given their presumed financial resources by simply maintaining an equivalent economic interest.

The Consultation Paper is silent on how many affiliates a corporate WVR beneficiary may spinoff and enjoy these disproportionate rights over. If each listing is no greater than 30% of the market capitalisation of the promoting corporate, it could theoretically bring to market three or more listings with corporate WVR privileges: it may be eligible for more than three such spinoffs if each one is significantly below 30% of the market capitalisation of the parent company. It is somewhat inconsistent that smaller companies are not entitled such spinoffs, but larger corporates potentially allowed three or more of such listings. It concerns us that the integrity of the Hong Kong public market could be severely undermined if use of the arrangement is widespread and unaffiliated shareholders are expected to share the risk with the promoter but not have sufficient influence to ensure that companies are run in the interests of all shareholders. Accordingly, these arrangements should be considered truly exceptional. We believe, if this proposal does go ahead, the amended Listing Rules should explicitly restrict a corporate or any of its subsidiaries from having more than one spinoff with corporate WVR privileges at any given time.

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We note the Consultation Paper proposes that a corporate WVR beneficiary must have a minimum economic interest in the WVR issuer of at least 10% for two financial years prior to listing but upon listing the corporate WVR beneficiary should have at least 30% economic interest. This condition implies the interest of the corporate WVR shareholder may actually increase upon, or just before, the listing of the issuer. This is highly unusual. In practically all initial public offerings, controlling shareholders dilute their stake when they list an affiliate by offering shares to the public. It appears that this lower minimum economic interest for the two-year prior period is to allow listings of issuers where the corporate promoter initially might have had a stake as little as 10% but within two years of listing increases its stake to at least 30% by acquiring the interest of some of the other pre-IPO investors. We believe that for the corporate promoter to show sustained commitment and deep involvement in the issuer, it should have had the same minimum economic interest at listing (30%, if not higher) for at least three years, and not reach this level of ownership only at, or any period less than 36 months before, the listing.

In our response to Question 6 of the Consultation questionnaire we give reasons why we view three rather than two years to be more suitable to show a track record; it also aligns with the time frame that would be considered for “a series of transaction” in determining whether transactions involve a reverse takeover, as provided under the new Listing Rules of the Exchange on backdoor listings which came into effect in October 2019.

Safeguards for independent shareholders

At the outset, we would like to underscore and agree with paragraph 133 of the Consultation Paper that existing safeguards when granting WVR to individuals will also apply in the regime for corporate WVR. By Listing Rules 8A.24, key matters that need to be decided on a OSOV basis include: (a) changes to the issuer’s constitutional documents, (b) variation of rights attached to any class of shares, (c) the appointment or removal of an independent non-executive director, (d) the appointment or removal of auditors, and (e) the voluntary winding-up of the issuer. Given the similar risks arising from disenfranchisement, provisions (a) to (e) to protect independent shareholders where individual WVR are being granted should all similarly apply to protect these shareholders if corporates are being granted the WVR privilege instead.

In addition, we recommend further safeguards to help protect the interest of independent shareholders in any arrangement where voting rights are significantly diminished relative to their economic interest. The arguments in favour of these we believe are self-evident and provided in our detailed response to the questionnaire for this Consultation. The additional safeguards we recommend are as follows (reasons in support of these are given in our responses to Questions 5, 12 and 13 of the questionnaire):

1. Disclosure of all vote results on a OSOV basis for it to be transparent when independent shareholders have significant disagreement with particular proposals.
2. Any related-party transactions involving the controlling shareholder, that is the Corporate WVR beneficiary, should be voted on only by disinterested shareholders as stated in Listing Rules Chapter 14A.
3. Approval by independent shareholders on a OSOV basis for the continued entitlement to WVR where there is a significant change in control of the corporate WVR beneficiary.

4. All proposals related to share issuances, including to the corporate WVR beneficiary to maintain the required minimum economic interest, should be voted on a OSOV basis; if shares are to be issued to the corporate WVR beneficiary then, as a related party transaction, the corporate beneficiary should not be eligible to vote.
5. Any major or very substantial transaction, as defined by Listing Rules Chapter 14, should similarly be voted on a OSOV basis.
6. The corporate governance committee of the WVR issuer should meet at least once a quarter, among other agenda items, to ascertain the ongoing provision of benefits to the issuer by the corporate WVR beneficiary; the maximum period where a corporate WVR beneficiary's contribution to the WVR issuer may be terminated, materially disrupted or suspended to be no more than six months (rather than 12 months proposed in the Consultation) before the WVR privilege would lapse, given the urgency for such a matter to be addressed.
7. A lead independent director to be appointed whose responsibility will include interacting with investors; the Corporate Representative of the corporate WVR beneficiary also to be accessible to investors of the issuer at least twice a year.

Minimum economic interest and voting power

The Consultation proposes that corporate WVR beneficiaries must have at least 30% economic interest in the WVR issuer while the voting power per WVR share would be a maximum five times that of an ordinary share. We consider the 30% minimum economic interest threshold too low as it would allow another shareholder potentially to build an economic interest very close to 30% as well. Should such a situation arise, it would likely change the dynamic between the two largest shareholders and the WVR issuer in a way that could jeopardize the privileged relationship of the WVR issuer and the corporate WVR beneficiary. Given that the trigger level for a mandatory general offer is 30%, we suggest a minimum economic interest of 40% for the corporate WVR beneficiary to prevent any other shareholder to reach an economic interest anywhere close to the corporate WVR beneficiary without availing independent shareholders to a general offer from any such potential rival significant shareholder.

At the minimum 30% economic interest proposed with up to five times voting power of the ordinary shares, the proposal allows a corporate WVR beneficiary with 30% economic interest to have aggregate voting power of 68.2%. This is significantly higher than the maximum voting power of 52.6% for an individual WVR beneficiary with the minimum economic interest as granted under Listing Rule 8A.10. Meanwhile, non-WVR shareholders who may in aggregate have an economic interest of 70% would have less than half of the corresponding voting power, at just 31.8%. We do not consider this a reasonable balance or desirable outcome.

The minimum economic interest required of the corporate WVR beneficiary should be considered in tandem with the maximum voting power granted. The effective voting power granted to corporate WVR beneficiaries with the minimum economic interest should not be significantly different from 50%, as is the case for the present individual WVR regime. To keep the economic interest and voting power more reasonably aligned within a WVR structure, we recommend a minimum economic interest of 40% and 1.5 times voting right which would allow the corporate WVR beneficiary to have 50% voting power rather than to allow a large corporate that is a minority shareholder in economic terms to be granted outright majority voting rights.

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Sunset clause

Given how rapidly market segments and the economy in general evolve, especially in “innovative” sectors, ten years as proposed in the Consultation Paper appears too long a period for an issuer to maintain its WVR arrangement and exceptional voting provisions without review. We consider five years a more appropriate period, after which the WVR issuer should have reached a scale and maturity in its business model thus able to support its own development and direct its own course going forward without relying nearly as much on the ecosystem enabled by the corporate WVR beneficiary.

It is conceivable that, following a period of close relationship with the corporate WVR beneficiary and the related ecosystem, the risk of disentangling the relationships could be detrimental for the WVR issuer. As long as the continuation of the WVR for the corporate WVR beneficiary is reviewed and voted on solely by independent shareholders at each point of renewal, we believe it is in the interest of all shareholders to have the option to extend the corporate WVR arrangement, potentially multiple times. However, just as the proposal in the Consultation is for the extension period to be half as long as the initial corporate WVR period granted, we believe the extensions should be for a similarly shorter period of no more than two years. After the initial five-year period, the WVR issuer should be approaching a level of scale and robustness such that the benefits derived from the corporate WVR beneficiary and its ecosystem should diminish, reducing the validity and required time period for the corporate WVR beneficiary to continue to enjoy disproportionate voting rights.

Allowing both individual and corporate WVR beneficiaries at an issuer

The Consultation envisages issuers may have both corporate as well as individual WVR. The residual voting power of non-WVR shareholders would be severely diminished were WVR granted to both a corporate as well as individuals. However, independent shareholders will likely have only minority voting rights under the proposal even if it were for just corporate WVR beneficiaries. The introduction of certain individuals, likely to be original founders, who may also be granted individual WVR for the same issuer raises the possibility that independent shareholders could have the swing vote when there is a divergence of views between the two parties with WVR privilege for a given issuer. The minority interest, even with a smaller percentage of voting power, could then be a significant vote. We would thus, on balance, agree to an issuer having WVR for both a corporate and individual(s) as long as (1) neither the corporate WVR nor the individual(s) have majority voting power, and (2) the corporate and individual(s) who are to be granted WVR explicitly state that they are independent and have no other common interests other than being shareholders of the issuer.

The logic that neither party should have a majority in terms of voting power implies that the sunset terms should be the same for both the individuals and the corporates who may be granted WVR privilege for a given issuer. Thus, we disagree with the proposal that would imply an asymmetry requiring individual WVR terms to be amended to maintain the aggregate percentage voting power when the corporate WVR falls away, but not conversely requiring amendment of the corporate WVR terms to keep unchanged its aggregate voting power if the individual WVR lapses.

We would also note that the terms for the event-based sunset of individual WVR should not necessarily be the same when individual WVRs are concurrent with corporate WVR for a given issuer. Rather, to maintain equal treatment of WVR

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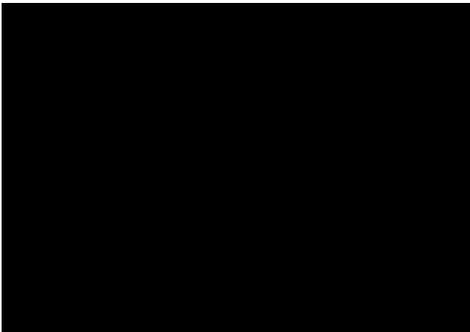
beneficiaries and to ensure that independent shareholders can always have a swing vote when such arrangements are in place, the sunset clause for all shareholders with WVR privilege should be the same. If an issuer has a corporate WVR beneficiary with a time-based sunset clause, that would mean any individual(s) who have WVR for the same issuer should have a time-based sunset clause similar to the corporate. The event-based sunset clause under the current Listing Rules for a company that only has individual WVR should thus not apply where individual WVR are combined with corporate WVR for a given issuer.

Summary

In summary, the proposal for corporate WVR is a complex one, especially when potentially combined with individual WVR for a given issuer. While we agree that less established and smaller market capitalization companies should not be eligible for such rights, the larger companies would not in general need them and thus should not be granted this privilege either. The advantages for the Exchange are questionable, while the disenfranchisement risks for independent shareholders are clear. The proposal violates the OSOV principle, the bedrock for equitable voting power for all shareholders. We are thus fundamentally against such an arrangement to be allowed by the Exchange's Listing Rules.

We welcome further discussion on any of the points raised. Thank you once again for the opportunity to provide our views.

Yours sincerely,



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.

While we acknowledge the proposed expansion of the WVR regime can diversify investment opportunities for Hong Kong investors, we are of the view that the risks associated with this change outweigh the potential benefits. Permitting WVR exposes other shareholders to significant disenfranchisement and lack of control over key company matters as well as the associated risks of management entrenchment. At worst, expropriation of value by the controlling shareholders when voting power is disproportionately concentrated and out of balance with their economic interest poses a high risk for independent shareholders. Such risks and uncertainties are heightened when WVR are granted not only to individuals but to corporate entities as well.

This is underscored in Chapter 3 of the Consultation Paper, highlighting that the controlling shareholders of corporate WVR beneficiaries could be in a position to exercise majority voting power in WVR issuers with only a small and indirect stake. Corporate WVR could become tradeable as control of the corporate entity changes.

WVR enjoyed by a corporate comes without fiduciary duties to the issuer by the controlling corporate; in various circumstances questions would arise whether the fiduciary responsibilities would be effectively undertaken by the representative of the corporate WVR beneficiary placed on the issuer's board, as we highlight in our response to Questions 20 and 21. Although certain safeguards can and should be provided together with sunset provisions for these rights, it is near impossible to cover all the scenarios where non-WVR shareholders could be disadvantaged by such arrangements. Thus, we are of the view that the risks of arrangements which allow for a suspension of the one-share one-vote (OSOV) principle outweigh the potential benefit for the market.

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.

As we are against WVR being granted to a corporate, we would similarly be against it being granted to a subsidiary of the corporate. However, if this question is read to determine whether such rights should be made available to a subsidiary not wholly-owned by a deemed Eligible Entity, then we agree that it should not. Any scheme to allow corporate WVR could be extended to a subsidiary that is 100%-owned, but not to any subsidiary that is not wholly-owned.

Were the Exchange to proceed with expanding the WVR regime to enable corporate entities to benefit from WVR, we believe the party that has ultimate effective control over the group is key to whether these rights are maintained. If a change in control at the Eligible Entity or a wholly-owned subsidiary would be a condition that results in the WVR falling away, we would agree that the Eligible Entity or a wholly-owned subsidiary could be a corporate WVR beneficiary. Control of the wholly-owned subsidiary is essentially the same as control at the Eligible Entity. Subsidiaries of the Eligible Entity that are not wholly-owned should not be allowed to be a corporate WVR beneficiary because it would introduce other parties with possible disproportionate control over an issuer with proposed WVR.

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 the corporate WVR beneficiary should own a significant economic interest in the listing applicant to reduce misalignment of interest with other shareholders. Our disagreement, however, with the overall corporate WVR proposal includes the specific percentage of economic interest that shall be required as the minimum to be maintained. We believe the minimum economic interest and the ratio of weighted votes permitted for shares need to be considered in tandem to evaluate the implications of the expanded WVR regime. Our view is that the economic ownership should be set at a higher level of 40%, as we explain in response to Questions 4(a) and 7 below, primarily to ensure that the economic interest does not deviate substantially with the majority voting power envisaged for the corporate WVR beneficiary. We recommend that the resulting aggregate voting power of the corporate WVR beneficiary and independent shareholders be designed to be close to, if not at, a balance of 50:50.

(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 WVR should lapse if the economic interest of the corporate beneficiary falls below the determined threshold set at the outset. The commitment of the corporate WVR beneficiary is best represented by keeping its economic interest at the minimum level required. If it falls below this level, it exacerbates the uncertainty arising from economic interest being misaligned with disproportionate voting power, especially if the voting power of the corporate WVR beneficiary may still be over 50% whilst its economic interest may fall below even 30% (or whatever initial requirement of economic interest that is set), given a high multiple on the voting rights of these shares.

Our disagreement however lies in the specific percentage of economic interest that should be the required minimum. As we state in our response to Question 3(a), we believe a minimum economic interest set at 30% is too low given the need for better alignment regarding the voting power in relation to the other independent shareholders. Taking into account the possibility of the emergence of an influential shareholder with a similar stake that could affect the relationship and thus the ecosystem that is provided by the corporate WVR beneficiary, as we argue in our response to Question 4(a) below, we recommend a minimum economic interest to be set at 40% which should be maintained on an ongoing basis.

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.

Given the extraordinary nature of granting WVR to corporates, we believe the minimum economic interest needs to be higher than 30% in order to more closely align corporate WVR beneficiary's interest with those of other shareholders. With the public float requirement at 25% – and as low as 15% in certain circumstances – it is conceivable for another shareholder to build an economic interest at or close to 30%. In such a situation, the dynamic between the two largest shareholders and the WVR issuer could change in a way that the corporate WVR beneficiary may not be as vested in the business and prospects of the WVR issuer, thus potentially jeopardizing the advantageous resources that the corporate WVR beneficiary should be providing the WVR issuer.

As such, we believe the minimum economic interest should be higher than 30% and closer to majority control. We suggest a minimum economic interest of 40%, as another shareholder would then not be able to build a stake that is close to the corporate WVR beneficiary. Certainly any other shareholder building up a stake to rival the corporate WVR beneficiary would not be able to do so without triggering a General Offer at the 30% ownership threshold, providing independent shareholders the opportunity to exit in such a scenario.

We elaborate our view on the voting power multiple in our response to Question 7.

(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 consider 30% already as too low an economic interest threshold, opening up risks of misalignment of interests of the corporate WVR beneficiary with other investors. At the outset we would like to state our disagreement with considering an even lower economic interest appropriate.

If an even lower economic interest threshold is, however, allowed, there would certainly need to be greater safeguards to protect non-WVR shareholders as the risks of misalignment of interests with the corporate WVR beneficiary become greater. For instance, it might require more items to be voted on a OSOV basis, a shorter time frame for the period that the disproportionate voting rights is allowed to remain before being reviewed and voted by non-WVR shareholders, as well as more frequent review of the WVR arrangement before any subsequent renewal.

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.

Any issuance of shares to the corporate WVR beneficiary should be subject to independent shareholder approval, even if the new shares do not carry WVR and are issued solely for the purpose of allowing the corporate WVR beneficiary to comply with the minimum economic interest requirement. This is a principle that applies to all changes in capital structure: these should always be voted on by all shareholders with an economic interest, and the interested party that would be subscribing for and would thereafter benefit from the rights derived from these shares, in this case the corporate WVR beneficiary, should abstain from the vote.

Should the corporate WVR beneficiary fail to receive majority support from independent shareholders to issue additional shares, and its economic interest thus falls below the minimum threshold, the WVR should lapse. This should be clear at the outset. Thus, any proposal involving the issuance of shares to a third-party e.g. for mergers and acquisitions, should be submitted together in one package with the terms for the corporate WVR beneficiary subscribing for new shares, or acquiring existing shares, to maintain its economic ownership at the required threshold if the corporate WVR beneficiary seeks to maintain these higher voting rights. This whole package of proposals should then be voted on by all the relevant non-interested shareholders. That is, this should be a matter for independent shareholders to vote on.

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.

The proposed minimum economic interest of 10% for two years prior listing is a very low level for a corporate WVR to demonstrate its commitment to the business and a deep relationship with the listing applicant. Under common accounting standards, an investment below 20% is treated as a financial investment; it is not until the investment amount exceeds 20% that the investor would generally be able to equity account the affiliate.

We believe a sustained, substantial economic interest in the listing applicant by the corporate WVR beneficiary at the official “de facto control” level of 30% should be required for the corporate WVR beneficiary to demonstrate its commitment to, and deep relationship with, the listing applicant. Should the minimum economic interest required at listing and on an ongoing basis be set a higher level, for example 40%, the minimum economic interest required for the set period prior to listing should be at the same level.

The time frame of two years prior listing is somewhat arbitrary. Three years is generally considered a minimum period for having some semblance of a track record, not just of a business model but also of the commitment of the controlling shareholders. A prior minimum three-year investment also aligns with the time frame that would be considered for “a series of transactions” in determining whether transactions involve a reverse takeover, as provided under the new Listing Rules on backdoor listings which came into effect on 1st October 2019. We consider three years an appropriate period to determine if the corporate has been committed to the business that it brings to the market while seeking to enjoy the corporate WVR benefit.

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.

Our response to this question is based on comparing the corporate WVR proposal with the 10 times voting power that has been allowed in 2018 for individual WVR beneficiaries. As mentioned in our response to Question 3(a), our view is that the minimum economic interest needs to be considered in tandem with the ratio of weighted votes permitted in order to evaluate the implications of this regime for non-WVR shareholders.

Our position is that no single shareholder, or aligned shareholders, should have greater than majority voting power if their economic interest is less than 50%; this is a corollary of the principle that voting rights should be aligned with economic interest. On this basis, the aggregate voting power of the corporate WVR beneficiary which holds less than a majority economic stake should not be greater than the aggregate voting power of non-controlling shareholders who hold the majority of the economic interest. We would thus argue that the ratio of weighted votes should be adjusted for corporate WVR beneficiaries to ensure that the resulting voting power for the corporate WVR beneficiary is 50% or close to that level. If the voting power of the non-WVR shareholders is at 50%, then the non-WVR shareholders could theoretically block a proposal that egregiously harms their interests. Even if in practice this will not likely happen, we believe independent shareholders having 50% aggregate voting power is a reasonable check to have in place to guard against totally egregious proposals by the corporate WVR beneficiary which has a significantly lower economic interest in the issuer.

We note that for individual WVR rules that are in place, the multiple of ten times permitted with the minimum ownership of 10% results in the individual WVR beneficiary with the minimum economic interest having 52.6% voting power. Similarly, we would argue that for a corporate WVR beneficiary that takes the minimum economic interest permitted for WVR eligibility, the resulting voting power should not deviate significantly from 50%. The current proposal is that the corporate WVR beneficiary should have 30% minimum economic interest and be granted up to five times voting power on their shares. This would result in the aggregate voting power of the corporate WVR beneficiary reaching 68.2%, significantly above 50% and much higher than the voting power granted under the individual WVR scheme for beneficiaries with the lowest economic stake. Meanwhile, non-WVR shareholders with 70% economic interest would translate to having less than half the corresponding voting power, at just 31.8% voting control under this corporate WVR proposal. We do not consider this a reasonable balance or a desirable outcome. Independent shareholders, despite having the dominant economic interest, will have no chance to block any egregious proposal even if all the non-WVR shareholders vote against it.

Our suggestion is that corporate WVR beneficiaries be required to have a minimum economic interest of 40% and a maximum ratio of weighted votes permitted for such shares at 1.5 times. Under this arrangement, the resulting voting power for the corporate WVR beneficiary would be 50%, the same as for other independent shareholders combined. This provides a more reasonable balance of equal aggregate voting power while allowing a somewhat lower economic interest for the corporate WVR beneficiary.

If, however, the HKEX proceeds with a minimum 30% economic interest for the controlling shareholder, we would recommend that the voting multiple be set at a maximum of 2.3 times, so that the aggregate voting power of the corporate WVR beneficiary stays no higher than 50%.

(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.

As we argue in our response for Question 7(a) above, we believe the minimum economic interest and the maximum ratio of weighted votes permitted for shares should be considered in tandem in order to evaluate the implication of the expanded WVR regime on non-WVR shareholders. The maximum ratio of weighted votes permitted for the shares should be lowered to a level such that theoretically the resulting voting power for non-WVR shareholders be close to, if not the same as, that for the corporate WVR beneficiary. That is, the resulting voting power for the corporate WVR beneficiary with the minimum economic interest should not be significantly different from 50% as is the case for individual WVR beneficiaries by the rules introduced in 2018.

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.

While we are not in favour of WVR arrangements generally, however, if such a scheme was to be introduced we would generally support restrictions on which companies might be eligible to be listed with these disproportionate voting rights. We thus support criteria such as being in an appropriate eco-system and the issuer demonstrably benefiting from the ecosystem as necessary conditions for allowing a corporate WVR arrangement.

We believe the extent of benefit being considered material and meaningful to justify allowing a corporate WVR structure should be set at the highest bar possible, with strict criteria set out for what will count as material benefits enjoyed by the WVR issuer from being in the eco-system. For instance, the regulations may specify that over 30% of its revenues are attributable to customers who are brought to the issuer from clear links with other companies in the eco-system; or that there are savings in overall operating costs and/or capital expenditure and/or support services and marketing spend savings in the same order (in excess of 20%), as a result of the benefits of being in the ecosystem. The benefits of being in the ecosystem should be tangible and the criteria for them being considered meaningful should be transparent.

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.

The proposed required characteristics of the ecosystem in the proposal are a necessary part of setting out criteria to support the ecosystem argument for granting corporate WVR. However, we believe the criteria should be amended in certain aspects and strengthened in others.

Requirement (b) states that “the components within the ecosystem (including the listing applicant) [should] both benefit from, and contribute to, the ecosystem by sharing certain data, users and/or technology...” This requirement would imply rejecting a corporate WVR proposal where a listing applicant may be at an early stage of its business development such that it may not yet contributing to the ecosystem, although benefitting from it. This appears to contradict the intention for expanding the WVR regime to enable prospective issuers that are innovative companies to be listed in Hong Kong. We suggest that the requirement that the issuer be contributing to the ecosystem be dropped.

Requirement (c) states that the ecosystem must have reached “meaningful scale”. There are indicators mentioned that may help illustrate metrics relevant to assessing the scale of an ecosystem, for instance frequency and extent of cross-interaction between users or customers of different components within the ecosystem. However, there are no thresholds on these measures for what would count as reaching a required scale. We would suggest, for instance, that the main platform for the ecosystem should have been operational for at least 3 years, that the users of the main platform should number at least 10 million and that the revenues for companies that can be shown as directly part of the ecosystem to amount to at least HK\$1 billion. Without certain objective metrics, the “meaningful scale” criterion would appear to be extremely subjective to the extent of not being meaningful in itself.

Requirement (e) that the growth of the listing applicant be materially attributable to its participation in and co-evolvement with the ecosystem should, we believe, state explicitly that this be demonstrated objectively in terms of customer and/or eyeball referrals as well as other relevant objective criteria. Our view is that this requirement should be explicit that a statement of benefiting from such co-evolvement without demonstrable evidence will not be sufficient.

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 are in principle against WVR arrangements and would generally not be in favour of caveats to allow other types of companies to be granted such rights. Any other criteria that might be contemplated for WVR arrangements should have a very high bar to demonstrate the benefit that might accrue for the market and investors to warrant violation of the OSOV principle, and similarly it should have a high bar for the benefits that an issuer must be shown to enjoy from such an arrangement.

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.

While in general we would expect the criteria to allow corporate WVR arrangements to be as restrictive as possible, it appears arbitrary to determine from the outset that "traditional" companies cannot conceivably provide ecosystem-like benefits, nor be able to create a technology platform where affiliates benefit from an ecosystem.

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 corporate WVR beneficiary should provide an ongoing contribution that benefits the issuer, or there would be no basis whatsoever for the corporate to continue to enjoy the WVR. However, our view is that 12 months is too long a period to allow the contribution to be terminated, disrupted or suspended before the WVR would lapse.

As the benefit from the ecosystem and corporate WVR beneficiary is key to justify the arrangement, we believe the corporate governance committee of the issuer should meet at least once a quarter to determine that these benefits continue to accrue for the issuer. If the committee discovers this is no longer the case, then it should be a matter of urgency to remedy the situation. That urgency should lead to a remedy within six months, counting from the first day of the occurrence of the substantial termination or material disruption; if it were to take longer, we believe it should come to a vote for non-WVR shareholders whether to continue with the WVR arrangement. The corporate WVR benefits should lapse after six months if the benefits from the corporate or its ecosystem no longer accrue to the issuer.

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 propose an additional condition that if there is any significant change in control at the corporate WVR beneficiary, a general shareholder meeting should be convened for independent shareholders of the WVR entity to determine on a OSOV basis whether the corporate WVR beneficiary should continue to be entitled to WVR. Similarly, if the corporate WVR has been vested in a wholly-owned subsidiary, any change in ownership of that subsidiary should also require a vote of independent shareholders for the corporate WVR to be maintained following the change in control. A failure to secure majority independent shareholder approval should cause the WVR to lapse. This is to ensure that independent shareholders of the WVR issuer have comfort that the ultimate controlling shareholders of the entity are parties they have confidence in given the influence they will have to guide the development of the issuer.

We also recommend that the outcome for all votes at any shareholder meeting be presented not only showing the result with the exercise of the additional voting power but also to show the result on a OSOV basis. This should be an ongoing requirement to ensure transparency on the level of dissatisfaction that may arise with any proposal that could have significant opposition by independent shareholders.

By the Listing Rules 8A.24 relating to individual WVR, five key matters need to be decided on a OSOV basis. We would reiterate that all five should apply for corporate WVR arrangements as well: (a) changes to the issuer's constitutional documents, (b) variation of rights attached to any class of shares, (c) the appointment or removal of an independent non-executive director, (d) the appointment or removal of auditors, and (e) the voluntary winding-up of the issuer.

Additional items that we recommend should be decided on a OSOV basis include all proposals related to share issuances, as well as all matters relating to a major or very substantial transaction, as defined by Listing Rules Chapter 14. Any related-party transactions involving the controlling shareholder as stated in Listing Rules Chapter 14A, should be voted on only by disinterested shareholders; where the related party is the corporate WVR beneficiary, then the vote on related party transactions should be only with independent shareholders voting.

Furthermore, in order to enhance corporate governance and transparency at the boards of companies with WVR structures, we recommend the appointment of a lead independent director. Such a role should include the responsibility of being a point of contact for shareholders without WVR to raise concerns to a representative on the board in circumstances where communication with the chairperson or executive directors is not available or appropriate.

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 believe the corporate governance committee should meet and confirm on a quarterly basis that there has been no termination, suspension or disruption to the corporate WVR beneficiary's contribution to the WVR issuer. Furthermore, it is imperative that the corporate governance committee consists only of independent directors and at least one of the independent directors should have the appropriate expertise to be able to assess and verify the contribution from the corporate WVR beneficiary to the WVR issuer. By appropriate expertise, we consider the ability to verify and explain to all shareholders the benefits that the WVR issuer derives from the ecosystem enabled by the corporate WVR beneficiary, and the ability to reference data and information that evidences the continued benefit for the WVR issuer from the contribution by the corporate WVR beneficiary and the relevant ecosystem.

We agree that the requirement for regular – we would recommend quarterly – confirmation by the issuer's corporate governance committee of the corporate WVR beneficiary's contribution to the WVR issuer be set out in the committee's terms of reference.

(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.

N/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 understand the need to ring-fence corporate WVR beneficiary and agree that having a market capitalization requirement of a significant size is one way to prevent corporates from spinning off businesses within an ecosystem that may not yet be robust and may not be dependable to benefit the issuer over the years following its listing. Companies below HK\$200 billion, or US\$25 billion, market capitalisation may not have achieved a business scale and robust platform to provide an ecosystem that warrants the corporate being a WVR beneficiary.

The threshold of HK\$200 billion is however somewhat arbitrary. We note that setting such a threshold might incentivize companies to prioritize growing their market capitalization in the short-term to be eligible to spinoff an affiliate while maintaining corporate WVR on that affiliate. This may be negative for long-term growth of the corporate WVR beneficiary (for instance, possibly, cutting capital expenditure or R&D spend to boost short-term earnings and its share price).

We would also recommend that the HK\$200 billion threshold for the corporate WVR beneficiary should be reviewed periodically, e.g. every five years, based on criteria relevant to asset inflation, to determine if the market capitalisation threshold should be adjusted up in future periods.

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.

The consideration that might be envisaged is when there has been a sudden and sharp market correction, a company that has had a market capitalization of over HK\$200 billion over an extended period, may see the capitalization fall below this level over a short period prior to the listing application and thus argue for dispensation. Our view is that during periods of market turbulence, the Exchange should be especially circumspect in allowing companies to spin off assets. This is especially so where, with a lower level of economic interest the corporate seeks to have majority voting control, resulting in greater risk for non-WVR shareholders when market sentiment is poor.

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 believe the criteria should be included to help ensure that the corporate WVR beneficiary is able to provide a viable ecosystem that benefits the WVR issuer. Having business experience or a track record of investments in innovative sectors and innovative companies would support the case for the corporate WVR beneficiary's contribution to the WVR issuer, and thus eligible for a WVR arrangement.

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.

While not a perfect safeguard, the requirement to be listed on the Exchange or a Qualifying Exchange would mean the corporate WVR beneficiary is subject to regulatory oversight under a reputable legal and regulatory regime.

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 that this requirement can help prevent existing issuers from introducing a WVR structure over a material part of its business or assets. The 30% limit appears arbitrary, but we take it as a reasonable cap. We would also note that this limit might allow a given corporate to have similar WVR arrangements for possibly three different affiliates that it might spin off, or more if each of the spinoffs is significantly less than 30% of the market capitalization of the sponsoring corporate. We believe that such arrangements should be considered exceptional and that no corporate which has the WVR benefit for a listed affiliate should be granted similar rights for another. That is, a corporate should have a WVR benefit for at most one listed affiliate at any given time.

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.

Having a Corporate Representative of the corporate WVR beneficiary at the board of the WVR issuer is crucial as the corporate WVR beneficiary itself does not have any fiduciary duties to the issuer. Its Corporate Representative, as an individual on the board, will have these fiduciary responsibilities, acting as a representative of the corporate WVR beneficiary and accountable for the performance of the WVR issuer itself.

- (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 recommend that the corporate WVR beneficiary give an explicit undertaking that the Corporate Representative on the board of the WVR issuer will act in the best interest of the WVR issuer in his/her function as a director of the issuer. We also recommend that the Corporate Representative be available at least every six months when the issuer has a results presentation, to be accessible to investors, especially for any queries on the ongoing benefits for the issuer of the WVR arrangement.

We also agree to the recommendations in Question 21 that would help to ensure accountability of the corporate WVR beneficiary to shareholders of the WVR issuer.

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 that the absence of a Corporate Representative on the WVR issuer's board of directors should cause the WVR of the corporate WVR beneficiary to lapse. The 30-day period should be viewed as a grace period if the Corporate Representative needs to be changed for whatever reason, allowing the corporate WVR beneficiary a reasonable but not excessive time to urgently identify a new Corporate Representative and carry out the key functions of being a link on the board of the issuer with the Corporate WVR beneficiary.

The WVR should also lapse if the Corporate Representative is disqualified or found unsuitable as a result of an action or decision taken in his or her capacity as director of the listed issuer where he/she is acting on the authority granted by the corporate WVR beneficiary. This is a matter of accountability on behalf of the corporate WVR beneficiary to investors of the WVR issuer.

Fraudulent or dishonest behavior by the corporate WVR beneficiary would raise serious concerns about the integrity of pledges to protect the interests of the WVR issuer, where the corporate beneficiary has disproportionate voting rights. It is thus appropriate that in such circumstances, the WVR entitlement should lapse.

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.

As businesses evolve, the interaction of the corporate WVR beneficiary and its ecosystem with the WVR issuer, as well as the benefits derived by the latter, will change as well. The argument of support provided by the corporate WVR beneficiary and its ecosystem to the issuer will likely diminish as the WVR issuer matures in its business. As the argument of essential contribution from the ecosystem for the corporate WVR beneficiary diminishes with the business growth of the latter, the basis for the corporate WVR arrangement will also diminish over time. A time-defined sunset on the WVR of a corporate beneficiary should thus be included in the regulations for such an arrangement.

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.

In the current fast evolving business age, companies, industries and business relationships develop rapidly, especially for those in “innovative” sectors targeted for WVR capital structures. Against the backdrop of how much market segments and the economy in general would change over ten years, an exceptional capital structure may be based on arguments that could have had some validity earlier; to maintain this arrangement for as long as ten years without review, appears too long a period. We consider five years a more appropriate length of time for such exceptional voting provisions generally to terminate.

Within five years after listing, the WVR issuer should have reached a scale and developed a business model that is able to support its own development and direct its own course going forward without relying nearly as much on the ecosystem enabled by the corporate WVR beneficiary. As the benefits derived from the corporate WVR beneficiary and its ecosystem diminish, the validity of any argument to support the disproportionate voting rights of the corporate WVR beneficiary is similarly undermined. The WVR issuer should after five years of listing be at a stage mature enough for independent shareholders to review the benefits of the ecosystem at that point and the need to maintain the WVR arrangement.

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.

It is conceivable that following a period of close relationship with the corporate WVR beneficiary and its ecosystem, after five years the nexus remains closely intertwined and the risk of disentangling the relationships if the WVR is terminated may be to the detriment of the issuer. We thus agree for a provision to renew the corporate WVR arrangement at the end of the sunset period if it is in the interest of all shareholders. It should thus be voted on and receive majority support of all independent shareholders for this arrangement to continue beyond the initial five-year period.

- (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.

Just as the proposal in the Consultation paper is for the extension period to be half as long as the initial period of the Corporate WVR arrangement, similarly we would argue that extensions beyond the initial period should be for a shorter period of renewal. This is on the basis that the issuer should be approaching a level of scale and robust business model, thus the renewal of the Corporate WVR arrangement should not need to be as long as was granted at the point of listing. If the initial period for the corporate WVR upon listing is for five years as we recommend, any extension should be for a period no more than half as long. That is, we believe it should be renewed for a period of no more than two years.

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

Yes

No

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

We agree that for an existing WVR issuer, the continual WVR for a corporate WVR beneficiary could be, in certain circumstances, beneficial for the company and all shareholders. As long as this is reviewed and voted on solely by independent shareholders at the point of each renewal, we consider the non-WVR shareholders should have the provision to extend the corporate WVR arrangement more than once, especially if it is reviewed and voted on at reasonably short intervals of two years.

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 consider that the provisions and requirements for extending the corporate WVR arrangement should be similar to those required in the first place if a corporate WVR is allowed during listing. However, if over time, other conditions that become apparent that should be added to protect independent, non-WVR shareholders, we would quite certainly agree to further protective safeguards. Thus, we would agree to provisions that allow other requirements to be introduced at any of the subsequent renewals of the corporate WVR arrangement.

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 note that if WVR are granted to both a corporate as well as to individuals, the residual voting power of the non-WVR shareholders would be severely diminished. However, the WVR are designed such that non-WVR shareholders will generally have less than 50% voting power in any case, even if it was just for a corporate WVR beneficiary. If the voting power of independent shareholders is reduced from below 50% to a level significantly below this, it will not in general place them in a worse position with regard to effective voting power than what their effective voting power would be if there was only one party with the WVR.

However, we envisage that having two parties with WVR for a given issuer may possibly increase the value of the votes of the independent shareholders. In cases of divergent views between the individual WVR beneficiary and the corporate WVR beneficiary and where neither has majority voting power, there could be circumstances where the non-controlling shareholders emerge with the swing vote on contentious issues. Both the corporate WVR beneficiary and individual WVR beneficiary/beneficiaries would then be incentivized to ensure that proposals benefit all shareholders of the WVR issuer. We would thus agree to WVR being granted to both corporates and individuals in a company as long as neither party - the corporate or the individuals with WVR - has over 50% voting power.

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.

If the Exchange were to proceed with allowing both corporate and individual WVR beneficiaries of an issuer, the voting power of the WVR beneficiaries should be adjusted such that neither of the WVR parties, the corporate shareholder or the individuals with WVR, should individually have majority voting power, as we argue in our response to Question 27 above.

In addition, the corporate and individual(s) who are to be granted WVR should explicitly state that they are independent and have no other common interests other than being shareholders of the issuer.

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.

The earlier adjustment to the Listing Rules allowing for Individual WVR should not in toto apply for a situation where a company might have both individual WVR as well as corporate WVR. This is especially so if applying the earlier set of rules might lead to greater uncertainty or might prove to be even less favourable for independent shareholders. In particular, we believe the sunset clause for individual WVR will need to be amended where there may be both individual as well as corporate WVR beneficiaries.

Our view is that having both parties with WVR is acceptable only when the independent shareholders would become the swing vote in situations where there is a disagreement between the corporate and the individual WVR beneficiaries. This entails that neither the corporate nor the individuals which have the WVR privilege should have a majority in terms of voting power. However, that would no longer hold true if the corporate has a time-based WVR while the individual continues to have an event-based WVR provision. For the overall voting blocks of the various parties to remain the same for an issuer with both types of WVR, the sunset terms should be the same for both the individuals and the corporate who are provided with WVR upon listing

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.

Our position is that if there is to be both Corporate WVR and Individual WVR beneficiaries for a specific issuer, neither party should have a majority in terms of voting power. To ensure that neither party has a majority of voting power, when one party's greater voting multiple falls away, there would then need to be an adjustment for the other party to ensure that the other party does not end up having effectively a higher voting power than what was granted at listing. There should not be uncertainty for independent shareholders about greater future voting power for any of the WVR beneficiaries. That means neither party that was granted WVR at listing should potentially see their voting power rise subsequently. If the corporate WVR beneficiary falls away as a result of its time-defined sunset, a similar sunset should also apply to the individual requiring him/her to ensure that his/her effective voting power does not increase as a result.

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.

As we argue in our response to Question 30, there is no reason why the voting power of a WVR beneficiary should be increased owing to a change in the WVR of the other party. Thus, the voting power of the corporate WVR beneficiary granted at the listing of the issuer should not increase simply because the voting multiple of the individual WVR lapses. This would lead to significant uncertainty for independent investors, as well as the parties representing the previous individual WVR beneficiary, if the voting power of the corporate WVR beneficiary rises from below 50% to a majority voting position. Allowing the number of shares with WVR and voting multiple of the corporate WVR beneficiary to remain the same results in the voting power rising when the WVR provision for the individual party lapses. This would lead to uncertainty over control of the company in such circumstances, which investors may have little to go by to weigh these scenarios at the outset. We believe the Listing Rules should prevent this and require a part of the corporate WVR shares to revert into ordinary shares so that the effective voting power for the corporate WVR beneficiary remains unchanged when the individual WVR arrangement lapses.

That the Consultation proposal suggests individual WVR benefits would be adjusted down if the rights of the corporate WVR lapses but not vice versa for the corporate WVR beneficiary if the individual WVR lapses is an asymmetry that we find hard to understand or justify. Hence, our view is that if an individual beneficiary's WVR falls away, the corporate WVR beneficiary should be required to convert part of its WVR shares into ordinary shares such that its total voting power stays the same.

- End -