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29 May 2020

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

Dear Sirs

**Re: Corporate WVR CP**

The Hong Kong Institute of Directors (“HKIoD”) is pleased to forward our response to the captioned paper.

HKIoD is Hong Kong’s premier body representing directors to foster the long-term success of companies through advocacy and standards-setting in corporate governance and professional development for directors. We are committed to contributing towards the formulation of public policies that are conducive to the advancement of Hong Kong’s international status.

In developing the response, we have consulted our members.

Should you require further information regarding our response, please do not hesitate to contact me on tel no. [REDACTED]

Thank you very much for your kind attention.

Yours sincerely

THE HONG KONG INSTITUTE OF DIRECTORS

[REDACTED]  
Dr Carlye Tsui  
Chief Executive Officer

Enc

cc: Dr Christopher To, Chairman, HKIoD  
Mr Henry Lai, Immediate Past Chairman, HKIoD &  
Chairman, Corporate Governance Policies Committee

Issued on: 29 May 2020

**The Exchange's Consultation Paper**  
**Corporate WVR Beneficiaries (January 2020)**

In relation to the captioned consultation paper, The Hong Kong Institute of Directors has the following views and comments.

\* \* \*

**General comments**

HKIoD is glad the Exchange has come around to put forward proposals to permit corporate WVR beneficiaries. We support the move.

As we stated in our responses to:-

- the Concept Paper on Weighted Voting Rights (August 2014), issued on 4 December 2014;
- the Concept Paper on New Board (June 2017), issued on 18 August 2017; and
- the Consultation Paper on a Listing Regime for Companies from Emerging and Innovative Sectors (February 2018), issued on 22 March 2018

, HKIoD believes there are circumstances in which issuers should be allowed WVR structures. Our general support of WVR extends to corporate WVR structures, not just individual beneficiaries.

We can appreciate that there are doubts and worries about corporate WVR structures, and we can see that some of the proposals in the Consultation Paper reflect an effort to address those concerns. Certain conditions and safeguards would be necessary (even desirable), but we believe some conditions and safeguards can be less restrictive than those proposed.

**Market forces can be the most effective policing force**

An efficient market should enable capital to flow from investors to listed companies when investors have knowledge of what they are buying into, and when issuers have market incentives to compete for investors' capital through the signalling effect of responsible governance.

We are aware of concerns that, by introducing WVRs such structures would proliferate and become more widespread over time. But if WVR structures are indeed the reason why issuers can create and sustain value, we do not see why they should be arbitrarily banned or overly restricted. If market forces are such that WVR structures routinely attract a discount to its share value to account for risks, issuers (and the WVR beneficiaries) will probably pay attention. If investors are so abhorrent and money flock to companies without WVRs, those with such structures can decide whether to stay the way they are, or to make an early change to attract investors.

### **Investor protection in context**

We are aware of oppositions to WVR, some to any form of it, with unfairness and risks to minority shareholders being the often cited reasons. The premise of this line of reasoning would seem to have ignored the very basic notion that no one is made to be a minority shareholder of an issuer with WVR (or any issuer for that matter). For us, the important thing is that the basis and nature of the WVR is known to investors. Fairness is still there if they buy in knowing the unequal treatment. These investors may well be buying in despite the WVR structure because there could be economic value to gain.

The other often cited argument against WVRs surrounds the belief in “one share, one vote”. But what is the real meaning of it, when many if not most issuers on the Hong Kong market are effectively under firm control, either because they are family-owned or because they are state-owned enterprises? Even with the more widely-helds, there are plenty other ways to maintain control. The issue therefore is not so much about lack of representation, but that minority shareholders have no hope of winning (unless they happen to side with the ones in control). In this respect, willingly buy in and be a minority shareholder of an issuer with WVR is no different. The more effective voting mechanism is not with their hands at shareholders’ meetings, but with their feet in the market. To ensure liquidity may be the more practical answer than to cling to a stiff observance of “one share, one vote”.

### **Can we not help investors fend for themselves?**

Just because there is a new issuer on the block from the Old or New Economy, whatever, does not mean every investor must buy. If the worry is some investors will be denied opportunities because of the WVR, there would probably be ways around for them to invest through funds that can help them buffer those risks and participate, and probably also achieve a more diversified holding than to focus on one or two hot stocks of the day.

The ultimate investor protection tool is for investors to be able to fend for themselves. Investors fending for themselves will need good information to rest investment decisions on. Disclosure is acknowledged as the central part of the Hong Kong regulatory scheme. A disclosure regime is only effective when it provides investors with the information they need to make investment and voting decisions, but does not overwhelm them with either extraneous information or with a form of presentation that obscures and detracts investors from what is material. It may be worthwhile to consider what changes, if any, needs to be made to our disclosure regime to help investors (particularly retail investors).

### **Shareholder engagement**

Alongside disclosure requirements, an issuer’s board will be well-advised to have a good shareholder engagement strategy and engagement operations in place to help shareholders and stakeholders have better understanding of the company.

There is some call in the market for a lead INED to be appointed to promote on-going dialogue with non-WVR shareholders. We at HKIoD think there can be considerable merits for any issuer to introduce a lead independent director concept to its board practices. The utility of a lead independent director can be more evident when the board chair is not independent. As we suggest elsewhere in this response, WVR issuers can be required to have a majority of INEDs

on their boards, and in such situations a lead independent director can be instrumental for effective board governance.

### **Other enforcement mechanisms**

In the case of abuse, disadvantaged investors ought to have means of redress. Some in the market may consider a class action regime a prerequisite to allowing WVR structures. HKIoD believes the ability to initiate and conduct class actions can be a useful addition to supplement the tools and options available to shareholders in protecting their rights. The prospect of facing class actions from shareholders can have the effect of prompting companies to have a stronger sense of obligation, whether to the controlling shareholder or to the minority shareholders. But HKIoD is also mindful that the adoption of a class action regime can produce its own social problems, most notably in the well-justified fear of promoting unnecessary, unmeritorious litigation. We therefore encourage the Exchange and all stakeholders to first look to alternative forms of collective redress; for example, a more flexible application of the group litigation order, or further development of the SFC's surrogate actions practice.

### **Role of the WVR issuer's board**

The proper role and function of the WVR issuer's board cannot be ignored.

One particular form of WVR is "enhanced or exclusive director election rights". When certain segments of the shareholder population have superior rights to name and install their person of choice to sit on the board, it does invite arguments that those nominees will only be looking after the master's interests. We believe that, with proper initial training and continuing development, directors will come to an understanding of their role, including the recognition that the primary loyalty runs to the company regardless of who nominates them.

We nonetheless have much doubt and reservations about the proposal to require at least one director of the WVR issuer's board to be Corporate Representative of the corporate WVR beneficiary. We can see better merits of a Corporate Representative concept in the shareholders' meeting arena, but not at the board level. A director should owe duty to the entity it serves on and have regards the interest of all shareholders (and stakeholders) regardless who nominates them. For a director on the issuer's board to overtly take on the capacity of Corporate Representative of the WVR beneficiary will make the director not independent and then, more detrimentally, make it difficult to perform his/her duties properly. It could send the wrong signal that, being Corporate Representative, the particular director's duty and loyalty begins and ends with the corporate beneficiary. We can give the proposal more support if, however, there is the ancillary requirement that an issuer with WVR be required to have a majority of INEDs on its board.

The perceived and actual independence of directors is an important factor. There is certainly room to bring up again the debate whether we should further raise the requirement to have a majority of INEDs among an issuer's board. There is well-founded postulation that requiring a majority could make INEDs collectively better able to play their director roles. To require it for issuers with WVRs could be the testing ground. We see this as a better alternative that does not intrinsically drive fissures and rifts into the boardroom, as some safeguards suggested in

the market (e.g., to have independent directors be voted in or out only by independent shareholders) would.

\* \* \*

### **Consultation questions**

Subject to the general comments above, we state below our response to specific questions as set out in the Consultation Paper.

#### Question 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?

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.

#### HKIoD response

- AGREE
  - Certain conditions and safeguards would be necessary (even desirable), but we believe some conditions and safeguards can be less restrictive than those proposed.

### **Proposed measures to address risks**

#### *Position in group*

#### Question 2

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

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

#### HKIoD response

- As to requirement that corporate WVR beneficiary must be an Eligible Entity, AGREE.
- As to the notion that corporate WVR beneficiary may be a wholly owned subsidiary of the Eligible Entity, we have the following remarks:
  - We note that the design is to essentially give flexibility to the corporate WVR beneficiary to hold the WVR shares through an SPV. It appears to us that the Exchange does not require nor expect the SPV itself to meet the various requirements of an Eligible Entity (e.g., characteristics, extent of contribution and size as described in Consultation Paper paras 50, 157 and 164, respectively.) As such, the eligibility assessment is made on the Eligible Entity. The salient factor is and should be that only the Eligible Entity can direct the voting of the WVR as described in Consultation Paper para 135. The Exchange's conception would seem to be one that sees the Eligible Entity and the SPV acting as one

insofar as the exercise of the corporate WVR is concerned. The Exchange may want to give further explanation (or set further criteria) to detail this aspect.

- We can agree that a change in control of the corporate WVR beneficiary should not affect the subject WVR. Consultation Paper para 136.

### Minimum economic interest

#### Question 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?

Please give reasons for your views.

- (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?

Please give reasons for your views.

#### HKIoD response

- As to 3(a), DISAGREE
  - It is not necessary to impose a minimum economic interest requirement. The very utility of WVR is to maintain control with less economic interest. The important thing is that the existence and nature of the WVR is known to investors.
  - It is not necessary to require that the corporate WVR beneficiary be the single largest shareholder at listing. The important thing is that the existence and nature of the WVR is known to investors.
- As to 3(b), DISAGREE
  - Because we do not see it necessary to impose a minimum economic interest requirement, Question 3(b) is moot.

#### Question 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?

If so, please state these conditions/requirements.

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

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.

HKIoD response

- As to 4(a), NO
  - However, should a minimum economic interest requirement be imposed, the threshold should be on the low side.
- As to 4(b), NO
  - See our response to Question 3 and 4(a).
  - The degree and pattern to which the corporate WVR beneficiary keeps and maintains economic interest in the issuer can have signalling effect that is more revealing than mere efforts to meet an imposed threshold.

*Exception from requiring share issues  
on a pre-emptive basis without shareholder approval*

Question 5

Do you agree with the proposed exception from the Rules to permit an issuance of shares on a non-pre-emptive basis to a corporate WVR beneficiary without shareholders' approval if the below conditions are satisfied?

- (a) The subscription is solely for the purpose and to the extent necessary to allow the corporate WVR beneficiary to comply with the 30% economic interest requirement;
- (b) such shares do not carry WVR;
- (c) the subscription will be on the same terms or better (from the perspective of the listed issuer) as the original issuance that triggered the need for the corporate WVR beneficiary to subscribe for additional shares in order to comply with the 30% economic interest requirement; and
- (d) the subscription price paid by the corporate WVR beneficiary for the anti-dilution shares is fair and reasonable (having regard, among other things, to the average trading price of the listed issuer's stock over the preceding three months).

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.

HKIoD response

- DISAGREE
  - It is not necessary to impose a minimum economic interest threshold. See our response to Question 3 and 4.
  - The conditions 5(a) thru (d) would seem reasonable, but the corporate WVR beneficiary should already have other means (e.g., open market purchase, general mandate to issue shares) without need to create such exception.



*Corporate WVR beneficiary must have an interest of 10% or more and material involvement for at least two financial years*

Question 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?

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.

HKIoD response

- AGREE in part; DISAGREE in part
  - We would agree that the corporate WVR beneficiary should have been materially involved in the management or business of the listing applicant prior to listing. Two years minimum would seem right; to require a longer track record period (e.g., three years) would not be unreasonable.
  - If, arguendo, a higher (30%) threshold of economic interest is considered necessary post-listing (which we do not agree), a higher (than 10%) threshold pre-listing could be more necessary and meaningful.

Maximum five votes per share

Question 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?

Please give reasons for your views.

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

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.

HKIoD response

- As to 7(a), DISAGREE
  - It is not necessary for corporate WVR beneficiaries to have a lower maximum ratio of weighted votes than for individual WVR beneficiaries. The important thing is that the basis and nature of the WVR is known to investors.





- As to 7(b), DISAGREE
  - It is not necessary for corporate WVR beneficiaries to have a lower maximum ratio of weighted votes than for individual WVR beneficiaries. The important thing is that the basis and nature of the WVR is known to investors.

### **Ring-fencing:**

#### **Contribution by the corporate WVR beneficiary**

##### Ongoing requirement to provide access to the qualifying ecosystem

###### Question 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?

Please give reasons for your views.

###### HKIoD response

- AGREE
  - The important thing is that the basis and nature of the WVR is known to investors.

###### Question 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.

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

HKIoD response

- As to 9(a), AGREE
- As to 9(b), AGREE
- As to 9(c), AGREE
- As to 9(d), AGREE
- As to 9(e), AGREE

Question 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?

Please give reasons for your views.

HKIoD response

- We do not have comments on these aspects at this time.

Question 11

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

Please give reasons for your views.

HKIoD response

- AGREE
  - The important thing is that the basis and nature of the WVR is known to investors.

Question 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?

Please give reasons for your views.

HKIoD response

- AGREE
  - To the extent that the involvement or contribution is the “selling point” of the listing, requiring a continuing contribution seems reasonable.

#### Question 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?

Please give reasons for your views.

#### HKIoD response

- We do not have comments on these aspects at this time.

#### Question 14

- (a) If your answer to 12 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?

Please give reasons for your views.

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

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.

#### HKIoD response

- As to 14(a), AGREE in part
  - We think this should be a matter for the full board. A subject issuer’s board can appropriately delegate and task one or more committees to conduct inquiry as to relevant aspects as circumstances may require.
  - If it is the views of INEDs being cherished here, there may be the argument for making this assessment and confirmation a responsibility for all INEDs of the issuer’s board.
  - There is the further possibility of requiring issuers with WVR (corporate, perhaps even individual) to have a majority of INEDs on their board.
- As to 14(b), see our response to 14(a).

#### Size of corporate WVR beneficiary

#### Question 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?

Please give reasons for your views.

HKIoD response

- AGREE in part
  - We note that size is no complete assurance of all things, but a large cap corporate WVR beneficiary may indicate certain strength and depth such that it is not wholly relying on the subject issuer for economic benefits. The \$200 billion threshold would seem sufficiently high, but it also seems arbitrary. The Exchange may want to give further explanation to justify this threshold.
  - The threshold is applied “at listing”. To the extent that the corporate WVR beneficiary's involvement and contribution pre-listing is important, the Exchange may want to impose some strength and depth expectation during the track record period (as alluded to in Consultation Paper para 165). The Exchange may also want to consider some on-going strength and depth expectations in addition to the requirement at listing.

Question 16

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

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.

HKIoD response

- YES
  - Although non-fund private corporate WVR beneficiaries may be rare, they do exist. See Consultation Paper para 106-107. The Exchange should have leeway to accommodate corporate WVR beneficiaries that are non-listed private entities. See also our response to Question 18.
  - The current proposals by design do not take fund corporate shareholders (private equity / venture capital) as eligible to become corporate WVR beneficiaries. See, e.g., Consultation Paper para 157. This may be the appropriate policy choice for the Hong Kong market now, but the Exchange may want to set out the principles or pre-conditions as to when and how they might ever become eligible.

*Nature of the corporate WVR beneficiary*

Question 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?

Please give reasons for your views.

HKIoD response

- AGREE
  - The important thing is that the basis and nature of the WVR is known to investors.

Question 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?

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

HKIoD response

- DISAGREE
  - We do not think listing status is an essential element to merit corporate WVR beneficiary status; the contribution to the listing issuer's business is. See also our response to Question 16.

*Size of listing applicant relative to corporate WVR beneficiary*

Question 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?

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.

HKIoD response

- AGREE
  - We understand the purpose is to prevent existing issuers to introduce a WVR structure over a material part of its business/assets.

**Corporate Representative**

Question 20

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

Please give reasons for your views.

- (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?

Please give reasons for your views.

HKIoD response

- As to 20(a), DISAGREE
  - We can see better merits of a Corporate Representative concept in the shareholders' meeting arena, but not at the board level. A director should owe duty to the entity it serves on and have regards the interest of all shareholders (and stakeholders) regardless who nominates them. For a director on the issuer's board to overtly take on the capacity of Corporate Representative of the WVR beneficiary will make the director not independent and then, more detrimentally, make it difficult to perform his/her duties properly. It could send the wrong signal that, being Corporate Representative, the particular director's duty and loyalty begins and ends with the corporate beneficiary.
  - We can give the proposal more support if, however, there is the ancillary requirement that an issuer with WVR be required to have a majority of INEDs on its board.
- As to 20(b), see our response to 20(a).

Question 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?

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.

HKIoD response

- As to 21(a), DISAGREE
  - See our response to Question 20.

- But if the situation is as described in 21(a), we surmise it is not difficult for the corporate WVR beneficiary to take or procure actions to prevent such from happening.
- As to 21(b), DISAGREE
  - See our response to Question 20.
  - But if the situation is as described in 21(b), the corporate WVR beneficiary should be given time and opportunity to remedy the situation; for example, by nominating and appointing another suitable person.
- As to 21(c), DISAGREE
  - See our response to Question 20.
  - But if the situation is as described in 21(c), the convicted offence that would cause the WVR to lapse should be one that has some clear connections with the ecosystem to which the WVR issuer is part of. The Consultation Paper would seem to prefer large cap corporate WVR beneficiaries. A large cap, however, could easily have multiple operations in multiple jurisdictions. Certain wrongdoing elsewhere, even if such involves “dishonest acts”, may not be “material” and may have little to do with the ecosystem that the WVR issuer is part of.

### Sunset clause

#### Question 22

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

Please give reasons for your views.

#### HKIoD response

- DISAGREE
  - It may not be necessary to impose time-defined sunset; event-based sunset should suffice. We are aware, however, of concerns that, unlike individuals, corporate WVR beneficiaries do not have a natural lifespan and as such, corporate WVRs could become perpetual. A time-defined sunset if imposed should be one on the long side.

#### Question 23

If your answer to 22 is “yes”, do you agree with the proposed maximum 10 year length of the initial “sunset period”?

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

#### HKIoD response

- DISAGREE
  - See our response to Question 22.
  - We can nonetheless agree to an initial sunset period of 10 years.
  - We are aware of suggestions of a definitive lifespan of, say 30 years. We will support an initial sunset period of such length.

Question 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?

Please give reasons for your views.

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

Please give reasons for your views.

HKIoD response

- As to 24(a), AGREE
  - Independent shareholders collectively are in a position to make the determination.
- As to 24(b), DISAGREE
  - The proposed initial sunset period is 10 years; the length of the renewal period can be as long as the initial sunset period.
  - For us, the initial period can be much longer than 10 years. See our response to Question 23. But we surmise that even in such scenario, the issuer will make an appropriate assessment when it comes time to renewal to gauge the acceptance of another long renewal period. If protection of ordinary shareholders is the purpose, the independent shareholders collectively can decide what they want to accept and there is no need for such to be regulated with hard rules.

Question 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?

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

HKIoD response

- AGREE.
  - It is not necessary to limit the number of times that the corporate WVR can be renewed. The independent shareholders can make the determination. If protection of ordinary shareholders is the purpose, the independent shareholders collectively can decide what they want to accept and there is no need for such to be regulated with hard rules.

Question 26

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



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.

HKIoD response

- We do not have comments on these aspects at this time.

### **Corporate and individuals benefiting from WVR in the same issuer**

Question 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?

Please give reasons for your views.

HKIoD response

- AGREE.
  - We believe individual WVRs and corporate WVRs can co-exist and may even be a selling point in a certain ecosystem that the WVR issuer is to rely on.

Question 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?

Please give reasons for your views.

HKIoD response

- NO
  - For us, no rules can truly regulate against deadlocks. Should boardroom or shareholder disputes arise, those would be the exact situations that require the relevant parties to showcase their corporate governance prowess. Governance is more about how parties come to resolve situations. To try to have rules that purport to resolve all situations is not realistic, or is only more realistic for things in the realm of compliance.

Question 29

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

Please give reasons for your views.

HKIoD response

- AGREE

- Individual WVRs will eventually lapse.

#### Question 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?

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

#### HKIoD response

- AGREE
  - The better policy may be to not allow a WVR beneficiary to have a windfall of additional control because of the falling away of other WVR(s) in the same issuer.

#### Question 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?

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

#### HKIoD response

- DISAGREE
  - The better policy may be to not allow a WVR beneficiary to have a windfall of additional control because of the falling away of other WVR(s) in the same issuer.

- Ends -