

## 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.

We wish to clarify at the outset that all responses to this questionnaire only represent the sell-side view of ASIFMA.

The sell-side view of ASIFMA is generally supportive of permitting corporate entities to benefit from WVR as long as appropriate safeguards are included. This is mainly to increase the competitiveness of Hong Kong as a listing destination, particularly to attract listings from new economy companies and to broaden the range of investment opportunities for investors.

Based on the various safeguards set out in the consultation paper, in practice, only companies with very high market capitalisation (mostly in the technology industry) may be able to benefit from the new regime. The benefits associated with increasing Hong Kong's competitiveness as a financial hub, especially since corporate WVR beneficiaries are permitted in the US and Singapore, are expected to outweigh the risks involved considering the proposed safeguards to be put in place.

However, we wish to point out that some of our members on the sell-side have expressed concerns whether corporate WVR beneficiaries should be permitted in the first place and questioned whether the intended benefits of WVR structures are justifiable. In this connection, we note that the Exchange has highlighted a number of common concerns relating to corporate WVR beneficiaries in Chapter 3 of their consultation paper.

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.

Given the various risks involved with extending WVR to corporate beneficiaries, certain safeguards (as proposed in a number of questions set out in this questionnaire) should be in place to limit the circumstances in which corporate WVR structures can be used. We believe the proposals in the consultation paper generally strike a sensible balance by providing a degree of flexibility in terms of corporate structures to hold WVR shares while limiting the scope of persons who can direct the voting of WVR shares.

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 believe a minimum economic interest should be imposed, even though there is no such requirement in the US. This is especially the case since individual WVR beneficiaries must collectively hold at least 10% of the underlying economic interest in the WVR issuer.

However, we believe the Exchange should reconsider what the minimum economic interest should be, looking at the corporate WVR regime as a whole. In particular:

- It is noted that a corporate WVR beneficiary must have held an economic interest of at least 10% in the listing applicant prior to listing (see Question 6). There are practical difficulties for corporate WVR beneficiaries to increase its shareholding from 10% to 30% before the IPO.
- A 30% requirement would mean that the corporate WVR beneficiary is a controlling shareholder, meaning that they have de facto control. This would defeat the main purpose of WVR – holding less than a controlling stake yet benefitting from outsized voting power – making the Hong Kong regime unattractive for potential corporate WVR beneficiaries.
- The main purpose of granting WVR to corporates is to recognise that their contribution to the WVR issuer is just as important as the contribution from certain individuals. Individual WVR beneficiaries are only required to collectively hold at least 10% of the underlying economic interest in the WVR issuer, and each vote may have up to 10 times voting rights – to impose a 30% requirement on corporates, especially with only 5 times voting rights (also see our response to Question 7), appears disproportionate and puts potential corporate WVR beneficiaries at a disadvantage, which would make the Hong Kong regime very uncompetitive compared with the US regime.

(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.

As mentioned in our response to Question 3(a), although we believe a minimum economic interest should be imposed, we urge the Exchange to re-consider the 30% minimum economic interest requirement in light of our concerns.

Assuming that the minimum economic interest is set below 30%, we believe corporate WVR beneficiaries should be required to maintain holding the minimum economic interest on an ongoing basis, otherwise its WVR should lapse. If there was no such requirement, this may lead to corporate WVR beneficiary structures becoming more widespread, as this may attract listings from companies with potential corporate WVR beneficiaries that plan to sell down its stake in the listed issuer in future.

The Listing Rules should also clarify whether the remaining individual WVR beneficiaries need to convert some of their respective WVR shares (so that the percentage of their respective voting rights remain the same as before the lapse in corporate WVR beneficiaries), or if an alternative arrangement applies, once the corporate WVR lapses because the corporate entity is no longer holding the minimum economic interest required in the WVR issuer. We believe the approach should be consistent with whatever approach that is adopted in Questions 30 and 31 for consistency reasons.

4. (a) If your answer to Question 3(a) is “no”, do you propose a different economic interest in order for the applicant to benefit from WVR and, if so, what this should be?

Yes

No

If so, please state these conditions/requirements.

Please refer to our response to Question 3(a). We believe the minimum economic threshold should ideally be set at no more than 10%, to align it with the requirements for individual WVR beneficiaries.

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

Yes

No

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

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

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

Yes

No

Please give reasons for your views. If your answer to Question 5 is "no", and you agree with the requirement for the corporate WVR beneficiary to hold at least 30% of economic interest in the issuer on an ongoing basis, what alternative measures would you propose to enable such minimum economic interest to be maintained on an ongoing basis? In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

We believe the conditions proposed are sensible, however, we would like to suggest some drafting improvements:

1. Condition (a) should be drafted in a way to make it clear that such issuances are only permitted to ensure that the corporate WVR beneficiary can hold the minimum economic interest but no more than that (condition (a) is currently drafted in a way which suggests that a percentage higher than the minimum economic interest may be possible, which we believe is not the intention).

2. Clarify the drafting of condition (c) above – if a subscription is on the "same terms or better (from the perspective of the listed issuer)", does it simply mean a higher subscription price, or are there other factors that the Exchange would like to take into account?

3. Set out in more detail what would be considered to be a "fair and reasonable" subscription price (condition (d) above) e.g. the subscription price cannot be a certain percentage lower than the average trading price in the last 3 months. The Exchange should specify the methodology that should be adopted in order to demonstrate the reasonableness of the subscription price, so that the market understands what the expectations and requirements are.

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.

In respect of the 10% economic interest requirement, please refer to our response in Question 3.

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.

Please refer to our response to Question 7(b).

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

Yes

No

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

We urge the Exchange to reconsider the ratio cap, together with the minimum economic interest requirement (see Question 3) as a package.

Generally speaking, the practice in the US is to have a cap of 10 times, including for technology companies (whether or not the WVR holders are individuals or corporates). This recognises that not only individuals, but also corporates, may have provided exceptional contribution to the WVR issuer, and that their contributions are equally recognised.

To align with market practice, we strongly believe that the proposed cap should be raised from 5 times to 10 times. To impose a cap lower than 10 times for corporate WVR beneficiaries would make the Hong Kong regime very uncompetitive, as potential corporate WVR beneficiaries would choose to pick the US as the listing venue for the WVR issuer. This is especially the case since the proposed Hong Kong regime is, overall speaking, more restrictive than the US regime.

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

Yes

No

Please give reasons for your views.

We believe this proposal justifies the expansion of the WVR regime, as corporate WVR beneficiaries are able to bring demonstratable benefits of an ecosystem to the issuer on an ongoing basis. However, we would suggest the Exchange to reconsider what constitutes an "ecosystem" (see our response to Question 9 below).

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.

Based on the consultation paper, it appears that a potential corporate WVR beneficiary would need to fulfil all of the criteria mentioned above in order to be eligible to hold WVR. If that is indeed the case, we question whether some of the proposed characteristics are necessary, especially in light of the high market capitalisation requirement (see Question 15). To include all these characteristics for an "ecosystem", on top of the high market capitalisation requirement, would mean very few companies would be able to satisfy these requirements, which raises the question whether the proposed corporate WVR regime would actually attract candidates to list in Hong Kong.

Instead of focusing on the "community" aspect of the ecosystem (i.e. criteria (a)), or trying to set a standard as to when the ecosystem is mature enough to be an "ecosystem" (i.e. criteria (b) and (c)) (unlike biotech companies, it is hard to find an objective standard to measure the development of technology companies), we would suggest the Exchange to focus more on the innovative nature of the corporate WVR beneficiary and the WVR issuer, as well as the exceptional innovative / technology contribution from the WVR beneficiary to the WVR issuer. This would enable more companies to fulfil the "ecosystem" requirement and simplify the regime (as the Exchange has already set out guidance on what an "innovative company" should be based on the individual WVR regime).

In addition, some of the criteria set out in the proposals (especially criteria (a) to (c)) are rather vague and its application is highly dependent on the subjective judgment of the Exchange. We suggest that a formal appeals process be made available to the listing applicant / potential corporate WVR beneficiary in the event that a potential WVR beneficiary disagrees with the Exchange's view that it has not fulfilled the ecosystem requirement.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

As technology may disrupt traditional businesses, it may be possible for a traditional economy company to develop ecosystems similar to innovative businesses – in that case, a traditional economy company is likely to be able to satisfy the requirements for Innovative Companies on their own merits.

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.

Unlike individuals, corporate WVR beneficiaries may exist in perpetuity. WVR structures are justified to be granted to certain individuals or corporates because of their exceptional contribution to the issuer pre-listing. This exceptional contribution should continue post-listing, otherwise it would not be aligned with the regime for individual WVR beneficiaries (e.g. an individual WVR beneficiaries will lose his/her WVR if he/she is no longer on issuer's board).

For the above reasons, it is sensible to require corporate WVR beneficiaries to continue providing their exceptional contribution to the WVR issuer post-listing – once the contribution "connection" is broken, it is hard to justify why the corporate WVR beneficiary is able to benefit from WVR on a perpetual basis.

However, we are concerned that independent shareholders do not have the opportunity to challenge whether the contribution provided by the corporate WVR beneficiary is sufficient – we believe there should be a mechanism in place (e.g. vote by independent shareholders if a sufficient percentage of independent shareholders table a resolution on this matter) so that checks and balances are in place to monitor whether sufficient contribution has been made. This is separate from the right of independent shareholders to vote on the renewal of the corporate WVR arrangement.

The Listing Rules should also clarify whether the remaining individual WVR beneficiaries need to convert some of their WVR shares (so that the percentage of their voting rights remain the same as before the lapse in corporate WVR), or if an alternative arrangement applies, once the contribution "connection" is broken. We believe the approach should be consistent with whatever approach that is adopted in Questions 30 and 31 for consistency reasons.

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.

In addition to the existing requirement that issuers need to include the warning that it is a company controlled through weighted voting rights, the issuers should also mention whether it has corporate WVR beneficiaries and/or individual WVR beneficiaries, so that investors are clearly put on notice what the WVR structure is like.

We also suggest issuers with corporate WVR beneficiaries to include in their annual and interim reports a description of the ongoing contribution of the corporate WVR beneficiary (also see response to Question 14(a)).

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.

These matters should be required as a matter of good corporate governance, particularly in view of the various risks associated with WVR structures.

In addition to the above, the corporate governance committee's terms of reference should also include a provision requiring the committee members to review and confirm, on a six month and annual basis, the corporate WVR beneficiary's ongoing contribution to the WVR issuer.

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

Yes

No

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

Please refer to our response to Question 12.

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.

Based on paragraph 167 of the consultation paper, there are 297 companies with a market capitalisation of over HK\$200 billion, representing 4% of companies primary listed in Hong Kong or on a Qualifying Exchange. We also note that paragraph 109 of the consultation paper sets out that more than half of the corporate WVR beneficiaries had a market capitalisation of more than HK\$ 200 billion at the time the relevant Mainland WVR issuer listed in the US.

Given the risks surrounding corporate WVR beneficiary structures discussed extensively in the consultation paper and identified by our members, we recognise the need to limit the number of potential corporate WVR beneficiaries. Based on the above data, HK\$200 billion appears to strike a right balance in terms of setting a gate keeper for limiting the proliferation of WVR structures in Hong Kong and at the same time enabling the high-calibre issuer candidates that the Hong Kong market seeks to attract to adopt a WVR structure.

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 HK\$200 billion market capitalisation eligibility requirement serves as an important ring-fencing measure and permitting exceptions to this objective test would run the risk of corporate WVR beneficiary structures becoming more prevalent over time.

In the event the market capitalisation is set at a much higher level (e.g. HK\$300 or HK\$400 billion), it may be arguable that the Exchange may make an exemption for worthy candidates to hold corporate WVR. However, this creates uncertainty in the market, and it would be preferable to set the market capitalisation test at a reasonable level so that it can remain a simple objective test.

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.

This strikes a sensible balance between the need to make Hong Kong a more attractive listing destination (especially for technology companies) and the risks involved with corporate WVR beneficiary structures.

We note the definition of "Innovative Company" to be applied in the context of corporate WVR beneficiaries is the same as the one currently used for individual WVR beneficiaries, which is a positive development as it does not create more confusion for the market and practitioners.

However, we are of the view that criteria (b) is drafted too broadly, which provides for too high a degree of subjective judgment to be exercised by the Exchange, and does not provide much guidance for a non-Innovative Company which may be a potential corporate WVR beneficiary. We recommend the Exchange to supplement the application of this criteria with further guidance and provide examples of circumstances that would fall under this criteria and situations that would not.

In addition, as mentioned in our response to Question 11 above, it may be possible for a traditional economy company to develop ecosystems similar to innovative businesses – in that case, the traditional economy company is likely to be able to satisfy the requirements for Innovative Companies on their own merits. Such corporate WVR beneficiary should also be suitable to benefit from WVR structure.

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

Yes

No

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

We believe this is a key requirement for shareholder protection purposes. We are fully aware of the various risks involved with corporate WVR beneficiary structures. Given the downsides, it is important for the corporate WVR beneficiary to be listed, so that investors in the WVR issuer have a clear picture of the corporate entity holding WVR, either through regulatory announcements or higher public scrutiny - such protection would not be afforded to shareholders if the corporate entity holding WVR were a private entity.

If the corporate WVR beneficiary ceases to be listed on a Qualifying Exchange, its WVR should lapse permanently.

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 disagree with the Exchange's requirement due to the following concerns:

- The requirement on using market capitalization at the time of listing is difficult to assess ahead of time and can be affected by unforeseen market fluctuations. Changes to the market capitalization of the corporate WVR beneficiary prior to the offering may cause the deal to be unexpectedly delayed or lead to restrictions on pricing. In addition, as market valuation can vary significantly across industries, a relatively high market capitalization of the listing applicant in comparison to the corporate WVR beneficiary would not necessarily be indicative of the size of the listing applicant's business relative to the corporate WVR beneficiary's business. We propose (i) to use objective historical financial metrics to determine whether the listing applicant and the corporate WVR beneficiary are distinct listing entities; and (ii) to use the listing applicant's contribution to the corporate WVR beneficiary's assets, net profit and/or revenue as the relevant criteria, which would be less subjective and more predictable than market capitalization. It is noted that this approach is adopted for spin-offs under Practice Note 15.

- We believe there should be more focus on the corporate WVR beneficiary continuing as an independent standalone entity, rather than restricting the listing applicant at 30% or less of the corporate WVR beneficiary. As a result, we suggest adopting an approach similar to Practice Note 15.

- If market capitalization is used as the criteria, we believe 30% is a low threshold which may prevent businesses in high-growth sectors with relatively high average P/E ratios from listing on the Exchange. This would undercut the purpose of the proposals to encourage high-growth and new technology companies with high valuations to list in Hong Kong. We believe this is especially a concern for secondary listings and may prevent some companies that otherwise would be very attractive listing candidates from conducting a secondary listing on the Exchange.

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.

This is an important requirement for shareholder protection purposes. We note that Singapore imposes a similar requirement. Even though the corporate WVR beneficiary will not owe fiduciary duties toward the WVR issuer, at least the Corporate Representative will owe fiduciary duties to the WVR issuer on a personal basis.

We would like to suggest that the number of Corporate Representatives required should be proportionate to the corporate WVR beneficiary's economic interest in the listed issuer. For example, if there is only 1 Corporate Representative out of 15 board members in total, the responsibility and accountability of the corporate WVR beneficiary (albeit indirectly, via the Corporate Representative) would be rather minimal.

- (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.

A corporate shareholder does not owe fiduciary duties towards 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.

The parameters set out by the Exchange all appear to be sensible. However, we would suggest the Exchange to further refine the application of criteria (b) and (c).

For criteria (b), in the case where the corporate WVR beneficiary is able to demonstrate that the Corporate Representative's actions were taken outside the authority granted by the corporate WVR beneficiary, we suggest to allow another Corporate Representative to be appointed within 30 days (to align it with criteria (a)).

For criteria (c), the current drafting makes it unclear what situations it is intended to address. Is it intended to only capture fraud / dishonesty that is directly related to, and has a material impact on, the ecosystem, or does it cover other situations as well? Would the corporate WVR also lapse if the corporate WVR beneficiary was not judicially convicted with a criminal offence, but had settled claims from class actions?

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.

Unlike individuals, corporate entities may exist indefinitely. Given the various risks associated with corporate WVR beneficiaries, and to protect independent shareholders from long-term entrenchment, it is sensible to include a time-defined sunset clause.

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.

Many founders of technology companies tend to be young (e.g. in their 30s or even younger), and assuming that their natural lifespan is more than 65 years, it is foreseeable that WVR issuers may have individual WVR beneficiaries for a least a few decades. When viewed in this context, a 10 year maximum "initial sunset period" is a reasonable and pragmatic length of time from a shareholder protection point of view.

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.

Please refer to the response to Question 23. It is likely that individual WVR would last more than 10 years, so renewing corporate WVR (subject to independent shareholders' approval) is not unreasonable.

- (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.

It is arguable that an extension of 10 years may be acceptable for the first and second renewal to reflect human lifespan (see response to Question 23). However, in the long run, since corporates may exist in perpetuity, each extension should not be for longer than 5 years, so that independent shareholders have a more regular opportunity to consider this important point.

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 believe this is the right approach as the renewal of the WVR of a corporate WVR beneficiary is subject to independent shareholders' approval.

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 would suggest that issues such as prolonged suspension, qualifications on audit reports, and sanctions / disciplinary processes would need to be resolved before the WVR can be renewed by an independent shareholders' vote.

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.

To do so otherwise would make the Hong Kong WVR regime less competitive - potential WVR issuers with both potential corporate and individual WVR beneficiaries would not choose to list here.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

We acknowledge that many voices in the market, particularly those from corporate governance associations and institutional fund managers, strongly advocate for a time-defined sunset clause for individual WVR beneficiaries. However, to apply a time-defined sunset clause for individuals would make the Hong Kong WVR regime uncompetitive. We note that the Exchange has already included an "event-based" sunset in the existing Listing Rules to address these concerns.

However, corporate entities can exist in perpetuity. For this reason, we are supportive that a time-defined sunset should only be applicable to corporate WVR beneficiaries.

30. Do you agree that, in the event that the WVR of the corporate WVR beneficiary falls away as a result of its time-defined sunset, the individual beneficiary should be required to convert part of his or her WVR shares into ordinary shares such that the individual beneficiary will control the same proportion of voting power in the issuer both before and after the corporate WVR beneficiary's WVR fall away?

Yes

No

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

We have not checked either the "yes" or "no" box as we are proposing a slightly different approach. We propose that the individual WVR beneficiary not be required to convert, but at the same time, the individual WVR beneficiary should not be allowed to control more of a company disproportionately (especially if a ratio of 10 times was used) just because of a corporate WVR sunset.

We suggest that either (i) the percentage of votes "lost" by the ex-corporate WVR beneficiary due to the lapse in its WVR or (ii) the extra percentage of voting rights gained by the individual WVR beneficiary (assuming no conversion), are distributed among all shareholders. In the case of (i), the distribution would be based on the shareholders' economic interest; and in the case of (ii), the distribution could be based on (a) the shareholders' economic interest or (b) the percentage of shares held by each shareholder after the corporate WVR lapses (assuming no conversion).

Although the calculation methods suggested above is not as simple as a straightforward "must convert" or "no conversion" scenario, we believe our suggested approach would result in a fairer outcome.

31. Do you agree that the Listing Rules need not mandate that, if an individual beneficiary's WVR falls away before a corporate WVR beneficiary's WVR, the corporate WVR beneficiary should convert part of its WVR shares into ordinary shares such that the corporate WVR beneficiary will control the same proportion of voting power in the issuer both before and after the individual beneficiary's WVR fall away?

Yes

No

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

We have not checked either the "yes" or "no" box as we are proposing a slightly different approach.

We suggest that, for consistency reasons, the approach taken in this scenario should be similar to the approach taken in Question 30. We propose that the corporate WVR beneficiary not be required to convert, but at the same time, the corporate WVR beneficiary should not be allowed to control more of a company disproportionately. Please refer to our answer in Question 30 above – references to "individual WVR beneficiary" and "corporate WVR beneficiary" should refer to "corporate WVR beneficiary" and "individual WVR beneficiary" respectively.

**OTHER CONCERNS:**

We would also like to mention some Takeover Code concerns raised by our members in the event that the WVR of a WVR holder falls away, which may be a disruptive event for the market and the WVR issuer. We recommend the Exchange and the SFC to provide further guidance, so that the market may be more prepared in case such a disruptive event occurs.

In the event of a lapse in WVR, the voting rights held by the remaining shareholders will likely increase. Depending on the shareholding structure of the WVR issuer and the facts of the specific case, the mandatory offer obligation (MGO) under Rule 26 of the Takeovers Code may be triggered by certain shareholders when the WVR of a WVR holder falls away. Based on the current Takeovers Codes, there appears to be no exemption to the MGO obligation nor is a "whitewash waiver" applicable in this scenario. MGO concerns may also arise if the voting rights of WVR shares are reduced (Listing Rule 8A.16), as the voting rights of the remaining shareholders will increase.

In this connection, we note that the Singapore Takeovers Code was amended in early 2019 to clarify its application to companies with a dual class shareholding structure, especially in situations involving (i) the conversion of shares; and (ii) reduction of voting rights of shares carrying multiple voting rights.

- End -