

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 agree in principle with the proposed expansion of the existing WVR regime. Please see our comments on the Exchange's proposal as set out in this questionnaire.

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

Yes

No

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

We agree.

We suggest that the Exchange clarify that the corporate WVR beneficiary may either be directly or indirectly wholly-owned (to permit multiple intermediate holding companies).

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 have reservations about both requirements.

The expansion of the WVR regime is premised on the Exchange's acknowledgement that both corporate and individual shareholders could have materially contributed to the growth and development of an Innovative Company. As such, if the Exchange has no intention to distinguish between the potential importance of the contributions from corporate and individual WVR beneficiaries, we believe the basic thresholds regarding WVR shares should also apply equally.

Many Innovative Companies, like [REDACTED] due to the nature of their businesses, will have undergone multiple rounds of fundraising to be able to grow to the size required for listing under Chapter 8A of the Listing Rules, with their corporate shareholders' economic interests being diluted in the process. In addition, many Innovative Companies (including [REDACTED] have adopted share incentive schemes to attract and retain talent, pursuant to which shares will be issued before and after listing, further diluting corporate shareholders' economic interests. None of [REDACTED] individual or corporate shareholders had an underlying economic interest of 30% or more at the time of listing. We therefore take the view that 30% is too high, and that 5% would be a more appropriate level.

Furthermore, we think it is neither fair nor necessary to limit the grant of WVR to the single largest shareholder if other corporate shareholder(s) of a listing applicant also satisfy the suitability requirements and relevant thresholds.

(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 stated above, we think corporate and individual WVR beneficiaries should be treated equally. As such, we do not think an on-going minimum economic interest requirement should be imposed on corporate beneficiaries while there is no such requirement for individual beneficiaries. Such requirement would also reduce the issuers' ability to raise funds through placing or conduct acquisitions by issuing consideration shares in the future.

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.

For the reasons stated above, we propose a minimum economic interest requirement of 5% at the time of listing.

- (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.

Please see the reasons stated above.

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.

As stated, we think it is not necessary to impose an on-going minimum economic interest requirement on corporate beneficiaries after listing, and that such a provision is therefore unnecessary.

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

Yes

No

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

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

We recommend that the Exchange clarify the meaning of "material involvement in the management of the business of the listing applicant" and / or specify (e.g., by providing concrete examples) how this could be satisfied. For example, should there be cross-directorships / should the corporate WVR beneficiary have had direct involvement in the nomination of senior management positions, or have veto rights over certain matters? Such clarification would be important given that many Innovative Companies are managed by their founders / professional management teams on a day-to-day basis, while corporate shareholders support the management's visions and provide invaluable strategic directions which cannot be accurately quantified.

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.

As stated, we think corporate and individual WVR beneficiaries should be treated equally. We therefore propose that the maximum ratio of weighted votes permitted for shares of a corporate WVR beneficiary should be 10 times the voting power of ordinary shares, same as the maximum ratio permitted for individual WVR beneficiaries.

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

Yes

No

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

Please see our response to Q7(a) above.

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 have reservations about the "ecosystem" requirement. This is a term commonly used within the TMT sector but without a universally accepted definition. It could be difficult for listing applicants to identify an "ecosystem" with a defined scope, distinct components, and a specific "leader", given that it is increasingly common for TMT companies to cross-invest in each other and their platforms, technologies, products and services are highly interconnected. The term "ecosystem" should therefore be well-defined.

If the "ecosystem" requirement is maintained, we suggest that the minimum economic interest requirement be set at 5%.

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.

As submitted in our response to Q8 above, in general, we think corporate shareholders that have materially contributed to the development of qualified Innovative Companies without having created an "ecosystem" should also be entitled to have WVR.

If the "ecosystem" requirement is maintained, we suggest that the minimum economic interest requirement be set at 5%.

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.

Please see our response to Q8 above.

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

Yes

No

Please give reasons for your views.

We agree that the corporate WVR beneficiary can be a traditional economy company.

12. If your answer to 8 is "yes", do you agree that the corporate WVR beneficiary should be required to provide a contribution to the WVR issuer (e.g. by facilitating the applicant's participation in the ecosystem and including the applicant in its vision and planning for the ecosystem) on an ongoing basis and that its WVR should lapse if the corporate's contribution to the WVR issuer is substantially terminated or materially disrupted or suspended for a period exceeding 12 months?

Yes

No

Please give reasons for your views.

We think the proposed requirement may not necessarily be beneficial to the WVR issuer and its shareholders. Listed companies should be allowed, if not encouraged, to develop their businesses independently rather than relying on any particular shareholder(s) where its board of directors considers it in shareholders' interests to do so. If a WVR issuer has identified other platforms, technologies or products that are more suitable for its future business development than the existing ones contributed by the corporate WVR beneficiary, it should pursue them for the benefit of all shareholders. By contrast, the minority shareholders would be worse off if the corporate WVR beneficiary, in order to retain its WVR, voted against a proposal to pursue a more favourable platform, technology or product outside the "ecosystem".

It is also worth mentioning that the existing WVR regime does not require individual beneficiaries to maintain the same level of contribution on an on-going basis after listing in order to retain their WVR: so long as an individual beneficiary remains on the board of the issuer (whether executive or non-executive role), he / she can continue to exercise WVR.

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.

N/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.

N/A

(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.

Based on the premise that corporate shareholders should benefit from WVR because of their material contributions to the listing applicant, we think the market capitalisation requirement of HK\$200 billion (being five times the minimum requirement for a listing applicant under Chapter 8A of the Listing Rules) is too high.

Instead, we would recommend that the Exchange consider requiring that the parent company have material businesses other than the WVR issuer (by reference to a revenue or total assets test).

We are also of the view that the risk of a proliferation of corporate WVR structures is manageable even without the market capitalisation requirement. The ring-fencing measures already in place under the current WVR regime (including the requirement of a listing applicant to prove that it is a qualified "Innovative Company" and the market capitalisation requirement of HK\$40 billion), together with other measures on corporate beneficiaries proposed by us in this response, would be sufficient to ensure that the floodgates will not be opened.

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.

N/A

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.

There will be more flexibility if the corporate WVR beneficiary's own "Innovative" status should not matter.

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 think this is an appropriate measure to ensure the corporate WVR beneficiary is subject to a high degree of regulatory oversight.

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.

Please see our response to Q15 above.

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

Yes

No

Please give reasons for your views.

We agree that this proposal will provide an additional element of oversight as the Corporate Representative will be subject to directors' duties owed to the issuer while also acting as a representative of the corporate beneficiary.

- (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 think the requirement to have a Corporate Representative on the board of the WVR issuer and the requirement that a corporate beneficiary remain as a listed company would be sufficient.

21. Do you agree that the WVR attached to a corporate WVR beneficiary's shares must lapse permanently if:

(a) the beneficiary no longer has a Corporate Representative on the listed issuer's board of directors for a continuous period of 30 days;

(b) the Corporate Representative is disqualified as a director or found unsuitable by the Exchange as a result of an action or decision taken in his or her capacity as director of the listed issuer save where the corporate WVR beneficiary is able to demonstrate to the Exchange's satisfaction that the action or decision was taken outside of the authority granted by the corporate WVR beneficiary to the Corporate Representative; or

(c) the corporate WVR beneficiary has been convicted of an offence involving a finding that the beneficiary acted fraudulently or dishonestly?

Yes

No

If not do you suggest any alternative criteria? Please give reasons for your views. In your response, you may propose additional or alternative measures to the ones discussed in the Consultation Paper.

We agree with these criteria. For (a), we propose that issuers be allowed to apply for an extension of the 60-day period as there could be circumstances in which a new Corporate Representative cannot be appointed within 60 days after his / her predecessor resigns, is deceased or removed. We believe that a corporate WVR beneficiary should be given a 60-day period to replace its representative in scenario (b) above, unless the disqualification / finding of unsuitable arises directly as a result of instructions given by the corporate WVR beneficiary to the Corporate Representative.

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.

Given that the ratio of high-vote shares to ordinary shares cannot be increased after listing, we consider that there is already a built-in mechanism to ensure that the interest of a corporate WVR beneficiary cannot increase over time (other than through the acquisition of ordinary shares). So long as the corporate WVR beneficiary continues to support the WVR issuer by continuing to hold its shares, we see no reason why it should not be permitted to continue to hold its interest. We also have employee equity ownership plans, and over time as awards are issued under these plans the interest of the corporate WVR beneficiary will be gradually diluted (absent on-market purchases of ordinary shares by such beneficiary).

23. If your answer to Q22 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.

N/A. Please see our response to Q22 above.

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.

N/A. Please see our response to Q22 above.

(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.

N/A. Please see our response to Q22 above.

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.

N.A. Please see our response to Q22 above.

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.

Please see our response to Q23 above.

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 agree that an issuer should be entitled to grant WVR to both corporate and individual beneficiaries in recognition of their contributions to the issuer.

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

Yes

No

Please give reasons for your views.

We do not think any additional measures are required.

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.

Please see our response to Q22 above.

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.

This is beyond the control of any individual beneficiary and we do not believe they should be penalised in terms of their voting rights by virtue of a corporate beneficiary losing theirs (particularly if they have held on to their WVR shares for such a long period and have continued to serve as a director of the issuer).

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 think corporate and individual beneficiaries should be treated equally. Please refer to our response to Q30 above.

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