

30 April 2020

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

Re: Corporate WVR CP

Dear Sirs,

We attach to this letter our completed Questionnaire on Corporate WVR Beneficiaries by way of response to the Exchange's Consultation Paper on Corporate WVR Beneficiaries (the "CP").

As stated in our [submission](#) to HKEX on individual WVR in March 2018, our view remains that multiple voting rights, whether held by a corporate or an individual, are incompatible with the principle of fair and equal treatment of all shareholders and represent a danger to minority shareholders. While eligibility conditions and safeguards may go some way to mitigating the risks, they do not eliminate those risks. We are therefore opposed in principle to any form of WVR. In relation to the proposals in the CP, our view is that the various conditions and safeguards that are proposed offer only a limited degree of protection for minority shareholders. There are also some instances in which we are unclear about the practical or legal effect of the proposed conditions and safeguards, and, to that end, it would have been helpful if the CP had been accompanied by a draft of the proposed amendments to the Listing Rules, as was the case with the February 2018 Consultation Paper which dealt with WVR for individual beneficiaries.

While we do not intend to repeat in this letter all of the points that we have made in the Questionnaire, we wish to highlight the following points:

1. **The "ecosystem":** We have strong reservations about the proposed ecosystem concept, viewed from both a conceptual and practical perspective. Conceptually, we reject the proposition that the voting power of an influential shareholder within a listed company should be determined by reference to the perceived value of that shareholder's contribution to the company. The effect is to downgrade the legal status of other shareholders whose contribution the listed company perceives as being less valuable. As a practical matter, we question whether the concept has the degree of precision and legal certainty that is needed in a listing eligibility condition. It is drawn in such loose terms that in practice we doubt that it would act as much of a limitation on the number of eligible applicants for listing. We would therefore urge the Exchange to reflect on the suitability of the ecosystem concept.

2. **Sunset provisions:** In relation to sunset measures, we remain of the view that all provisions of this kind should be subject to a definitive expiry date, which cannot be extended indefinitely by shareholder approval. In our view, the initial maximum term of ten years proposed in the CP is excessive, and sits uneasily with the related proposal that the historic involvement of the corporate WVR beneficiary in the management of the WVR issuer need not be longer than the two financial years prior to listing. We also regard the proposal for an indefinite number of five-year extensions with independent shareholder approval to be potentially a false safeguard. Some independent shareholders may be reluctant to remove a long-established WVR structure because of a concern that the market might react negatively to what it perceived to be an underlying governance or conduct problem that had prompted the decision to return to a unitary capital structure. For these reasons, we are proposing that the initial term of the corporate WVR should be a maximum of five years, with the possibility of a one-time extension for a further five years, with independent shareholder approval.
3. **Corporate or individual WVR, not both:** We do not agree with the proposal that that an issuer should be able to issue WVR to both individual beneficiaries and corporate beneficiaries, and do not see any regulatory policy or business rationale for the proposal. Given the different conditions, both initial and ongoing, that attach to individual WVR and corporate WVR, we think that this proposal has the potential to introduce some degree of confusion and uncertainty into the market, particularly as regards outcomes for non-WVR shareholders in such a “mixed” WVR structure. In addition, the CP does not appear to address the potential for conflicts of interest among WVR beneficiaries which operate to the disadvantage of non-WVR shareholders. Until there is greater market understanding of the legal and practical implications of a mixed WVR structure, we suggest that a WVR issuer be required to choose between issuing either individual WVR or corporate WVR.
4. **Qualifying Exchanges:** We note the proposal that a corporate WVR beneficiary must have its primary listing on the Exchange or on a Qualifying Exchange. We are unclear as to the nature of the regulatory policy rationale which underpins the limited choice of venues within the Qualifying Exchange definition. In addition, we do not think that a primary listing on a Qualifying Exchange in and of itself is a sufficient guarantee of a high standard of corporate governance, in view of various exemptions from listed company continuing obligations that can be accessed in some countries by overseas-incorporated companies. For that reason, we suggest that this condition be amended to provide that the beneficiary have its primary listing on a Qualifying Exchange and that it be subject to corporate governance requirements which are in all material respects at least as high as those which would apply to the beneficiary were it to have its primary listing on the Stock Exchange of Hong Kong.

5. **Enhanced minority rights:** At a number of points in the Questionnaire we propose additional or amended safeguards for minority shareholders which concern the role of the WVR issuer's independent non-executive directors (INED). We think that a robust INED function is an important counterweight to the fundamentally inequitable nature of WVR. For this reason, we propose the following Listing Rule amendments:
- (i) An INED of a WVR issuer should be appointed and removed solely on the basis of voting by non-WVR, independent shareholders.
 - (ii) An individual should be ineligible for appointment as an INED of a WVR issuer if that individual is a director of any company in the ecosystem shared by the WVR issuer and corporate WVR beneficiary; this should also encompass individuals with close connections to the corporate WVR beneficiary, such as a recently-retired partner of the beneficiary's auditor. Such an exclusion should be for an indefinite duration, hence the normal INED cooling-off period rules should not be applied.
 - (iii) A lead INED should be appointed with responsibility for promoting ongoing dialogue with non-WVR shareholders.
 - (iv) The corporate governance (CG) committee of the WVR issuer should report periodically to shareholders, in addition to the board, on its assessment of the value (if any) contributed by the corporate WVR beneficiary, through the ecosystem, to the WVR issuer, together with an account of the nature of the enquiries that the committee has undertaken in order to make its assessment.
 - (v) The CG committee of the WVR issuer also be given a role in monitoring and reviewing related-party transactions, especially those between the issuer and any other entity in the ecosystem of the corporate WVR beneficiary. We are aware that LR 14A.40 requires the appointment of an independent committee to advise shareholders on the merits of a specific connected transaction. However, given the inherent close commercial proximity between the WVR issuer, the corporate WVR beneficiary and other inhabitants of the ecosystem, we think that this matter deserves a greater degree of INED oversight and on a continuing rather than ad-hoc transaction basis. The committee should monitor and review connected transactions on an ongoing basis and report to shareholders annually on compliance with rules which govern such transactions.

- (vi) Given the broad nature of the CG committee's work, it will require a degree of technical or industry-specific experience on the part of at least some of its members. The Exchange should establish a regulatory expectation that the committee be composed of individuals with relevant technical or industry experience.

We would be happy to discuss any of the points raised in this letter or in our Questionnaire response.

Yours truly,

A handwritten signature in black ink, appearing to read 'JA', is positioned above the printed name and title.

Jamie Allen
Secretary General

*Christopher Mead, Deputy Secretary General, ACGA also contributed to this letter and submission.