

Hong Kong Capital Markets Update



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HKEX's consultation on Corporate Weighted Voting Rights Beneficiaries

On 31 January 2020, the Stock Exchange of Hong Kong Limited (the Exchange) published a [consultation paper](#) (Consultation) seeking market views on a proposal to extend the Exchange's current Weighted Voting Rights (WVR) regime to permit corporates to benefit from WVR, subject to appropriate safeguards. The deadline for submissions is 1 May 2020.

Highlights

- The Exchange proposed to extend the current WVR regime for allowing corporates to benefit from WVR.
- The Exchange's proposal included certain safeguards to protect individual shareholders.
- The deadline for submitting responses to the Consultation is 1 May 2020.

Background

Effective 30 April 2018, the Exchange implemented new Listing Rules Chapter 8A permitting issuers from emerging and innovative sectors to list with a WVR structure. The current rules limit a beneficiary of WVR to an individual. At the time of launching the previous consultation, the Exchange recognised that allowing corporate entities to benefit from WVR would be a significant development based on the market feedback received. To allow time for developing broader consensus on the subject, the Consultation was deferred to 2020 from the initially proposed launch date of July 2018.

The Consultation set out certain reasons for allowing corporates to be WVR beneficiaries:

- The issuer can benefit from granting WVR to a corporate shareholder who is the ecosystem leader as it will encourage the corporate shareholder to include the issuer in its common vision for the ecosystem and reinforces the issuer's position within the ecosystem;
- A corporate shareholder can maintain control of the issuer through WVR structure, and is able to consolidate the issuer's financial information for financial accounting purposes that enhances its corporate valuation; and
- Mainland emerging and innovative issuers with corporate WVR beneficiaries, such as Youdao, Tencent Music Entertainment and Huya, have sought listing on US exchanges. If the WVR regime does not accommodate corporate WVR beneficiaries, it would diminish the ability of Hong Kong's capital market to attract these innovative companies.

Accordingly, the Exchange is seeking market views on its proposal for extending the WVR regime to enable corporate entities to benefit from WVR. The Exchange proposes that the same conditions and safeguards should apply to both individual and corporate WVR beneficiaries, while corporate WVR beneficiaries will be subject to additional conditions and safeguards.

Key proposals

A summary of key proposals is set out below:

Position in group

A corporate WVR beneficiary must either be an innovative company itself or 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.

Minimum economic interest

A corporate WVR beneficiary must have held an economic interest of at least 10 percent and had a material involvement in the management or the business of the listing applicant for at least two financial years prior to its listing application. At the time of listing and on an ongoing basis, a corporate WVR beneficiary must hold an economic interest of at least 30 percent in the listing applicant, or the WVR attached to the corporate WVR beneficiary's shares will lapse.

Maximum voting power

A corporate WVR beneficiary can benefit from shares that carry no more than five times the voting power of ordinary shares.

Contribution of the corporate WVR beneficiary

A corporate WVR beneficiary's contribution to the listing applicant must be of a nature that cannot be easily replicated or substituted by other means. Therefore, a financial investment or an ordinary non-financial contribution will not constitute enough basis for a corporate shareholder to be entitled to WVR.

To benefit from WVR, a corporate must demonstrate that it owns and operates an "ecosystem" at listing (and on an ongoing basis) that benefits the listing applicant. The "ecosystem" must have the following characteristics:

- a) There is a community of companies (including the listing applicant) and other components 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;
- 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;
- 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 were materially attributable to its participation in and co-evolution with the ecosystem, and the applicant is expected to continue to benefit materially from being part of that ecosystem.

Size of corporate WVR beneficiary

A corporate WVR beneficiary must have a minimum market capitalisation of not less than HKD 200 billion.

Nature of the corporate WVR beneficiary

A corporate WVR beneficiary must have the following:

- a) Experience in emerging and innovative sectors; and
- b) Regulatory oversight: a corporate WVR beneficiary must be a company with a primary listing on the Exchange or a Qualifying Exchange¹ to ensure its conduct is subject to regulatory oversight under a reputable legal and regulatory regime. The WVR attached to a corporate WVR beneficiary's shares must lapse permanently if the corporate WVR beneficiary no longer remains listed on the Exchange or a Qualified Exchange.

¹ NYSE, NASDAQ or the Main Market of the London Stock Exchange plc (and belonging to the UK FCA's "Premium Listing" segment)

Size of listing applicant relative to corporate WVR beneficiary

The listing applicant must not represent more than 30 percent of the corporate WVR beneficiary in terms of market capitalisation at the time of listing.

Corporate representative

A corporate WVR beneficiary must have at least one corporate representative on the board of directors of the issuer.

Sunset clause

A corporate WVR beneficiary is subject to a time-defined sunset of not more than 10 years, and can be renewed for further periods of five years subject to independent shareholders' approval.

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If you have any questions about the matters discussed in this publication, please feel free to contact the following capital markets partners and directors.

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