

BY EMAIL & BY HAND

PRIVATE AND CONFIDENTIAL

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

Email:

Tel:

Fax:

Date: 10 June 2020

JINGTIAN & GONGCHENG LLP
Suites 3203-3207, 32/F
Edinburgh Tower, The Landmark
15 Queen's Road Central
Hong Kong

Telephone: +852 2926 9300
Fax: +852 2926 9400

Re: Corporate WVR CP

Dear Sirs,

Subject: Response to Corporate WVR Consultation Paper

We refer to the consultation paper issued by the HKEX on a proposal to extend the Exchange's current WVR regime to permit corporates to benefit from WVR. For the reasons provided in our response to the consultation paper, we welcome the Exchange's proposal. We hope the proposal will be implemented smoothly and more high quality tech and innovative unicorn enterprises will be attracted to Hong Kong.

If you have any queries in relation to this submission, please contact our

or

Yours faithfully,

Jingtian & Gongcheng LLP

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 welcome the Exchange's proposal to extend the WVR regime to corporate WVR beneficiaries. To further promote HKEX as a leading international exchange, improve liquidity in the trading of Main Board listed stocks and diversify investment options that go beyond the traditional concentrated sectors, the introduction of WVR regime and the current proposal to extend the regime to corporate entities is a much needed step. Against the backdrop of the on-going US-China trade war resulting in many US-listed Chinese companies seeking for secondary listings back home, and having considered the launch of the Shanghai Science and Technology Innovation Market (STAR Market) which other A shares major markets may soon follow, we are of the view that the revised WVR rules need to provide enough incentives or be seen as more "regulatory friendly" to attract tech and innovative unicorn companies to choose HKEX over other major exchanges which implement more flexible framework.

In the race of attracting high quality new economy enterprises, other major exchanges kept improving their infrastructure to enhance their attractiveness. In particular, A shares stock exchanges in the Mainland are becoming more and more competitive. Following the recent establishment of the STAR Market in Shanghai Stock Exchange (SSE), ChiNext stock market in Shenzhen Stock Exchange (SZE) has proposed new rules which also aim at establishing a more friendly and competitive fundraising platform to drive innovation and new sources of growth. If the new rules proposed under the current consultation are approved, the eligibility scope under the proposed WVR rules of the ChiNext Board in SZE will allow the listing of companies that do not fall within the negative list (note1) and hence is much wider than the current and proposed scope in Hong Kong, which only allows the listing of innovative and tech companies. Second, the current WVR rules of SSE and the proposed rules of SZE allow "persons who have made significant contributions to the development of listing applicant and who continue to serve as directors of the company before and after the company's listing, or who are actually controlled by such persons" to be the WVR beneficiaries. Such framework provides flexibility for corporate WVR beneficiary which is not 100% owned by the relevant personal to be the WVR beneficiary. Coupled by factors such as the gradual transition from an approval-based system to a registration-based system with better valuation, SSE and SZE have arguably provided more incentives to Chinese unicorn companies and US-listed Chinese companies to list onshore than what HKEX and the Hong Kong capital market have to offer.

We observed no empirical findings that suggest minority shareholders of US-listed Chinese companies are being disadvantaged by virtue of their adoption of corporate WVR structures. The negative publicity associated with certain US-listed Chinese companies are more often than not related to financial frauds, which is unlikely a result of concentration of control under the WVR regime. Allowing corporate parent to enjoy the WVR is essential for large scale unicorns in the TMT space or other innovative segments to maintain their current control structure and stay within the ecosystem of the corporate shareholders so that such enterprises can continue to enjoy the advantages arising therefrom. We are of the view that the risk-mitigating ring fencing measures proposed under the current consultation paper can sufficiently alleviate the concern that the interests of minority shareholders will be compromised by the further opening-up of the WVR structure to corporate WVR beneficiaries. We support the current initiatives of the HKEX.

Note 1 - Negative list includes "traditional industries such as agriculture, forestry, animal husbandry and fishery, agricultural and sideline food processing, mining, food and beverage, textile and clothing, ferrous metals, electricity, heat and gas, construction, transportation, warehousing and postal services, accommodation and catering, finance, real estate, residential services and repairs".

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.

The purpose of allowing only entities with certain prescribed criteria to be the corporate WVR beneficiary can limit the grant of special voting rights to well established and high quality corporation with good corporate governance.

While eligibilty for WVR was established by the corporate WVR and not by its controller, we suggest the HKEX retain the discretion to exercise scrutiny under certain circumstances where change in control of the corporate WVR may defeat the purpose of granting the WVR to corporate beneficiaries, e.g. change in control may render the contributions or benefits described in paragraphs 154 to 159 of the consultation paper faded away.

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.

Given the minimum market capitalisation of an issuer which can be entitled to WVR is HK\$10 billion, 30% of economic interest appears to be quite stringent. However, we agree that a higher shareholding will likely enhance the alignment of interests and provide more incentive for such shareholder to act for the best interest of the Company.

(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.

See our response in Question 3(a)

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.

N/A

(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.

N/A

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 agree to the proposal on the basis that the anti-dilution rights granted to the corporate WVR beneficiary is tag along with the WVR structure. Conditions 5(a) to 5(d) can effectively prevent WVR beneficiaries from abusing their right to issue shares on a non-pre-emptive basis without shareholders' approval. There should however be a price setting mechanism in place to ensure the issuance will not be at the expense of the other shareholders.

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.

A minimum economic interest and sufficient level of management involvement demonstrate that significant contribution of WVR beneficiaries before the listing.

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.

We do not have strong views on this proposal.

- (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.

N/A

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 generally agree with this proposal but we suggest HKEX provide further guidance on how in practice such criteria will be assessed objectively. Clear guidance is warranted as to whether contributions from corporate WVR beneficiaries will be translated into reliance issue which may affect the listing applicant's listing eligibility.

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.

See our response to Question 8.

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.

While nature, business model and development of tech and innovative companies are evolving continuously, we believe keeping discretion and flexibility in determining what other circumstances can justify the grant of WVR may be necessary.

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 consider that this is an area where HKEX can further explore and as mentioned in our response to Question 1, SSE and SZE are considering expanding the scope of companies that can adopt the WVR structure to those companies other than tech and innovative enterprises.

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.

Such requirement will be beneficial to WVR issuer and other shareholders.

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.

Such requirement will safeguard the interest of other shareholders and 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.

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.

We suggest HKEX maintain discretion and flexibility in accepting WVR beneficiaries that are unable to satisfy the brightline test set out in the consultation paper, considering the fact that market capitalisation may be affected by and fluctuated along factors that beyond the control of the listed companies.

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.

We agree that exception to the market capitalization requirement should be allowed if the prospective corporate WVR beneficiary could provide compelling justifications for the market capitalization exception, such as financial performance (e.g. revenue, net assets or net profit) or other industry specific factors. It should be considered on a case-by-case basis.

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.

We also suggest HKEX explore the possibility of expanding the scope of enterprises that can enjoy WVR down the road. Please refer to our response to Question 1.

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.

While we agree with this approach generally, we consider that exception to the above requirement should be allowed if the prospective corporate WVR beneficiary could provide compelling justifications for such exception. It should be considered on a case-by-case basis.

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.

While we agree with this approach generally, we suggest introduce some flexibility to cater for the situation where materiality may reflect in aspects other than market capitalisation, in particular in circumstances where capitalisation is distorted by factors beyond the control of the corporate WVR beneficiaries.

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 generally agree with the proposal but suggest that mechanism shall be in place to ensure that the relevant director can properly fulfil the fiduciary duties owe to both the listed issuer and the corporate WVR beneficiary, in particular in circumstances where conflict of interest arise.

- (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.

No strong views.

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 the proposal and rationale.

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.

We agree with the proposal and rationale.

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.

We agree with the proposal and rationale.

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.

We agree with the proposal and rationale.

(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.

We agree with the proposal and rationale.

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 agree with the proposal and rationale. We believe if the independent shareholders are given a chance to consider the renewal proposal in the general meeting, this will serve as a sufficient safeguard to protect the interests of the minority shareholders.

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.

Upon renewal, the shareholders shall be furnished with sufficient information for them to consider and assess whether to approve the renewal. Threshold requirements and conditions imposed on corporate WVR beneficiaries at their initial inception shall continued to be satisfied upon the WVR renewal.

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 with the proposal and rationale, and we cannot see strong reasons for the two categories of WVR beneficiaries to be mutually exclusive.

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.

N/A

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 agree with the proposal and rationale given individual WVR beneficiary will lapse eventually.

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 agree with the proposal and rationale.

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 agree with the proposal and rationale. Corporate WVR beneficiaries will need to consider the implication under the Takeovers Code in such circumstances.

- End -