The British
Chamber of Commerce
in Hong Kong
香港英商會

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

31st May 2020

Re: Corporate WVR CP

We refer to the HKEX Consultation Paper on Corporate WVR Beneficiaries, dated January 2020, which in principle we support. We believe it important that HKEX should complement the recent approval of Individual WVR Beneficiaries with WVR Corporate Beneficiaries, to allow these innovative companies operating under such corporate structures access to capital markets and to open up more options for investors.

Meanwhile, we also recognise that there are regulatory challenges of allowing Corporate WVRs, and welcome the appropriate checks and balances. However, we believe the proposed threshold of HK$200 Billion is set too high, will give access to only the very largest candidates, and effectively make this exercise largely academic. In our answers to the questions in the paper we also highlight some areas which cause us concern. In particular we suggest more attention to the unwinding process when Corporate WVR structures no longer meet regulatory requirements, and must revert to conventional listed companies and the proposed renewal of sunset clauses.

Meanwhile, please revert if you would like clarification on any aspect of our response.

Yours Sincerely,

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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.

Yes, we agree in principle, to ensure Hong Kong remains a leading International Finance Centre, with the capabilities to open our Capital Markets innovative new companies. This is conditional on the various checks and balances outlined below for investor protection and market integrity, excepting the $200 Billion Threshold, which we believe is too high. The careful and considered crafting and implementing the appropriate safeguards is vital to the success of the WVR regime.

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.

For the reasons outlined in the Paper.

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.

Reasons outlined in the Paper.

(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.

But subject to consideration of the Takeovers Code. If WVR beneficiary shares should lapse, this may cause another substantial holder to gain effective control and trigger a General Offer.

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.

(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.

We do not believe a lower economic interest threshold should be allowed.

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.

The WVR Corporate beneficiary controls the company, and its ability to maintain the 30% minimum is essential. To allow non pre-emptive issues of shares opens the door to potential abuse and contrary to Hong Kong's high regulatory standards for listed companies and a dilution of the concept of level playing fields.

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.

For the reasons outlined in the Paper, and consistent with the spirit of requiring a clear track record.

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.

To limit the effects of misalignment of interests, as outlined in Paper.

(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 have no views on what the appropriate ratio. Should be and invite HKEX to expand on the rationale for proposing this ratio.

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.

These definitions and requirements are complex and subjective, and this leads to issues of intepretation, ease of understanding by investors and effective monitoring by regulators. We invite HKEX to consider these issues and provide guidance and transparency.

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 above.

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.

This could open a Pandora's Box and inconsistent with the concept of providing this regime to innovative companies. Please also consider if there is any impact on the Listing Rules or Takeovers Code.

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.

Yes, but please consider if this has any effect under the Takeovers Code.

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.

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.

(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.

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.

HK$200 Billion is a very high threshold and would make this regime accessible only to a small group of 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.

A lower threshold, calculated to enable a meaningful number of companies to qualify, and avoid domination by a small group of very large companies.

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.

To prevent opening a Pandora's Box, and diluting our Hong Kong's high regulatory standards with opportunistic and unsuitable applicants.

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.

For effective corporate governance.

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.

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.

(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.

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.

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.

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 believe that 5 years is long enough in our rapidly changing markets.

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 see no compelling reason for renewing sunset clauses and renewal dilutes a key control for this regime.

(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 have some reservations over the proposed renewal of sunset clauses. A sunset clause that can be renewed for long periods, dilutes a key control for this regime. Independent shareholders' approval may not always be an effective check, given the lack of litigation funding, class action remedies and other established infrastructure in other reputable jurisdictions which allow WVR. We recognise these are pros and cons regarding litigation funding and class actions and ask HKEX to consider how other jurisdictions have handled such difficulties (for example, Australia proposes to license litigation funders and make them comply with investment fund regulations). Given the likely differences of opinions around WVR, we ask the HKEX to consider whether renewals of sunset clauses are appropriate and/or whether there are other solutions for shareholders and market integrity protection.

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.

See our response to question 24.

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.

See our response to question 24.

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.

In reality there will often be both Corporate and Individual beneficiaries but we question whether both are necessary or whether this dilutes any measures taken for shareholders protection.

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.

Please see our reservations on sunset clauses.

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 see no compelling reason for this proposal.

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 see no compelling reason for this proposal.

- End -