

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

11 June 2020

Dear Sirs

Re: Corporate WVR Consultation Paper

We are writing in response to SEHK's Consultation Paper on Corporate WVR Beneficiaries of January 2020 (the "**Paper**"). Please note that we do not wish our identity to be disclosed to members of the public.

Unless otherwise indicated, the terms used in this letter shall have the same meaning as the Paper.

We are in support of the general direction advocated by the SEHK in the Paper. In particular, we agree with the minimum HK\$200 billion market capitalisation requirement, the "innovative company" requirement, the "listing status" requirement and the requirement that the WVR issuer must not represent more than 30% of the corporate WVR beneficiary in terms of market capitalisation at the time of listing, which we believe can minimise floodgate concerns. We also agree that a WVR issuer should not be restricted from granting WVR to both corporate and individual beneficiaries if the requisite suitability requirements can be satisfied as this should be addressed as a commercial matter between the WVR issuer and its shareholders.

Set out below are our views on a number of proposals as outlined in the Paper:

A. Minimum economic interest requirement

(I) Holding 30% economic interests in the WVR issuer and being the single largest shareholder at listing

We would like to draw the SEHK's attention to the fact that the absence of a controlling shareholder (as defined under the Listing Rules) is not uncommon for innovative

companies, as these companies may have completed several rounds of fund raising before listing application. The requirement to own at least 30% economic interest in the listing applicant at the time of listing may fundamentally change the shareholding structure of the listing applicant, which may be discouraged from adopting WVR structure.

We propose requiring the corporate WVR beneficiary to *either* hold 30% economic interest, *or* be the single largest shareholder, but not both. This is in line with SEHK's regulatory principle in relation to control and ownership continuity, and is sufficient to ensure that the corporate WVR beneficiary's interest is aligned with those of the minority shareholders.

If the SEHK accepts our above proposal, the requirement on the corporate WVR beneficiary to maintain at least a 30% economic interest on an ongoing basis should also be adjusted correspondingly, to *either* maintaining at least 30% economic interest in the issuer on an ongoing basis, *or* maintaining the corporate WVR beneficiary's position as the single largest shareholder.

(II) *Holding not less than 10% economic interests and having been materially involved in the management of the listing applicant for at least two financial years before the listing application*

We have concerns about the requirement that the corporate WVR beneficiary should have been “materially involved in the management or the business of the listing applicant” for not less than two financial years, as this may not be in line with the commercial reality that pre-IPO investors are not normally expected to be substantially involved in the daily management of investee companies where they hold only a 10% to 30% stake.

While we believe that “having a representative on the board of the listing applicant” should itself be an indication of material involvement in the management of the WVR issuer, we invite the SEHK to elaborate on the material involvement requirement to give more guidance to the market.

(III) *Conditions to be satisfied to permit an issuance of shares on a non-pre-emptive basis to corporate WVR beneficiary without shareholders' approval*

We consider that conditions (c) and (d) in paragraph 144 of the Paper may impose subjective as opposed to objective standards, and corporate WVR beneficiaries and WVR issuers may find it difficult to demonstrate satisfaction of such conditions. Regarding condition (c) which requires the subscription by the corporate WVR beneficiary to be on the same terms or better 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, in the scenario where the WVR issuer issues consideration shares for the acquisition of interest in a company, the WVR issuer may have practical difficulty in justifying that the subscription by the corporate WVR beneficiary is on the same or better terms as the consideration issue. Regarding condition (d) which requires demonstration that the subscription price paid by the corporate WVR beneficiary for the anti-dilution shares is fair and reasonable, without a bright-line test, there may be uncertainty as to how this condition can be satisfied.

We suggest that condition (c) should be removed and the share price of the WVR issuer should serve as the only objective benchmark for the purpose of determining whether the subscription price paid by the corporate WVR beneficiary for the anti-dilution shares is fair and reasonable.

B. Ratio of WVR

While we recognize the rationale behind imposing the limit of maximum five votes per share is to reduce the risks of misalignment of interest, we are not convinced that the misalignment of interests between a corporate WVR beneficiary and minority shareholders would necessarily be more significant than the misalignment of interests between an individual WVR beneficiary and minority shareholders which justifies a lower maximum ratio of weighted votes per share for corporate WVR beneficiary. It is also arbitrary to impose a lower maximum ratio of weighted votes of 5 times to corporate WVR beneficiaries (as opposed to 10 times to individual WVR beneficiaries). We invite the SEHK to provide more justification as to the different treatment of maximum ratio of weighted votes between individual WVR beneficiaries and corporate WVR beneficiaries.

We also invite the SEHK to consider allowing corporate WVR beneficiary to have the same maximum ratio of weighted votes as individual WVR beneficiary and allowing the WVR issuer to have the flexibility to arrange different ratios of weighted votes between

individual WVR beneficiaries and corporate WVR beneficiaries, which should be a matter of business negotiation between the WVR issuer and its shareholders.

C. Contribution by the corporate WVR beneficiary through the inclusion of WVR issuer in its ecosystem on an ongoing basis

We agree in principle that a corporate WVR beneficiary should be required to provide contribution to the WVR issuer on an ongoing basis and broadly agree with the required characteristics of an ecosystem as proposed in the Paper. However, condition (d) in paragraph 156 of the Paper (i.e. the core components within the ecosystem, and the listing applicant, are in substance controlled by the corporate WVR beneficiary) is too ambiguous. The factors to be taken into account for the purpose of determining whether a component will be considered as “core component”, and the degree of control required to be exercised by the corporate WVR beneficiary over the WVR issuer for the purpose of satisfying that the WVR issuer is “in substance controlled by the corporate WVR beneficiary”, are uncertain. We invite the Exchange to consider removing condition (d) as one of the characteristics of the ecosystem.

D. Corporate representatives

We generally agree that at least one director of the WVR issuer must be a Corporate Representative of the corporate WVR beneficiary at the time of listing. We note the SEHK’s proposal that the Corporate Representative must be an “officer” of the corporate WVR beneficiary as defined under the SFO, i.e. a director, manager or secretary of, or any other person involved in the management of the corporate WVR beneficiary. Considering that corporate WVR beneficiaries are likely to be conglomerates having various business units and a large number of subsidiaries operating across different industry sectors, if the definition of “Corporate Representative” is narrowly defined to include only the directors and senior management of the corporate WVR beneficiary as disclosed in annual report, it may not be feasible to require a member of the management team of the corporate WVR beneficiary at such senior level to serve as a director of the WVR issuer. In addition, the narrow definition does not necessarily benefit the WVR issuer, as the “officer” of the corporate WVR beneficiary may not be best suited to serve on the board of the WVR issuer.

We suggest that the SEHK should allow more flexibility in the choice of "Corporate Representative" and the definition of "Corporate Representative" should be expanded to include any key person involved in the management of the relevant business line of the corporate WVR beneficiary.

E. Sunset period

We understand that the proposal to impose a 10-year sunset period is based on the possibility of a corporate being able to exist indefinitely and the requirement to obtain independent shareholders' approval for WVR renewal is meant to address concern over the indefinite existence of corporate WVR structure. However, we believe it is undesirable to impose a 10-year sunset period considering that the relatively short duration of the sunset period and the uncertainty over renewal at the end of 10 years may discourage an investor from increasing its stake in the investee companies at the pre-IPO stage to meet the 30% economic interest threshold with a view to benefitting from the corporate WVR regime.

We consider that the event-based sunset provisions under the proposal should be able to provide sufficient safeguards. If the SEHK is minded to adopt a time-defined sunset, we would suggest that the 10-year sunset period should be extended to 20 years. Alternatively, the 10-year sunset period may be more acceptable to investors if an entity holding less than 30% economic interest in a WVR issuer can qualify as a corporate WVR beneficiary.

We would expect the SEHK to take forward the proposals and work closely with market participants to develop a corporate WVR regulatory regime with a view to striking a balance between attracting high quality candidates for listing in Hong Kong and providing adequate safeguard for shareholders.

Yours faithfully

