

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:

<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/December-2019-Chapter-37-Debt-Issues/Consultation-Paper/cp201912.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

Capitalised terms have the same meaning as defined in the Consultation Paper unless otherwise stated.

1. Do you agree with the proposed increase of the NAV Requirement from HK\$100 million to HK\$1 billion?

Yes

No

Please give reasons for your views.

We have no objection to the proposed increase of the NAV Requirement to HK\$1 billion, as we believe it will help to ensure the financial quality of the issuers or guarantors, which in turn may provide an additional level of confidence to investors.

Whilst we agree that this proposal will be beneficial for investors, a balance should be struck to maintain Hong Kong as an attractive listing platform for debt securities offered to professional investors. Hence, in order to maintain the Exchange's competitiveness within the region, it may be beneficial for the Exchange to conduct a statistical analysis of all the debt listing applications made under Chapter 37 for the past few years as a reference to help determine what proportion of issuers/guarantors are able to fulfil this increased threshold and what proportion of issuers/guarantors will be excluded and consider whether the proposed level of increase is appropriate, in particular, taking into consideration SGX does not impose a NAV Requirement for debt securities offered to professional investors.

In addition, the Exchange may also consider adopting an alternative listing criteria under Chapter 37 to cater for quality issuers in asset-light industries - to allow issuers/guarantors with a credit rating of investment grade or above to list under Chapter 37.

2. (a) Do you agree that the Exchange should maintain the current Eligibility Exemption available for State corporations?

Yes

No

Please give reasons for your views.

We agree that the Exchange should maintain the current Eligibility Exemption for State corporations given the criteria for State corporations is based on whether the corporations are majority owned by a State and not based on the financial support provided by the State.

(b) If not, which type of State corporations should comply with Issuer Eligibility Requirements? Please give reasons for your views.

Not Applicable

3. (a) Do you agree with the proposed introduction of a minimum issuance size of HK\$100 million (or equivalent in other currencies) for Chapter 37 Debts?

Yes

No

Please give reasons for your views.

We have no objection to the introduction of a minimum size issuance of HK\$100 million. We agree that this additional criterion will help to enhance the quality of issuers in the professional bond market. The minimum issuance size may also further enhance the liquidity of bonds in the secondary market. Based on our experience, we believe most issuance of bonds listed under Chapter 37 in the past few years have an issue size of at least HK\$100 million (or equivalent in other currencies), hence we believe that most issuers should be able to fulfil this criteria.

Whilst we agree with the Exchange that this proposal will ensure only issuers with proven financial capacity and track-record of debt issuances of a significant amount would be eligible to list under Chapter 37, we must also ensure that we are not imposing additional entry barriers to list under Chapter 37 and undermining the Exchange's competitiveness, taking into consideration other stock exchanges (including SGX) have a much lower minimum issuance size requirement than HK\$100 million. Hence, in order to maintain the Exchange's competitiveness within the region, it may be beneficial for the Exchange to conduct a statistical analysis of all the debt listing applications made under Chapter 37 for the past few years as a reference to help determine what proportion of issuers are able to fulfil this minimum issue size requirement and what proportion of issuers will be excluded and consider whether the proposed level of minimum issue size requirement is appropriate.

- (b) Do you agree that such minimum issuance size shall not apply to tap issuances?

Yes

No

Please give reasons for your views.

Given that tap issuances are further issuances of bonds to capture additional market interests and upon issue (or upon satisfaction of certain conditions post issue), will be fungible with the existing bonds, we agree that the minimum issue size should not apply to tap issuances to allow for flexibility.

4. Do you agree with the proposal to require issuers to state explicitly on the front cover of the listing document the intended investor market in Hong Kong (i.e. professional investors only) for its Chapter 37 Debts, in addition to the existing legend required under Rule 37.31?

Yes

No

Please give reasons for your views.

We agree with the proposal to require issuers to include a statement on the front cover of the listing document the intended investor market in Hong Kong, which is in line with market development. We believe that such a statement will enhance investors' awareness that the bonds are only intended for purchase by professional investors. In addition, as the issuer/managers in the primary offering has no control of the selling of the bonds in the secondary market, such a statement may also facilitate suitability assessments to be conducted by intermediaries during the selling process and may help reduce risk mismatch and misselling of the bonds.

5. Do you agree with the proposal to require publication of listing documents for Chapter 37 Debts on the Exchange's website on the listing date?

Yes

No

Please give reasons for your views.

Whilst we do not object to the proposal to require publication of the listing document for Chapter 37 bonds on the Exchange's website on the listing date, as we believe it will be helpful for investors and intermediaries (in particular in relation to sales in the secondary market) to gain access to the offering document and understand the structure of the bonds and the business and financial quality of issuer/guarantor as well as to facilitate the selling process, care must be taken that such a publication will not breach the relevant Companies (Winding Up and Miscellaneous) Ordinance ("CWUMPO") and Securities and Futures Ordinance ("SFO") provisions. In particular, we wish to highlight that under sections 38B and 38D of the CWUMPO, exemption for the Prospectus Regime under the Seventeenth Schedule applies to offers to professional investors only; and the exemption under section 103(k) of SFO applies where the securities are intended to be disposed of to professional investors only. Hence, we are of the view that disclaimers may not be adequate to ensure that the publication on the Exchange's website will not breach the relevant CWUMPO and SFO provisions. We believe this is one of the reasons why listing documents are currently not required to be published on the Exchange's website. We would urge the Exchange to consider amending the relevant provisions of the CWUMPO and SFO to provide clear legislative backing that such publication will not result in any breach of the relevant public offer restrictions under CWUMPO and SFO .

6. (a) Do you agree that the Exchange's current disclosure and vetting approach in relation to listing documents for Chapter 37 should remain unchanged, notwithstanding that the intended investors would include HNW Investors?

Yes

No

Please give reasons for your views.

For non-complex bonds without special or unusual features, we agree that the Exchange's current disclosure and vetting approach in relation to listing documents for Chapter 37 should remain unchanged. To deviate from the current streamlined approach and revert back to a prescriptive approach may in our view undermine the Exchange's competitiveness in the region (in particular, compared to SGX which also adopts a light-touch approach). In addition, a prescriptive approach may result in regulatory inconsistencies compared with unlisted securities which are targeted at the same group of investors.

In addition, given that under the SFC Code of Conduct, individual HNW Investors are given the highest degree of protection and licensed intermediaries dealing with individual HNW Investors need to comply with more substantive and comprehensive suitability obligations, our view is that maintaining the current disclosure and vetting approach in relation to listing documents for Chapter 37 for such products is appropriate.

Additional disclosure requirements may be adopted for complex bonds with special or unusual features - see (b) below.

- (b) For the purpose of Rule 37.29, should there be a different standard with specific disclosure requirements in respect of Chapter 37 Debts that are offered to HNW Investors, compared to those that are offered to Institutional Investors, for example, the manner of presenting information such as the terms and conditions and financial information of issuer and any credit support provider (even though the current Hong Kong legal framework does not differentiate disclosure standards between Institutional Investors and HNW Investors)? If so, what should those specific disclosure requirements be?

Yes

No

Please give reasons for your views.

We agree to include additional disclosure requirements for complex bonds with special or unusual features that are offered to HNW Investors, given that such a category of investors may include individual investors who may not be as sophisticated compared to Institutional Investors.

For offers of complex bonds with special or unusual features to HNW Investors, the Exchange may consider requiring issuers to include a summary section in the front section of the offering document which sets out in a clear format the special terms and features of the bonds (eg. deferred interest payment, conversion, write-off of debt obligations etc.), and the highlight particular risks relating to the issuer/guarantor in the risk factors section (eg. negative cash flows etc.) which may affect the issuer's and/or the guarantor's ability to fulfil their payment obligations under the bonds.

7. (a) Do you agree that the Exchange should publish disclosure guidance to the market on specified Special Features found in certain Chapter 37 Debts and other disclosure-related matters?

Yes

No

Please give reasons for your views.

We agree that the Exchange should publish disclosure guidance to the market on specified Special Features to ensure market participants are aware of the requirements and the level of detail to be included in the listing document. The disclosure guidance will also ensure consistency and transparency of information which will be helpful for investors and intermediaries.

- (b) Do you have other suggestions on any additional or alternative proposals that the Exchange may implement to promote disclosure quality and consistency for Chapter 37 Debts?

Yes

No

Please give reasons for your views.

Not Applicable

8. Do you agree with the proposal to codify the PI Waiver by revising the definition of "professional investors" under Chapter 37 to include HNW Investors?

Yes

No

You may provide reasons for your views.

We agree with the proposal to codify the PI Waiver by revising the definition of "professional investors" in the listing rules to reduce administrative burden and time required to process the listing application, since we understand that waivers have been granted by the Exchange in nearly all cases in practice.

9. (a) Do you agree with the proposal to allow eligibility of a REIT Issuer (or a REIT Guarantor) to be assessed by reference to the REIT Assets and REIT Financials respectively, provided that it has recourse to the REIT Assets to satisfy the obligations under the relevant Chapter 37 Debts?

Yes

No

Please give reasons for your views.

We agree with the proposal given that in such circumstances the REIT Assets will be applied to satisfy the payment obligations under the bonds and investors are in fact relying on the creditworthiness of the REIT Assets for repayment of the bonds.

- (b) Do you agree that if the relevant REIT is listed on the Exchange, a REIT Issuer (or a REIT Guarantor) should be qualified as a HK Listco and therefore, be exempted from the Issuer Eligibility Requirements?

Yes

No

Please give reasons for your views.

If the relevant REIT is listed on the Exchange, we agree that the relevant REIT should be given the same eligibility exemption as a HK Listco.

10. Do you have any comments on the proposed enhancements relating to the continuing obligations of the issuer and guarantor under Chapter 37?

Yes

No

Please give reasons for your views.

We agree with the proposed enhancements relating to the continuing obligations of the issuer and the guarantor to ensure more effective communication between the Exchange and the issuers/guarantors and to ensure more up-to-date information can be given to investors promptly.

11. Do you agree with the proposal to replace the existing requirements to submit copies of constitutional documents and resolutions as part of the listing application documents with a requirement to provide written confirmation by the issuer (or guarantor, as the case may be) in relation to its due incorporation, capacity and authorisation?

Yes

No

Please give reasons for your views.

We have no objection with the proposal to replace the submission of constitutional documents and resolutions with a written confirmation by the issuer/guarantor in relation to its due incorporation, capacity and authorisation. We believe it will facilitate the Exchange's review and approval process.

The Exchange may also consider making similar amendments under Rule 37.35(j) - to replace the requirement to provide copies of approvals authorising the issue and listing of shares in respect of convertible bonds by a written confirmation by the issuer.

12. (a) Do you agree with the proposal to replace the existing requirement to submit last published financial statements with a new requirement for an issuer (or the guarantor that an issuer relies in fulfilling the Issuer Eligibility Requirements) to submit its audited financial statements to evidence its fulfilment of the Issuer Eligibility Requirements?

Yes

No

Please give reasons for your views.

We agree with the proposal to replace the existing requirement with the submission of the issuer's or guarantor's audited financial statements to evidence fulfilment of the Issuer Eligibility Requirements as this will provide clarification for issuers - in certain cases, issuers in certain jurisdictions post their quarterly management accounts on their websites and it is unclear whether such accounts will be considered as the "last published financial statements".

In practice, the issuer's /guarantor's audited financial statements are required to be included in the offering document, hence we believe this requirement should not pose any additional burden on issuers/guarantors.

- (b) Where the issuer (or the guarantor) is exempted from the Issuer Eligibility Requirements or where the required audited financial statements are disclosed in the listing document, do you agree that such issuer (or guarantor) should not be required to separately submit financial statements to the Exchange?

Yes

No

Please give reasons for your views.

We agree with the proposal as the Exchange can refer to the audited financial statements in the offering document (where the same are required to be included) and where the issuer or guarantor is exempted to comply with the Issuer Eligibility Requirements, it is not necessary for the Exchange to review the financial statements to evidence fulfilment of the Issuer Eligibility Requirements. Such a proposal will reduce administrative burden and is more environmentally friendly.

13. Do you agree with the proposal to amend Rule 37.26 to clarify that supplementary listing document includes a pricing supplement?

Yes

No

Please give reasons for your views.

Yes, the amendment to Rule 37.26 will provide further clarification for market participants.

14. The Exchange invites your comments regarding whether the drafting of the proposed housekeeping Rule amendments will give rise to any ambiguities or unintended consequences.

Please consider the following comments:

- Rule 37.09A: please define "tap issue" to clarify that the further issue is to be consolidated with the original issue of bonds upon issue (or upon satisfaction of certain conditions post issue).

- Rule 37.35 (k)(1) and Rule 37.35(l)(1): please add "in its place of incorporation or establishment" after "established".

15. Do you have any other comments in respect of the matters discussed in the Consultation Paper? If so, please set out your additional comments.

No further comments .

- End -