

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 are generally supportive of this proposal. As an observation, we have received informal feedback from some market participants that the proposal to increase the NAV Requirement from HK\$100m to HK\$1 billion could potentially present some barriers for certain categories of bond issuances, particularly in the context of a keepwell structure (where the issuer or guarantor may not meet the proposed new HK\$1 billion threshold). In that scenario, one possible solution would be for the issuer or guarantor to rely on the state corporation exemption but that may not always be available. One way of addressing these concerns may be to allow the Exchange to consider in certain circumstances the net assets of the keepwell provider in lieu of the issuer/guarantor to provide more flexibility (where the net assets of the keepwell provider meet the HK\$1 billion threshold) although there would need to be clear disclosure in the listing document making clear to investors that the level of credit support provided under a keepwell is not equivalent to that provided under a guarantee. Alternatively, the Exchange could consider reducing the new NAV requirement slightly to below the proposed HK\$1 billion threshold. In any case, we believe that it will be important for the Exchange to retain some flexibility so as to ensure that high credit keepwell structures (which remain an important aspect in the structuring of professionals only bond offerings in the market) are not excluded for the purposes of a Chapter 37 listing pursuant to the new proposals.

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.

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

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.

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

Yes

No

Please give reasons for your views.

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 are supportive of this proposal and agree it will allow the issuer the opportunity to state its target market and confirm that the Chapter 37 Debts are not appropriate for retail investors in Hong Kong. While the primary market availability of the listing document should be limited in Hong Kong to professional investors, this type of legending may be especially useful if the listing document becomes available in the secondary market (particularly if publication of listing documents on the Exchange website is implemented as envisaged in Question 5).

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.

We are supportive of this proposal. The current position is anomalous, in that there is no public record of the listing document for Chapter 37 Debts. Requiring publication on the Exchange website will:

- bring Hong Kong into line with the other major listing venues for professionals-only listings
- ensure the legending which identifies the restricted nature of the listing (including the target market proposal referred to in Question 4) remains in public view
- provide a record of the full terms and conditions of the securities, which may not otherwise be available on abbreviated sources such as Bloomberg; this is particularly important for covenanted, structured and/or otherwise complex instruments
- establish a benchmark for the public information against which legal and listing rules provisions which protect against market abuse in respect of listed securities can be measured

We believe this proposal is important to protect the integrity of the (albeit often very limited) secondary market in Chapter 37 Debts, both in the wholesale market but also to the extent these securities subsequently become available, through intermediaries, to non-professional investors. In the latter case, the legending and other information in the listing document will be available to, and should be taken fully into account by, intermediaries in discharging their suitability obligation.

Some issuers which do not otherwise publish information may have concerns about publication of the listing document for Chapter 37 Debts which are intended only for a narrow professionals investor base. These concerns can perhaps be dealt with where appropriate, in the normal exercise of the discretion of the Exchange, by allowing redaction of otherwise non-public financial and business information from the published version of the listing document.

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.

Please see our responses to para (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 are not supportive of a different standard / disclosure requirements in respect of Chapter 37 Debts offered to HNW Investors, compared to those that are offered to Institutional Investors. We believe that the standard of disclosure for Chapter 37 Debts that are offered to HNW Investors should be the same as other Chapter 37 Debts. There is no clear legal reason for making such differentiation in the listing rules, and this distinction is similarly not made in legislation such as the prospectus regime under the CWUMPO or the SFC Authorisation Regime under the SFO. If different (more stringent and onerous) standards were applied to Chapter 37 Debts offered to HNW Investors, the relative competitiveness of the Exchange as a listing venue may be affected given the importance of HNW Investors as a potential investor market for Chapter 37 Debts. Moreover, if a different standard is introduced and a listing document has only been prepared to the standard of distribution to Institutional Investors, it would be difficult to see how such a restriction to Institutional Investors could be policed as a listing matter and how effective in practice it would be, at least beyond the initial primary market distribution.

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 have no objection to this proposal although we should stress that any such guidance should operate in a clear and predictable manner and should not impose unduly onerous obligations on issuers and underwriters or be overly prescriptive and rigid in its approach. In addition, such guidelines should be framed as guidance or recommendations only, rather than strict requirements that must be complied with - it should ultimately be left to the issuer to determine (a) whether the particular Chapter 37 Debt contains the relevant Special Feature and (b) the level of disclosure that would be appropriate bearing in mind the nature and terms of the Chapter 37 Debts in question, the nature of the issuer, industry, sector and other relevant factors.

- (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.

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.

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.

- (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.

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.

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 would encourage the Exchange to consider accepting the written confirmation in various forms including in the form of an email confirmation from the issuer (or guarantor, as the case may be)

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.

- (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.

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.

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.

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.

- End -