

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.

Ashurst has no objection to the proposed increase but notes that this may exclude some issuers from seeking to list debt securities under the Chapter 37 regime.

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.

Agreed that this should be maintained for State corporations.

- (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.

The proposed wording could help clarify that the debt securities are only intended and appropriate for the professional investor market.

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 have mixed views on this. We are supportive of the proposal as a measure to promote transparency and access of information and to bring the Hong Kong regime in line with other markets. However, we also note that this requirement may give rise to liability concerns for issuers and reduce desirability of Hong Kong as a listing venue for private issuers who do not wish their information to be publicly available. As an administrative matter, the files can also be very large (due to the F-pages, and sometimes mixed Chinese and English) and often need to be split into different files when sending by email (or uploading onto a data site). so may not be possible to fit into one single PDF file. Any virus or corrupted files (due to IT issues) also need to be considered. We would recommend these practical considerations to be taken into account.

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.

We do not think there is change needed to the current approach.

(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 do not think two different standards need to apply.

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 support the proposed publication of disclosure guidance which will assist issuers in identifying what disclosures are customarily expected and promote disclosure quality and consistency. It is however important to make it clear that the guidance is not mandatory.

- (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.

We agree with this as this will decrease the administrative burden on issuers to apply for the PI waiver.

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.

No comment

- (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.

No comment

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.

Rule 37.47D: With reference to the requirement of quarterly updated information to be announced after trading suspension, this is a new requirement and will require issuers and market participants time to familiarise themselves as to what information should be announced. Particularly in cases of default, there could be a lot of information going on in the defaulted group or other entities which have not issued any bonds listed on the HKEX. Further HKEX guidance on what the actual requirements would be would be helpful.

Rule 37.47E(b): Not all receivers or managers are court appointed as some could be contractually appointed. Pls clarify if these apply. The current clause also applies to "any part" of the business of the issuer, which is unclear as most issuers are SPV entities. If this applies to the whole wider "Group", note that events of default clauses in the bonds are often negotiated and not all these events will trigger events of default in the listed bonds, so this requirement may be wider than what is contractually agreed in the bond documents.

Rule 37.48: suggest that in line with the change to the other parts of Rule 37, that "as soon as possible" be amended to "as soon as reasonably practicable" for consistency purposes

Rule 37.49(b): Trust Deeds may be amended due to contractual provisions, or issue of supplementary trust deeds for tap issuances. HKEX to clarify if notification is required in these instances.

Rule 37.51: suggest that there be added "if reasonably practicable". We understand that in certain circumstances, securities may be applied for listing in markets where the issuer is unaware and has not provided consent, for example on the German Open Market (Freiverkher).

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.

Instead of a separate new administrative form requirement, we suggest that this be included in one of the existing issuer application forms.

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.

Please see above.

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.

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