

Consultation Conclusions

Review of Chapter 37 –
Debt Issues to Professional Investors Only



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DEFINITIONS

TERM	DEFINITION
“Chapter 37 Debts”	Debt securities listed on the Exchange under Chapter 37
“Consultation Paper”	Consultation Paper on Review of Chapter 37 – Debt Issues to Professional Investors Only on 6 December 2019 (here)
“CWUMPO”	Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32 of the Laws of Hong Kong)
“Eligibility Exemption”	The exemption available to supranationals, State corporations, HK Listcos and special purpose vehicles formed for listing asset-backed securities from the Issuer Eligibility Requirements
“Exchange”	The Stock Exchange of Hong Kong Limited
“GEM”	GEM of the Exchange
“GEM Rules”	The Rules Governing the Listing of Securities on GEM
“HK Listco(s)”	Companies whose equity securities are listed on the Exchange
“HKEX”	Hong Kong Exchanges and Clearing Limited
“HNW Investors”	High net worth corporates, high net worth individuals and others as prescribed by rules made under section 397 of the SFO ¹
“Institutional Investors”	Professional investors as defined under section 1 of Part 1 of Schedule 1 to the SFO, excluding the HNW Investors
“ISE”	Irish Stock Exchange
“Issuer Eligibility Requirements”	NAV Requirement and the requirement to provide audited accounts for the past two years pursuant to Rules 37.05 and 37.06 respectively
“Licensed Intermediary(ies)”	Corporations that are either licensed by the SFC as a licensed corporation, or registered with the SFC as a registered institution, to carry out regulated activities under the SFO
“LSE”	London Stock Exchange
“LUXSE”	Luxembourg Stock Exchange
“Main Board”	Main Board of the Exchange

¹ Please refer to the Securities and Futures (Professional Investor) Rules (Cap. 571D of the Laws of Hong Kong).

TERM	DEFINITION
“NAV Requirement”	The requirement under Rule 37.05 that an issuer must have minimum net assets of HK\$100 million in order to be eligible for listing its debt securities under Chapter 37
“PI Waiver”	In light of Rule 37.58 which provides that a professional investor includes a professional investor as defined in Part 1 of Schedule 1 to the SFO (excluding those prescribed by rules made under section 397 of the SFO), waivers would be granted by the Exchange, if applied by listing applicants, to modify the definition of professional investors under Rule 37.58 such that Chapter 37 Debts may also be marketed to professional investors prescribed by rules made under section 397 of the SFO, i.e. HNW Investors
“Professional Debt Regime” or “Chapter 37”	Chapter 37 of the Main Board Rules - “Debt Issues to Professional Investors Only”
“Prospectus Regime”	The regime under the CWUMPO where the offering document of any offer of shares or debentures of a company to the public for subscription has to be registered under section 38D(1) of the CWUMPO and to comply with the content requirement in accordance with section 38(1) of the CWUMPO
“Regional State corporation(s)”	Corporation(s) controlled or majority owned by regional or local authority
“REIT”	A real estate investment trust
“REIT Assets”	The assets of a REIT
“REIT Financials”	The audited financials of a REIT
“REIT Guarantor”	A guarantor of Chapter 37 Debts which has recourse against the REIT Assets for satisfying its guarantee obligations under the relevant Chapter 37 Debts
“REIT Issuer”	An issuer that has recourse against the REIT Assets for satisfying its obligations under its Chapter 37 Debts
“Rules” or “Main Board Rules”	The Rules Governing the Listing of Securities on Main Board
“SFC”	The Securities and Futures Commission
“SFO”	The Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong)
“SGX”	Singapore Exchange Limited

TERM	DEFINITION
“Special Features”	The non-exhaustive list of special features of certain bonds that render such bonds complex as posted on the SFC’s website ² , which include perpetual or subordinated bonds, or those with variable or deferred interest payment terms, extendable maturity dates, or those which are convertible or exchangeable or have contingent write down or loss absorption features, or those with multiple credit support providers and structures
“State”	Includes any agency, authority, central bank, department, government, legislature, minister, ministry, official or public or statutory person of, or of the government of, a state or any regional or local authority thereof
“State corporation(s)”	Any company or other legal person which is directly or indirectly controlled or more than 50 per cent. of whose issued equity share capital (or equivalent) is beneficially owned by, and/or by any one or more agencies of, a State or all of whose liabilities are guaranteed by a State or which is specified as such from time to time by the Exchange

² <https://www.sfc.hk/web/EN/rules-and-standards/suitability-requirement/non-exhaustive-list-of-examples-of-non-complex-and-complex-products/>

EXECUTIVE SUMMARY

Introduction

1. On 6 December 2019, the Exchange published the Consultation Paper, which set out its proposals to review and explore enhancements to the Professional Debt Regime.
2. The consultation period ended on 7 February 2020. The Exchange received a total of 24 submissions³ from a broad range of respondents, including professional bodies, industry associations, listed companies, bank, law firms, market participants and individuals⁴. 22 responses contained original content⁵. We would like to thank all those who shared their views with us during the consultation process.
3. This paper presents the results of the consultation.

Market feedback

4. The market supports all of the Exchange's proposals to enhance the Professional Debt Regime, with all the proposals receiving majority support⁶.
5. Save for the proposal to maintain the current Eligibility Exemption available for State corporations, we will implement the proposals outlined in the Consultation Paper, with minor modifications to the draft Rules in response to market comments as discussed in Chapter 2.
6. Some respondents have also made valuable comments and suggestions on further potential enhancements to the Professional Debt Regime. As these comments were outside the scope of this consultation, they will be considered in future reviews as appropriate.

Enhancements to Professional Debt Regime adopted

7. The table below sets out a summary of our original proposals and the way forward:

Relevant Question in the Consultation Paper	Original proposals	Way forward
1.	Increasing the NAV Requirement from HK\$100 million to HK\$1 billion	Adopt

³ A list of respondents (other than those who requested anonymity) is set out in Appendix I.

⁴ See paragraph 13 below for the number of responses received under each category.

⁵ Submissions with entirely identical content were counted as one response. Submissions by a professional body or industry association were counted as one response irrespective of the number of individual members that the body or association represents.

⁶ Please refer to a quantitative analysis of the responses to the consultation questions in Appendix II.

Relevant Question in the Consultation Paper	Original proposals	Way forward
2a.	Maintaining the current Eligibility Exemption available for State corporations	Require Regional State corporations to comply with Issuer Eligibility Requirements
3a.	Introducing a minimum issuance size of HK\$100 million (or equivalent in other currencies) for Chapter 37 Debts	Adopt
3b.	<u>Not</u> applying the minimum issuance size of HK\$100 million (or equivalent in other currencies) to tap issuances	Adopt
4.	Requiring 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	Adopt
5.	Requiring publication of listing documents for Chapter 37 Debts on the Exchange's website on the listing date	Adopt
6a.	Maintaining the Exchange's current disclosure and vetting approach in relation to listing documents for Chapter 37, notwithstanding that the intended investors would include HNW Investors	Adopt
6b.	Whether there should 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	No such different standard is considered necessary
7a.	Publishing disclosure guidance to the market on specified Special Features found in certain Chapter 37 Debts and other disclosure-related matters	Adopt
8.	Codifying the PI Waiver by revising the definition of "professional investors" under Chapter 37 to include HNW Investors	<ul style="list-style-type: none"> • Adopt • Revise proposed Rules amendments to reflect certain comments received

Relevant Question in the Consultation Paper	Original proposals	Way forward
9a.	Allowing 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	<ul style="list-style-type: none"> • Adopt • Revise proposed Rules amendments to clearly reflect the proposals
9b.	Allowing a REIT Issuer (or a REIT Guarantor) to be qualified as a HK Listco and therefore, be exempted from the Issuer Eligibility Requirements if the relevant REIT is listed on the Exchange	Adopt
10.	Enhancing the continuing obligations of the issuer and guarantor under Chapter 37	<ul style="list-style-type: none"> • Adopt • Revise proposed Rules amendments to reflect certain comments received
11.	Replacing 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	<ul style="list-style-type: none"> • Adopt • Revise proposed Rules amendments to reflect certain comments received
12a.	Replacing 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	Adopt
12b.	<u>Not</u> requiring issuer (or guarantor) to separately submit financial statements to the Exchange 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	Adopt

Relevant Question in the Consultation Paper	Original proposals	Way forward
13.	Amending Rule 37.26 to clarify that supplementary listing document includes a pricing supplement	<ul style="list-style-type: none"> • Adopt • Revise proposed Rules amendments to reflect certain comments received
14.	Making housekeeping changes to improve Rules clarity and to correct any typographical errors	<ul style="list-style-type: none"> • Adopt • Revise proposed Rules amendments to reflect certain comments received

Implementation arrangement

8. The Rules and the GEM Rules set out in **Appendix III** and **Appendix IV** respectively will come into effect on 1 November 2020. For new listing applicants that submit their applications before such effective date, the listing qualifications and requirements under the Rules or the GEM Rules (as the case may be) in force as at the date of this paper shall apply.

CHAPTER 1: INTRODUCTION

Background

9. On 6 December 2019, the Exchange published the Consultation Paper, which set out its proposals to review and explore enhancements to the Professional Debt Regime. The proposals seek to balance the need to safeguard investors whilst maintaining an effective and appropriate listing platform for the continued development of the bond market in Hong Kong.
10. The consultation period ended on 7 February 2020.
11. This paper sets out a summary of the key comments made by respondents on the proposals set out in the Consultation Paper, our responses and conclusions. Please refer to **Chapter 2** for details. This paper should be read in conjunction with the Consultation Paper, which is posted on the HKEX website.
12. Unless the context specifies otherwise, all Rule references in this paper are to the Main Board Rules. Whilst this paper focuses on the Main Board Rules, equivalent amendments apply to the GEM Rules (to the extent equivalent GEM Rules exist). The amended Main Board Rules and GEM Rules are set out in **Appendix III** and **Appendix IV** respectively. They have been approved by the Board of the Exchange and the SFC.

Number of responses and nature of respondents

13. We received a total of 24 submissions from a broad range of respondents, of which 22 responses contained original content⁷. The responses can be grouped into broad categories as follows:

Respondent Category	No. of responses	% of responses ⁸
<i>Institutions</i>		
Law firms	9	41%
Professional bodies / Industry associations	4	18%
Listed companies	2	9%
Bank	1	5%
Market participant (licensed corporations)	1	5%
Other entity	1	5%
<i>Individuals</i>		
Individuals	4	18%
Total	22	100%

⁷ Submissions with entirely identical content were counted as one response. Submissions by a professional body or industry association were counted as one response irrespective of the number of individual members that the body or association represents.

⁸ The percentages in the column do not add up to 100% due to rounding.

14. A list of respondents (other than those who requested anonymity) is set out in **Appendix I**. One respondent requested that its submission not be published on the HKEX website in which case we have not provided a hyperlink to its response. However, we have counted its response for the purpose of our qualitative and quantitative assessment of responses (see paragraphs 15 to 17 below). The full text of all other submissions is available on the HKEX website⁹.

Methodology

Qualitative analysis

15. The Exchange performed a qualitative analysis to enable it to properly consider the broad spectrum of respondents and their views. A qualitative analysis enabled the Exchange to give due weight to responses submitted on behalf of multiple persons or institutions and the underlying rationale for a respondent's position.

Quantitative analysis

16. The Exchange also performed an analysis to determine the support, in purely numerical terms, for the consultation proposals. For the purpose of our quantitative analysis, we counted the number of responses received, not the number of respondents those submissions represented. For example, a submission by a professional body was counted as one response even though that body may represent many members. We set out in **Appendix II** a summary result of our quantitative analysis of the responses.
17. In calculating the percentage of support for or against each proposal, we excluded those respondents who did not respond or did not indicate clearly a view to that proposal. For each question, at least 82% of respondents indicated clearly their views.

⁹ https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses_Aug_2020?sc_lang=en

CHAPTER 2: MARKET FEEDBACK AND CONCLUSIONS

A. Eligibility Requirements

(a) NAV Requirement (Question 1)

18. The Exchange proposed to raise the NAV Requirement from HK\$100 million to HK\$1 billion.

Comments received

19. 71% of respondents supported the proposal and 29% opposed it.
20. Respondents supporting the proposal generally agreed with the rationale set out in the Consultation Paper and considered that the proposal is appropriate given the current threshold has remained unchanged for fifteen years. Supporting respondents considered that a higher listing standard would raise quality of issuers of Chapter 37 Debts and in turn, the Professional Debt Regime. They also believe that the new threshold of HK\$1 billion represents a reasonable balance between investors' protection and issuer's access to debt listing platform under Professional Debt Regime.
21. Respondents who opposed the proposal commented that raising the NAV Requirement to the proposed level represents a substantial increase. This may potentially affect asset-light issuers' or special purpose vehicles' access to the Professional Debt Regime, thereby may undermine Hong Kong's competitiveness to other similar overseas listing platforms such as SGX, LUXSE, ISE and LSE¹⁰ that has no asset requirement or the requirement is only one of the alternative listing criteria¹¹. Some opposing respondents commented that net asset level of an issuer is not a direct indication of its financial health or the quality of the debt securities it issues and one respondent commented that the NAV Requirement is not necessary for a professional debt market and therefore, the Exchange should consider removing the NAV Requirement.
22. Both supporting respondents and opposing respondents have provided other suggestions to this proposal. One supporting respondent commented that the Exchange may consider raising the NAV Requirement but to a level lower than the proposed threshold¹². Some respondents suggested that the Exchange should allow parties such as a keepwell provider or a guarantor that does not wholly own the issuer to comply with the NAV Requirement¹³. Some respondents suggested the Exchange should also consider alternative criteria to determine issuer's listing eligibility such as credit rating (of issuer, guarantor or the debt securities) of investment grade or above, or by reference to the

¹⁰ These respectively refer to debts listed on the Euro Multilateral Trading Facility of the LUXSE, the Global Exchange Market of the ISE and the International Securities Market of the LSE. As mentioned in the Consultation Paper, LUXSE, ISE and LSE impose no asset requirement or other financial thresholds for determining an issuer's eligibility under their equivalent listing platform. An asset requirement is one of the alternative eligibility criteria on SGX.

¹¹ See paragraph 62 of the Consultation Paper.

¹² This respondent has not indicated any suggested level in its responses.

¹³ Currently, the NAV Requirement is required to be fulfilled by the issuer or failing which, the guarantor that wholly owns the issuer. See Rule 37.05 and Rule 37.08.

eligibility requirements applicable for issuers of equity issuers¹⁴.

Our response

23. We reiterate that the NAV Requirement provides a clear and objective criterion to determine an issuer's listing eligibility. As explained in the Consultation Paper, the Exchange considered that there are practical difficulties in using other financial thresholds to determine eligibility. The Exchange considers that introducing alternative eligibility criteria is not necessary in view that the proposed NAV Requirement represents an appropriate balance as explained in paragraph 24 below. In particular, the proposed use of credit rating to determine listing standard may not be appropriate as the Exchange noted that, for example, the Financial Stability Board has been advocating a reduction in reliance on credit rating¹⁵. Furthermore, the NAV Requirement is a criteria to determine listing eligibility, rather than a standard to assess credit quality of the debt securities. Assessment by reference to credit rating should be a separate due diligence exercise by professional investors to assess the debt securities before they invest. The Exchange considered that it would be appropriate to maintain the NAV Requirement as an eligibility criteria to ensure only issuers meeting certain asset level could list debts on the Exchange under Chapter 37.
24. We note the comment that the increased NAV Requirement may pose difficulty for some asset-light issuers or special purpose vehicles to list their debt securities under Chapter 37. Based on Chapter 37 Debts listed between 2016 and 2018, we note that 359 issuers (out of a total of 363 issuers) (98.9%) had net assets of at least HK\$1 billion. The Exchange therefore considers that raising the NAV Requirement to HK\$1 billion strikes an appropriate balance between enhancing the Professional Debt Regime and not excluding quality issuers with a low net asset level seeking to list under Chapter 37. The Exchange further highlights that, asset-light issuers or special purpose vehicles may continue to list their debt securities under Chapter 37 if the issue is guaranteed by a guarantor that meets or is exempt from, inter alia, the increased NAV Requirement.
25. The Exchange maintains its views that the NAV Requirement should continue to be fulfilled by the issuer or failing which, a guarantor that wholly owns the issuer. This approach is to ensure that despite the differences in credit support structure of each Chapter 37 Debt, each assessment of eligibility is consistent across all listing applications (i.e. assessment is either against the issuer or guarantor that wholly owns the issuer).
26. In light of the majority support from respondents, the Exchange will proceed with the proposal.

(b) Eligibility Exemption for State corporations (Questions 2(a) and (b))

27. The Exchange proposed to maintain the Eligibility Exemption available for State corporations. In case respondent disagreed with the Exchange's proposal, the Exchange

¹⁴ These requirements are set out in Rule 8.05.

¹⁵ Please refer to the principles set out in the "Thematic Review on FSB Principles for Reducing Reliance on CRA Ratings" published by the Financial Stability Board in 2014, available at https://www.fsb.org/wp-content/uploads/r_140512.pdf.

further invited market comments on the type of State corporations that should comply with the Issuer Eligibility Requirements.

Comments received

28. 84% of respondents supported the proposal to maintain the Eligibility Exemption available for State corporations and 16% opposed it. Three respondents who opposed the proposal have provided comments in relation to the type of State corporations that should comply with the Issuer Eligibility Requirements.
29. Respondents in favour of the proposal generally agreed with the rationale that the Eligibility Exemption available for State corporations should be based on an ownership test rather than a credit test (i.e. the level of financial support or backing provided by a State). One respondent suggested that any concerns over the financial support that may be provided by a State to its State corporations may be addressed by way of disclosures in the listing document.
30. One respondent further suggested the Exchange to consider expanding the definition of State corporations to include any company or other legal person in which (a) state can appoint over half of the board members or (b) state can direct its management policy.
31. Respondents opposing the proposal, however, commented that the Eligibility Exemption available for State corporations rests on the assumption that the State will back the payment obligations of the relevant State corporations in case of default. However, given the broad definition of “State” (which includes a wide range of persons under a State or any regional or local authority thereof), ownership by a State does not necessarily imply financial strength of State corporations or financial support from States to State corporations in case of default and therefore, justifies the Eligibility Exemption available for all State corporations. Further, it was suggested that the Exchange should remove the Eligibility Exemption available for State corporations to align Chapter 37 with the listing rules applicable in SGX, LUXSE, ISE and LSE where such exemption is not available.
32. Respondents that have provided comments on the type of State corporations that should comply with Issuer Eligibility Requirements are generally of the view that all types of State corporations should comply with such requirements.

Our response

33. While noting the majority support for maintaining the Eligibility Exemption available for State corporations based on ownership, the Exchange also considered the dissenting comments in light of the market developments subsequent to the publication of the Consultation Paper, such as bond defaults by some Regional State corporations¹⁶ and complaints received by the Exchange relating to Chapter 37 Debts issued by Regional

¹⁶ <https://www.caixinglobal.com/2020-02-17/investors-oppose-provinces-soe-bond-buyback-101516707.html> and <https://www.bloomberg.com/news/articles/2019-12-10/china-lqfv-secures-investor-approval-on-late-bond-repayment>.

State corporations that have defaulted in their Chapter 37 Debts.¹⁷ These developments question whether the Eligibility Exemption should automatically be warranted for all State corporations (particularly Regional State corporations) that may not necessarily receive financial support from their States in case of a default.

34. The Exchange highlights that the current definition of State corporations under Chapter 37 also includes any company or legal person “controlled” by a State which may potentially cover the scenarios mentioned in paragraph 30 above¹⁸. Therefore, the Exchange does not propose to further expand the scope of State corporations under Chapter 37.
35. The Exchange agreed with the suggestion that in case the State is not guaranteeing the obligations of a State corporation in its Chapter 37 Debts, potential investors should self-assess the extent of financial support provided by the State in case of a default. The Exchange has included this suggestion in its market guidance on disclosures in listing documents for Chapter 37 Debts (see paragraph 74 below).
36. Professional investors whom the Chapter 37 Debts are offered are expected to be sophisticated in making investment decisions on the Chapter 37 Debts. However, in light of the developments relating to Regional State corporations mentioned in paragraph 33 above and after consultation with the SFC, the Exchange will require Regional State corporations to comply with the Issuer Eligibility Requirements. For the avoidance of doubt, the Eligibility Exemption will continue to be available for corporations controlled or majority owned by central government (such as, in the case of PRC, PRC central ministries¹⁹ and the State-owned Assets Supervision and Administration Commission of State Council) under the Professional Debt Regime.

(c) *Minimum Issuance Size (Questions 3(a) and (b))*

37. The Exchange proposed to introduce a minimum issuance size of HK\$100 million (or equivalent in other currencies) for Chapter 37 Debts. The proposal will not apply to tap issuances.

Comments received

38. 67% of the respondents supported the proposal and 33% opposed it. All respondents supported the proposal that the proposed minimum issuance size shall not apply to tap issuances.

¹⁷ These observations are in line with the risk disclosures in some recent listing documents of Chapter 37 Debts issued by State corporations and the recent official notices issued by the PRC government. For details, please refer to paragraph 64 of the Consultation Paper.

¹⁸ For the purpose of determining whether a corporation is “controlled” by a State and therefore qualifies as a “State corporation” under Chapter 37, the Exchange will review the facts presented on a case-by-case basis.

¹⁹ In practice, for the purpose of Chapter 37, when assessing whether an entity is a State corporation of the PRC such that it may rely on the Eligibility Exemption, the Exchange will be inclined to refer to the description of “PRC Central Government” under the definition of “PRC Governmental Body” in Rule 19A.04. As such, if a PRC corporation is majority owned or controlled by an authority other than “PRC Central Government”, it will not be considered as a State corporation under Chapter 37 and will therefore be required to comply with the Issuer Eligibility Requirements (unless another exemption under Rules 37.05 and 37.06 applies). The Exchange may also require a legal opinion from an issuer’s legal adviser in order to assess whether the issuer/guarantor is a State corporation under Chapter 37.

39. Respondents supporting the proposal generally agreed with the rationale set out in the Consultation Paper, with the comment that the proposed minimum issuance size should not pose any major entry barrier to issuers seeking to list their debt securities under the Professional Debt Regime, and that from their experience as market participants, most of the issuances in past years were in a size larger than HK\$100 million.
40. Some supporting respondents expressed the views that the Exchange should consider if the proposed minimum issuance size, taking into consideration of the requirements (if any) in other overseas professional debts listing platforms, would potentially put the Professional Debt Regime to a competitive disadvantage.
41. Opposing respondents generally considered that the proposed minimum issuance size of HK\$100 million is too high, compared to similar professional debts listing platforms in overseas markets. Such high threshold may potentially drive away smaller size issuances (e.g. issuances under medium term note programme) and therefore, may affect competitiveness of the Professional Debt Regime. One respondent commented that if the minimum issuance size is introduced, the requirement should not apply to unlisted issuance under a medium term note programme listed under Chapter 37.
42. Two respondents commented that the same minimum issuance size should be lower or otherwise not applicable for debt securities listed under Chapter 30 of the GEM Rules.

Our response

43. The Exchange notes comments from both supporting and opposing respondents on whether the proposed level of the proposed minimum issuance size would put the Professional Debt Regime to competitive disadvantage, thereby undermining the Hong Kong Government's initiatives to continue developing Hong Kong's bond market and maintain its competitiveness.
44. The Exchange proposed to introduce a minimum issuance size with a view to enhancing the Professional Debt Regime by ensuring that only issuers with financial capacity and a proven track-record of supporting debt issuances of a significant amount would be eligible for issuing Chapter 37 Debts. When formulating the proposal, the Exchange sought to strike a balance between enhancing the Professional Debt Regime and ensuring that the new requirement would not exclude smaller size issuances. As pointed out by some supporting respondents who are major market participants, the proposed minimum issuance size should not pose an unreasonably high barrier to entry for issuances in general, including those issuances under the medium term note programme. This comment echoes our observation that between 2016 and 2018, 793 (out of a total of 799) (99.2%) Chapter 37 Debts issued (including issuances under notes programme) were in a size of at least HK\$100 million. On balance, the Exchange considers that the proposed level of minimum issuance size is appropriate.
45. We also clarify that such minimum issuance size will not apply to unlisted issuance under a medium term note programme notwithstanding that such programme is listed under Chapter 37.

46. On comments concerning the GEM Rules, the Exchange considers that the same minimum issuance size should apply. That said, the Exchange will re-visit the position at an appropriate time when there is a growth in debt securities listing under the GEM Rules²⁰.
47. In conclusion, with a majority support of the respondents, the Exchange will proceed with the proposal to introduce a minimum issue size of HK\$100 million (or equivalent in other currencies) for Chapter 37 Debts (other than tap issues²¹).

B. Issuer Statement on Intended Investor Market (Question 4)

48. The Exchange proposed to require an issuer to state explicitly on the front cover of the listing document that the intended investor market in Hong Kong for its Chapter 37 Debts are professional investors only.

Comments received

49. 95% of the respondents supported the proposal and 5% opposed it.
50. Respondents in support of the proposal agreed with the rationale set out in the Consultation Paper, in particular that the proposed statement would serve to highlight the professional-only nature of Chapter 37 Debts. Some respondents have also provided suggested amendments to the sample statement as stated in paragraph 80 of the Consultation Paper and to the draft Rules.
51. One respondent opposing the statement considered that the proposal is unnecessary as the existing statement set out in paragraph 75 of the Consultation Paper achieves the same purpose.

Our response

52. There is an overwhelming support from respondents for this proposal to require a statement on the front cover of the listing document that the intended investor market in Hong Kong for its Chapter 37 Debts are professional investors only.
53. We clarify that the sample statement set out in paragraph 80 of the Consultation Paper serves as an example only instead of a prescribed statement. Other statement to the same effect may be accepted by the Exchange. Accordingly, we have not accepted respondent's suggested changes to the sample statement set out in paragraph 80 of the Consultation Paper and maintains our earlier proposed changes to the draft Rules. We also clarify that this statement is intended to be given in relation to the intended investor market in Hong Kong only.
54. As explained in the Consultation Paper and to avoid the duplication as highlighted by respondent, the proposed statement is intended to replace the existing legend as set out

²⁰ So far, there are no debt securities listed under Chapter 30 of the GEM Rules.

²¹ Please note that "Tap issues" is defined in Rule 1.01.

in paragraph 75 of the Consultation Paper.

55. With strong market support, we will proceed with the proposal.

C. Publication of Listing Document (Question 5)

56. The Exchange proposed to require the publication of listing documents of Chapter 37 Debts on the listing date on the Exchange's website.

Comments received

57. 63% of the respondents supported the proposal and 37% opposed it.
58. Respondents in support of the proposal generally agreed that the proposed publication would enhance transparency regarding the necessary information on the relevant Chapter 37 Debts and would benefit both Licensed Intermediaries and potential investors as they will be alerted to the statements included in the listing documents highlighting that Chapter 37 Debts are intended for professional investors only. Requiring publication of listing document would bring Hong Kong in line with global standards. One supporting respondent also suggested the Exchange to consider allowing redaction of sensitive information in the listing document should it proceed with the proposal.
59. Respondents opposing the proposal commented that certain issuers (e.g. private company) may have concern over confidentiality should the listing document become publicly available. Some respondents also suggested that publication of listing document on the listing date may not benefit investors as the primary offering distribution have already been completed by such time. Instead, this may encourage participation by retail investors in Chapter 37 Debts in the secondary market.
60. Two respondents expressed the views on whether making the listing document publicly available (even with the appropriate disclaimers) may give rise to liability concerns to issuers or it will lead to a breach of public offering restrictions under the CWUMPO and the SFO²².

Our response

61. We believe that our proposal to require publication of listing document on the Exchange's website enhances transparency and increase market awareness of the professional nature of Chapter 37 Debts which target professional investors only. In response to the comments that the publication of listing documents may give rise to liability concerns to issuers or it will lead to a breach of public offering restrictions under the CWUMPO and the SFO, we reiterate that with appropriate disclaimers (see below an example of such disclaimer²³), the Exchange understands that such publication on the listing date (where

²² One respondent commented that there may be a potential breach given (a) the exemption from the Prospectus Regime under the Seventeenth Schedule of the CWUMPO applies to offers to professional investors only; and (b) the exemption under section 103(k) of SFO applies where the securities are intended to be disposed of to professional investors only.

²³ Any such disclaimer is expected to be included in the announcement publishing the listing document. Issuers should seek their own legal advisers' opinion for the disclaimer to be included.

the primary offer would have been completed) would not amount to a public offer of the relevant Chapter 37 Debts²⁴.

“This announcement and the listing document referred to herein have been published for information purposes only as required by [the Listing Rules] and do not constitute an offer to sell nor a solicitation of an offer to buy any securities. Neither this announcement nor anything referred to herein (including the listing document) forms the basis for any contract or commitment whatsoever. For the avoidance of doubt, the publication of this announcement and the listing document referred to herein shall not be deemed to be an offer of securities made pursuant to a prospectus issued by or on behalf of the issuer for the purposes of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong nor shall it constitute an advertisement, invitation or document containing an invitation to the public to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for or underwrite securities for the purposes of the Securities and Futures Ordinance (Cap. 571) of Hong Kong.”

62. To alert those who access the listing documents for Chapter 37 Debts published on the Exchange’s website that the relevant Chapter 37 Debts are intended for professional investors only, we would expect the issuer’s announcement published in relation to such publication to state expressly that the relevant Chapter 37 Debts are intended for professional investors only, for example, by including the issuer’s statement on intended investor market (as required to be included in listing document for Chapter 37 Debts going forward, see paragraphs 48 to 55 above).
63. We note the comments raised by respondents opposing the proposal. Market generally expects more transparency in listed securities, compared to unlisted securities. The approach requiring for publication of listing document is in line with those in other professional debts listing platforms (see paragraph 91 of the Consultation Paper). On balance, the proposal would help protect the interests of investors and uphold quality of the Hong Kong listed bond market. We also clarify that such publication requirement will not apply to unlisted issuance under a medium term note programme listed under Chapter 37.
64. We have considered the suggestion for allowing redaction of sensitive information in the listing document to be published. As the rationale for requiring publication of listing document is to facilitate access to information in the listing document, allowing redaction of certain information may counteract the benefits brought by the proposal and therefore, we do not intend to allow redaction of information in any published listing document for Chapter 37 Debts.
65. With a majority support of the respondents, the Exchange will adopt the proposal.

D. Disclosure and Vetting (Questions 6(a) and (b) and Questions 7(a) and (b))

66. The Exchange proposed to:

²⁴ In addition, the Exchange understands that in relation to the original primary offering of Chapter 37 Debts, section 103 of SFO would not apply in any event given the exemption under section 103(2)(ga) of SFO (as the listing documents relate to an offer to professional investors).

- (a) maintain the current disclosure and vetting approach in relation to listing documents for Chapter 37; and
 - (b) issue market guidance in relation to disclosures of specified Special Features in certain Chapter 37 Debts and other disclosure-related matters (see paragraph 102 of the Consultation Paper) and further, invited suggestions on any additional or alternative proposals that the Exchange may implement to promote disclosure quality and consistency.
67. For the purpose of Rule 37.29, the Exchange invited comments on whether there should be a different standard with specific disclosure requirements (if so, what should be those specific disclosure requirements) in respect of Chapter 37 Debts that are offered to HNW Investors, compared to those that are offered to Institutional Investors.

Comments received

68. All respondents supported the proposal to maintain the current disclosure and vetting approach in relation to listing documents for Chapter 37.
69. 85% of respondents did not consider that there should be a different disclosure standard for HNW Investors and Institutional Investors in respect of Chapter 37 Debts that are offered to HNW Investors, compared to those that are offered to Institutional Investors, while 15% of which considered otherwise. Respondents opposing different disclosure standards considered that any such differentiation is inconsistent with the current legal framework, artificial and highly disruptive to the market in view that most Chapter 37 Debts are in practice offered to both Institutional Investors and HNW Investors. One respondent in favour of a different standard further commented (with suggestions on possible disclosure requirements) that additional disclosure requirements should be imposed for Chapter 37 Debts with special or unusual features offered to HNW Investors.
70. 81% of the respondents supported the proposal to issue market guidance on disclosures of Special Features in certain Chapter 37 Debts and other disclosure-related matters and 19% opposed it. Respondents supporting the proposal agreed that the disclosure guidance could promote quality and consistency in disclosures and clarify expected disclosures. Some of these respondents have provided suggestions on the guidance to be provided²⁵. On the other hand, opposing respondents considered that the existing requirement in Rule 37.29 is sufficient and there is currently a diligent and thorough process undertaken by professional transaction parties (such as arrangers, managers, intermediaries and legal counsel) to ensure disclosure of relevant terms and risks in the listing document.
71. Some respondents suggested that the market guidance should cover disclosures of high yield issuances.
72. We have not received from respondents any other suggestions on additional or alternative

²⁵ In addition to the suggestion described in paragraph 71, the Exchange also received suggestions that the market guidance should be in line with market practice and that it should not be exhaustive or mandatory.

proposals that the Exchange may implement to promote disclosure quality and consistency for Chapter 37 Debts. One respondent suggested that the SFC may consider issuing a circular to Licensed Intermediaries on the need to consider the risks related to Special Features disclosed in listing documents when assessing the suitability of Chapter 37 Debts for their clients.

Our response

73. With the strong support of respondents, the Exchange will maintain its current disclosure and vetting approach in relation to listing documents for Chapter 37.
74. The Exchange believes that the issuance of a market guidance on matters mentioned in paragraph 66(b) above would promote disclosure quality and consistency in the market. The publication of such market guidance should not affect but to complement the existing process by professional parties to determine the level of disclosures in listing documents for Chapter 37 Debts. In light of the majority support of the respondents, the Exchange will proceed with the proposal to issue the proposed market guidance²⁶.
75. The majority respondents' views are that there should be no different disclosure standard for HNW Investors and Institutional Investors in respect of Chapter 37 Debts that are offered to HNW Investors, compared to those that are offered to Institutional Investors. Notwithstanding the above, issuers should consider the type of information which investors (i.e., Institutional Investors and HNW Investors, in particular individual HNW Investors) would customarily expect when drafting the listing document of Chapter 37 Debts. Our market guidance will also take into consideration of respondents' suggestions on how to enhance disclosures of certain information in the listing documents for Chapter 37 Debts containing Special Features.

E. Definition of Professional Investors (Question 8)

76. The Exchange proposed to codify the PI Waiver by revising the definition of "professional investors" under Chapter 37 to include HNW Investors to streamline the Rules and alleviate the administrative burden on issuers by removing the need to apply for the PI Waiver.

Comments received

77. All respondents supported the proposal to codify the PI Waiver. They agreed with the rationale as set out in the Consultation Paper.

Our response

78. With the strong support by respondents, the Exchange will proceed with this proposal.
79. We further clarify that after the proposed codification, the definition of "professional investors" will align with that under the SFO. We have made minor modifications to the

²⁶ See "[Guidance on Disclosures in Listing Documents and Continuing Obligations under Chapter 37 – Debt Issues to Professional Investors Only](#)".

draft Rules to reflect clearly this position.

F. Other Rules Amendments

(1) Issuer's or guarantor's eligibility concerning issuance by REIT (Questions 9(a) and (b))

80. The Exchange proposed to:

- (a) 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; and
- (b) exempt a REIT Issuer (or a REIT Guarantor) from the Issuer Eligibility Requirements if the relevant REIT is listed on the Exchange.

Comments received

- 81. 94% of the respondents supported the proposals and 6% opposed them.
- 82. Respondents in support of the proposals generally agreed with the rationale set out in the Consultation Paper. One supporting respondent provided drafting comments on Rules 37.05 and 37.06.
- 83. The respondent who opposed the proposals commented that it was indifferent to the proposals as it had not been involved in REIT transactions.

Our response

- 84. With an overwhelming support of the respondents, the Exchange will adopt the proposals. In light of the drafting comments received, the Exchange has also made minor modifications to the draft Rules to clearly reflect the proposals.

(2) Enhancement of continuing obligations of issuers and guarantors under Chapter 37 (Question 10)

- 85. The Exchange proposed certain enhancements of continuing obligations under Chapter 37.
- 86. 57% of the respondents indicated that they had no comments and 43% had provided comments on some of the proposed enhancements.
- 87. Key specific comments raised in relation to each proposed enhancement and our responses are summarized below.

(a) To require prompt response to the Exchange’s enquiries

88. The Exchange proposed to require the issuer and/or the guarantor to respond to enquiries made by the Exchange promptly.

Comments received

89. We have not received any key comments on this proposal.

Our response

90. The Exchange will adopt the proposal.

(b) To require announcement of default or matters leading to or involving winding up and/or liquidation

91. The Exchange proposed to require announcement of default or matters leading to or involving winding up and/or liquidation.

Comments received

92. On announcement of default, one respondent commented that some defaults are merely clerical or administrative and can be cured quickly. Further, question is raised on whether it is necessary to mandate such disclosure if the issuer is required to announce information having a material effect on its ability to discharge its obligations under listed debt securities. Another respondent requested clarification that the announcement obligation should cover cross-default triggered by default of issuer’s or guarantor’s other debt obligations.

93. On the proposal to announce matters leading to or involving winding up and/or liquidation, one respondent commented if the draft Rules is too broadly drafted. Another respondent asked the Exchange to clarify if issuers are required to announce the appointment of contractually-appointed receivers or managers (rather than appointed by a court).

Our response

94. While noting that some defaults could be of clerical or of administrative nature, the Exchange’s intention is to enhance transparency and facilitate the exercise of the investors’ rights. The obligation to announce default and the obligation to announce information having a material effect on issuer’s or guarantor’s ability to discharge their obligations under listed debt securities serve different purposes; the latter announcement obligations serve to alert holders at an early stage that ability of issuers and/or guarantors to fulfil their obligations under the Chapter 37 Debts may have been materially affected, while the obligation to announce default serves to facilitate holders exercising their rights under the Chapter 37 Debts to seek recourse against the issuers and/or the guarantors.

95. As explained in paragraph 119 of the Consultation Paper, the obligation to announce default includes (but not limited to) cross-default of its Chapter 37 Debts triggered by a

default on other debt obligations of the issuer or guarantor.

96. In response to whether the announcement obligation would cover contractually-appointed receivers or managers, the Exchange also clarifies that the proposed Rules 37.47E(b) and 37.47E(c) require issuers to announce “equivalent action” in relation to matters set out therein. Consideration should be given to the specific circumstances of an issuer and/or guarantor at the relevant time to determine whether an “equivalent action” has occurred and therefore, has triggered the announcement obligations thereunder.
97. The Exchange will adopt the proposal with minor modifications to the draft Rules in response to respondent’s suggestions.

(c) To require announcement on developments after trading suspension of Chapter 37 Debts

98. The Exchange proposed to require an announcement on developments after trading suspension of Chapter 37 Debts.

Comments received

99. Three respondents invited the Exchange to clarify what “developments” means. One respondent would like the Exchange to clarify if the proposal would be applicable in case of prolonged trading suspension.

Our response

100. As explained in paragraph 122 of the Consultation Paper, we reiterate that “developments” includes developments on matters leading to the suspension. Issuer should assess (with advice from professional advisors if necessary) as to what quarterly updates will be necessary for investors should its Chapter 37 Debts remain suspended.
101. In addition, the Exchange clarifies that the proposed obligation is applicable in case of prolonged suspension, so long as the trading in the Chapter 37 Debts is suspended.
102. The Exchange will adopt the proposal.

(d) To clarify the timing of making an announcement of information to avoid a false market or information having material effect on a guarantor’s ability to meet its obligations under debt securities

103. The Exchange proposed to require an announcement of information to avoid a false market or information having material effect on a guarantor’s ability to meet its obligations under debt securities to be made “as soon as reasonably practicable”, as opposed to “immediately”.

Comments received

104. We have not received any key comments on this proposal.

Our response

105. The Exchange will adopt the proposal.

(e) To require issuer to announce information having a material effect on its ability to meet its obligations under listed debt securities

106. The Exchange proposed to require issuer to announce information having a material effect on its ability to meet its obligations under listed debt securities.

Comments received

107. We have not received any key comments on this proposal.

Our response

108. The Exchange will adopt the proposal.

(f) To clarify which entities need to comply with the continuing obligations

109. The Exchange proposed to state in Rule 37.44 to specify which continuing obligations apply to guarantors in case of guaranteed issues.

Comments received

110. One respondent provided drafting comments on the draft Rules amendment in Rule 37.44.

Our response

111. The Exchange reiterates that in case of guaranteed issues, it expects (and has been requiring) the guarantors to comply with the continuing obligations set out in Rule 37.44 to 37.53 as a matter of existing practice. The proposal is solely to state its expectation clearly instead of introducing new continuing obligations on the guarantors.

112. The Exchange will adopt the proposal with amendments to the draft Rules in response to the respondent's comments.

(g) To clarify the scope of debt securities with respect to the continuing obligations

113. The Exchange proposed to clarify the scope of debt securities with respect to the continuing obligations.

Comments received

114. The Exchange did not receive specific comments on this proposal.

Our response

115. The Exchange will adopt the proposal.

(3) Streamlining the listing application process

(a) Constitutional documents and resolutions submitted to Exchange (Question 11)

116. The Exchange proposed 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.

Comments received

117. All respondents supported the proposal. They generally agreed with the rationale set out in the Consultation Paper. Two supporting respondents also provided suggested changes to the draft Rules.

118. Some respondents suggested that the Exchange replaced the requirement under Rule 37.35(j) to submit a copy of the approvals authorising the issue and listing of conversion shares with a requirement to provide written confirmation by the issuer (or guarantor, as the case may be) in relation to such authorisations.

Our response

119. We clarify that the approvals referred to in Rule 37.35(j) are the listing approvals granted by the Exchange with respect to the conversion shares granted by the Exchange, as opposed to the issuer's or guarantor's internal authorisations with respect to the conversion shares. As such, the requirement under Rule 37.35(j) will not be replaced with a requirement to provide written confirmation by the issuer (or guarantor, as the case may be).

120. With the unanimous support of the respondents, the Exchange will adopt the proposal, with minor modifications to the draft Rules in response to the respondents' suggestions.

(b) Last published financials submitted to Exchange (Questions 12(a) and (b))

121. The Exchange proposed 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. Such new requirement will not apply 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.

Comments received

122. 95% of the respondents supported the proposal and 5% opposed it. All respondents agreed that such new requirement should not apply 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.
123. Respondents in support of the proposals generally agreed with the rationale set out in the Consultation Paper.
124. The respondent who opposed the proposal commented that it would affect the timing for the listing of Chapter 37 Debts as an issuer may have only reviewed financial statements at a particular time.

Our response

125. The Exchange clarifies that the proposal to require 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 will not apply to an issuer (or guarantor) which is exempted from the Issuer Eligibility Requirements. If an issuer (or guarantor) is not so exempted, it would not be eligible to issue or list any Chapter 37 Debts if it has not produced audited accounts for two financial years²⁷. As such, the proposal should have no impact on the timing for the issue and listing of Chapter 37 Debts by issuers (or guarantors) that meet, or are exempted from, the Issuer Eligibility Requirements.
126. With an overwhelming support of the respondents, the Exchange will adopt the proposals.

(4) Clarify the scope of supplementary listing document (Question 13)

127. The Exchange proposed to amend Rule 37.26 to clarify that supplementary listing document includes a pricing supplement.

Comments received

128. 95% of the respondents supported the proposal and 5% opposed it.
129. Respondents in support of the proposal generally agreed with the rationale set out in the Consultation Paper.
130. The respondent who opposed the proposal stated that it would not object to this proposal if it is made clear that the responsibility statement required to be included in pricing supplements issued under medium term note programmes can state that the pricing supplement together with the offering circular for the programme contains the information about the issuer (and the guarantor) as required by the Rules.

²⁷ Rule 37.06 requires an issuer to produce audited accounts for the two years before the listing application made up to a date at most 15 months before the intended date of the listing document, unless exempted.

Our response

131. With an overwhelming support of the respondents, the Exchange will adopt the proposal with minor modifications to the draft Rules in response to the comment referred to in paragraph 130 above.

(5) Other housekeeping changes

132. In the Consultation Paper, we proposed a number of housekeeping changes to improve clarity of the Rules and to correct any typographical errors.

Comments received

133. The Exchange did not receive any comments that the proposed housekeeping changes would give rise to ambiguities or unintended consequences. One respondent invited the Exchange to clarify whether the deletions in Rule 37.08(b) were made in error.

Our response

134. The Exchange clarifies that the intent of Rule 37.08 is to set out the circumstances under which an ineligible issuer may issue guaranteed Chapter 37 Debts. An issuer wholly owned by a State corporation is a State corporation under Chapter 37 and is eligible to issue Chapter 37 Debts. It is therefore unnecessary to retain the reference to “a State corporation” in Rule 37.08(b)²⁸.
135. The Exchange will proceed with the proposed housekeeping changes with minor modifications to reflect the respondent’s comments.

G. Other comments and suggestions

136. We received valuable comments on other enhancements or changes to the Professional Debt Regime and related Rules, which although outside the scope of this consultation, would be considered in future reviews.

²⁸ In the Consultation Paper, the Exchange initially proposed to delete the reference to “a State” in Rule 37.08(b) on basis similar to that set out in paragraph 134. However, in light of the amendments to the definition of State corporations in Rule 37.58, the reference to a “State” should be retained so that an otherwise ineligible issuer that is wholly owned by a regional or local government of a State may also issue guaranteed Chapter 37 Debts pursuant to Rule 37.08.

APPENDIX I: LIST OF RESPONDENTS

Law Firms (9 in total)

1. Ashurst Hong Kong
2. Clifford Chance
3. Deacons
4. King & Wood Mallesons
5. Latham & Watkins LLP
6. Linklaters
7. Sidley Austin
8. Slaughter and May
9. Fangda Partners

Professional Bodies / Industry Associations (4 in total)

10. Hong Kong Institute of Certified Public Accountants
11. Hong Kong Institute of Chartered Secretaries
12. International Capital Market Association - Asia-Pacific Legal and Documentation Forum
13. The Law Society of Hong Kong

Listed Companies (2 in total)

14. AIA Group Limited
15. Cathay Pacific Airways Limited / Swire Pacific Limited / Swire Properties Limited ²⁹

Bank (1 in total)

16. The Hongkong and Shanghai Banking Corporation Limited

Market Participant (Licensed Corporation) (1 in total)

17. Charltons (on behalf of Alliance Capital Partners Limited, Anglo Chinese Corporate Finance Limited, Da Yu Financial Holdings Limited, Huatai Financial Holdings (Hong Kong) Limited, Pearl Bridge Securities Limited, SHK Hong Kong Industries Limited, Yu Ming Investment Management Limited, and Yue Xiu Capital Limited)

Other Entity (1 in total)

18. 1 other entity (name not disclosed at the respondent's request)

Individuals (4 in total)

19. Guiping Lu
20. Stephen C K Ng
21. to 22. 2 individuals (names not disclosed at the respondents' request)

Remarks:

1. *If the entire body of the response is identical, word-for-word, with the entire body of another response. It will be recorded as a "duplicate response" and it will not be counted for the purpose of a quantitative and qualitative analysis of the responses.*

²⁹ Cathay Pacific Airways Limited's submission is identical to the submission of Swire Pacific Limited and Swire Properties Limited. Therefore, we counted the three submissions as one response.

2. *The total number of responses is calculated according to the number of submissions received and not the underlying members that they represent.*

APPENDIX II: SUMMARY RESULT OF QUANTITATIVE ANALYSIS

Proposals in the Consultation Paper	Feedback		
	Agree	Disagree	Number of respondents ³⁰
Q1. Do you agree with the proposed increase of the NAV Requirement from HK\$100 million to HK\$1 billion?	15 (71%)	6 (29%)	21 (95%)
Q2a. Do you agree that the Exchange should maintain the current Eligibility Exemption available for State corporations?	16 (84%)	3 (16%)	19 (86%)
Q2b. If not, which type of State corporations should comply with Issuer Eligibility Requirements?	Three respondents provided comments.		
Q3a. 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?	14 (67%)	7 (33%)	21 (95%)
Q3b. Do you agree that such minimum issuance size shall not apply to tap issuances?	20 (100%)	0 (0%)	20 (91%)
Q4. 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?	20 (95%)	1 (5%)	21 (95%)
Q5. 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?	12 (63%)	7 (37%)	19 (86%)
Q6a. 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?	21 (100%)	0 (0%)	21 (95%)

³⁰ Out of 22 responses. Respondents who did not respond or did not indicate clearly a view to a proposal were excluded.

Proposals in the Consultation Paper	Feedback		
	Agree	Disagree	Number of respondents ³⁰
Q6b. 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?	17 respondents (85%) did not consider that there should be a different standard with specific disclosure requirements in respect of Chapter 37 Debts that are offered to HNW Investors. Three respondents (15%) thought there should be such different standard. Two respondents did not clearly indicate a view.		
Q7a. 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?	17 (81%)	4 (19%)	21 (95%)
Q7b. 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?	17 respondents (89%) had no other suggestions. Two respondents (11%) provided suggestions. Three respondents did not clearly indicate a view.		
Q8. 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?	20 (100%)	0 (0%)	20 (91%)
Q9a. 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?	17 (94%)	1 (6%)	18 (82%)
Q9b. 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?	17 (94%)	1 (6%)	18 (82%)

Proposals in the Consultation Paper	Feedback		
	Agree	Disagree	Number of respondents ³⁰
Q10. Do you have any comments on the proposed enhancements relating to the continuing obligations of the issuer and guarantor under Chapter 37?	12 respondents (57%) indicated that they had no comments and nine respondents (43%) had provided comments on some of the proposed enhancements. One respondent did not clearly indicate a view.		
Q11. 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?	20 (100%)	0 (0%)	20 (91%)
Q12a. 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?	19 (95%)	1 (5%)	20 (91%)
Q12b. 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?	21 (100%)	0 (0%)	21 (95%)
Q13. Do you agree with the proposal to amend Rule 37.26 to clarify that supplementary listing document includes a pricing supplement?	20 (95%)	1 (5%)	21 (95%)
Q14. The Exchange invites your comments regarding whether the drafting of the proposed housekeeping Rule amendments will give rise to any ambiguities or unintended consequences.	19 respondents did not provide comments or clearly indicate a view. Two respondents commented that the proposed housekeeping Rule amendments would not give rise to unintended consequences. One respondent provided drafting comments on the proposed housekeeping Rule amendments.		

Proposals in the Consultation Paper	Feedback		
	Agree	Disagree	Number of respondents ³⁰
Q15. Do you have any other comments in respect of the matters discussed in the Consultation Paper?	Nine respondents provided comments.		

APPENDIX III: AMENDMENTS TO THE MAIN BOARD RULES

Chapter 37

DEBT SECURITIES

DEBT ISSUES TO PROFESSIONAL INVESTORS ONLY

Introduction

37.01 This Chapter deals with debt issues to Professional Investors only. It sets out the qualifications for listing, application procedures, contents of listing documents and the obligations that apply after listing.

Listing Approval

- 37.02 A listing application may be approved by:
- (a) ~~A~~ a member of the Listing Division to whom the Executive Director – Listing has delegated authority;
 - (b) ~~T~~the Executive Director – Listing (who may also delegate approval authority within the Listing Division); or
 - (c) ~~T~~the Listing Committee.

Applicants' Qualifications for Listing

- 37.03 An issuer must be a State, Supranational, body corporate (including a State corporation) or trust.
- 37.04 If an issuer is a body corporate it must be validly incorporated or established in its place of incorporation or establishment. If an issuer is a trust it must be validly established. An issuer must provide ~~evidence~~ written confirmation of this if it applies for listing.
- 37.05 If an issuer is a body corporate or trust it must have net assets of HK\$~~100 million~~ 1 billion unless:
- (a) ~~i~~t is a Supranational; or
 - (b) ~~i~~t is a State corporation; or
 - (c) ~~i~~ts shares are listed on the Exchange; or
 - (d) ~~i~~ts shares are listed on another stock exchange; or

- (e) it is a special purpose vehicle formed for listing asset backed securities; or
- (f) it has recourse to the assets of a real estate investment trust which units are listed on the Exchange in respect of the obligations under the debt securities.

If an issuer has recourse to the assets of a real estate investment trust in respect of the obligations under the debt securities, its fulfilment of the eligibility criterion above may be assessed by reference to the assets of the real estate investment trust.

37.06 If an issuer is a body corporate or trust it must have produced audited accounts for the two years before the listing application made up to a date at most 15 months before the intended date of the listing document unless:

- (a) it is a Supranational; or
- (b) it is a State corporation; or
- (c) its shares are listed on the Exchange; or
- (d) it is a special purpose vehicle formed for listing asset backed securities; or
- (e) it has recourse to the assets of a real estate investment trust which units are listed on the Exchange in respect of the obligations under the debt securities.

If an issuer has recourse to the assets of a real estate investment trust in respect of the obligations under the debt securities, its fulfilment of the eligibility criterion above may be assessed by reference to the audited accounts of the real estate investment trust.

37.07 If an issuer proposes to issue asset-backed securities:

- (a) it must be a single purpose undertaking.
- (b) it may add further assets to the pool of assets whilst its securities are listed.
- (c) it may list further classes of securities backed by separate pools of assets.

37.08 If an issuer does not meet the eligibility criteria above it is eligible for a listing of guaranteed debt securities if:

- (a) it is a body corporate that is validly incorporated or established; and
- (b) it is wholly owned by a State, a Supranational or by a body corporate (including a State corporation) that meets the eligibility criteria above; and
- (c) its owner guarantees its obligations; and

(d) ~~It~~ and its owner agree to comply with the Listing Rules.

Securities' Qualifications for Listing

37.09 The debt securities must be freely transferable with a denomination of at least HK\$500,000 (or equivalent in other currencies).

37.09A Except in the case of a tap issue, the debt securities must be of a principal amount of at least HK\$100 million (or equivalent in other currencies).

37.10 The debt securities must have been validly authorised.

37.11 If an issuer is a body corporate (including a State corporation) its debt securities:

- (a) must comply with the law of the place where it is incorporated or established; and
- (b) must comply with its memorandum and articles of association or equivalent documents.

37.12 If an issuer is issuing guaranteed debt securities under rule 37.08 the guarantee:

- (a) ~~M~~must have been validly authorised;
- (b) ~~M~~must comply with the guarantor's memorandum and articles of association or equivalent documents, if the guarantor is a body corporate (including a State corporation); and
- (c) ~~M~~must comply with the law of the place where the guarantor is incorporated or established.

Asset-backed Securities

37.13 This section sets out additional requirements that apply if debt securities are asset-backed securities.

37.14 If the asset backed securities are backed by equity securities or depositary receipts:

- (a) ~~T~~he equity securities or depositary receipts must represent minority interests and must not confer legal or management control of the issuer of the equity securities; and
- (b) ~~T~~hey must be listed on the Exchange or another stock exchange.

37.15 If asset backed securities are backed by options or conversion rights relating to equity securities then rule 37.18 applies to the securities resulting from the exercise of the option or conversion rights.

- 37.16 There must be a trustee or appropriate independent party to represent the interests of the holders of the asset-backed securities. It must have a right of access to information relating to the assets.

Convertible Debt Securities

- 37.17 This section sets out additional requirements that apply if debt securities are convertible.

- 37.18 If debt securities are convertible they must be convertible into:

- (a) ~~S~~shares listed or to be listed on the Exchange or another stock exchange; or
- (b) ~~D~~depository receipts listed or to be listed on the Exchange or another stock exchange; or
- (c) ~~O~~other assets that the Exchange has agreed in writing are acceptable.

- 37.19 If debt securities are convertible into shares that have not yet been issued:

- (a) ~~T~~he issuance of the shares must have been validly authorised; and
- (b) ~~T~~he listing of the shares must have been validly authorised.

- 37.20 If debt securities are convertible into shares (or into depository receipts) the terms of the issue must provide for appropriate adjustments to the conversion terms if there is a change in the capital of the issuer of those shares or a change in the capital of the issuer whose shares underlie the depository receipts.

- 37.21 The Exchange treats debt securities with non-detachable warrants to subscribe for equity securities or other assets as convertible securities.

Options, Warrants and Similar Rights

- 37.22 This section sets out additional requirements that apply to options, warrants or similar rights.

- 37.23 The securities underlying the options, warrants or similar rights must be:

- (a) ~~D~~debt securities that are listed or to be listed on the Exchange;
- (b) ~~D~~debt securities listed or to be listed on another stock exchange; or
- (c) ~~O~~other debt security that the Exchange has agreed in writing is acceptable.

- 37.24 If the underlying debt securities have not yet been issued:

- (a) ~~T~~heir issuance must have been validly authorised; and

(b) Any listing of them must have been validly approved.

37.25 If options, warrants or similar rights are convertible into debt securities, the terms of the issue must provide for appropriate adjustments to the conversion terms if there is a change in those debt securities.

Listing Document

37.26 This section sets out the information that an issuer must disclose in its listing document and other requirements relating to the listing document. For debt issuance programmes these requirements apply to the base listing document and the supplementary listing document (including but not limited to the pricing supplement) for each issue under the programme.

37.27 A listing document must contain a disclaimer statement:

“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this document, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

The disclaimer must be legible and appear on the front cover or inside cover of the listing document.

37.28 A listing document must contain a responsibility statement:

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The issuer accepts full responsibility for the accuracy of the information contained in this document and confirms, having made all reasonable enquiries, that to the best of its knowledge and belief there are no other facts the omission of which would make any statement herein misleading.”

The Exchange may require appropriate modification to the statement if an issue is guaranteed or issued pursuant to a debt issuance programme. The Exchange may allow others to make the statement but an issuer must seek prior consent for this.

37.29 A listing document must contain the information that the investors an issuer is offering the securities to would customarily expect it to contain. It need not comply with Appendix 1, part C.

37.30 A listing document must contain any additional information that the Exchange requires.

37.31 A listing document must contain a statement limiting its distribution to Professional Investors only.

37.31A The front cover of a listing document must contain a statement on the intended investor market in Hong Kong (i.e. Professional Investors only) for the debt securities.

37.32 A listing document must be in English or Chinese.

37.33 A listing document may be in printed or electronic form.

Application Procedures

37.34 This section sets out the procedures that an issuer must follow to apply for listing of securities or listing of a debt programme. An application involves determining whether an issuer is eligible for listing and whether securities are eligible for listing. The Exchange will use the information that an issuer supplies to make these assessments. The documents an issuer submits must be in English or Chinese or translated into one of these languages.

37.35 An issuer must submit the following:

(a) ~~C~~ompleted application form. If an issue is guaranteed the guarantor must also complete the application form. This is set out in Appendix 5, part C.

(b) ~~L~~isting fee as provided in Appendix 8.

(c) ~~D~~raft listing document.

(d) ~~D~~raft formal notice of listing.

(e) ~~[Repealed [●]]~~ If an issuer is not listed on the Exchange a copy of

(1) ~~[Repealed [●]]~~ Its memorandum and articles of association, certificate of incorporation or equivalent (for example, trust deed) to show that the issuer is validly incorporated or established; and

(2) ~~[Repealed [●]]~~ Its last published financial statements. These financial statements are not required if an issue is guaranteed.

(f) ~~[Repealed [●]]~~ If the issue is guaranteed by a body corporate that is not listed on the Exchange a copy of the guarantor's

(1) ~~[Repealed [●]]~~ Memorandum and articles of association, certificate of incorporation or equivalent, to show that the guarantor is validly incorporated or established; and

(2) ~~[Repealed [●]]~~ Last published financial statements.

- (g) ~~[Repealed [●]] If debt securities have been authorised by shareholders then a copy of the resolution.~~
- (h) ~~[Repealed [●]] A copy of the resolutions by the issuer's governing body (for example, its board of directors or trustees) authorising—~~
- ~~(1) the issue and allotment of the debt securities;~~
- ~~(2) the application for listing; and~~
- ~~(3) issuing the listing document.~~
- (i) ~~[Repealed [●]] If an issue is guaranteed, a copy of the resolutions by the guarantor's governing body authorising—~~
- ~~(1) the listing application; and~~
- ~~(2) issuing of the listing document.~~
- (j) If an issue is convertible into shares a copy of the approvals authorising the issue and listing of those shares.
- (k) a written statement by the issuer's duly authorised representative confirming:
- (1) where the issuer is not listed on the Exchange, the issuer has been validly incorporated or established in its place of incorporation or establishment; and
- (2) the issuer has obtained all necessary internal authorisations to issue and allot the debt securities, make an application for listing and issue the listing document.
- (l) if an issue is guaranteed, a written statement by the guarantor's duly authorised representative confirming:
- (1) where the guarantor is not listed on the Exchange, the guarantor has been validly incorporated or established in its place of incorporation or establishment; and
- (2) the guarantor has obtained all necessary internal authorisations to approve the listing application and the issuing of the listing document.
- (m) if an issuer (or a guarantor on which the issuer relies in eligibility assessment pursuant to rule 37.08) is not exempted from rules 37.05 and 37.06, a copy of the audited financial statements of an issuer (or the guarantor on which the issuer relies in eligibility assessment pursuant to rule 37.08) to evidence its fulfilment of rules 37.05 and 37.06.

Where the required financial statements are disclosed in the listing document, it is not necessary to separately submit them to the Exchange.

An issuer may submit drafts of the application form in (a) and the ~~authorisations and resolutions confirmation~~ in ~~(g)~~, ~~(hk)~~ and (ii) to enable the Exchange to consider whether an issue and issuer are eligible for listing. The final ~~resolutions and authorisations confirmation~~ in ~~(g)~~, ~~(hk)~~ and (ii) may be submitted after the listing application but before listing.

- 37.36 After the Exchange has considered an application it will issue a Listing Eligibility letter. In this letter it will advise an issuer whether it and its debt securities are eligible for listing. The Exchange will also indicate whether it requires inclusion of additional information in the listing document. The letter is valid for three months from the date of issue. For routine applications the Exchange aims to issue this letter 5 business days after it receives the application.
- 37.37 An issuer must not issue the listing document in final form until the Exchange has confirmed that the issuer may issue it. A draft may be circulated for the purpose of arranging underwriting, syndication and marketing of the offering to Professional Investors.
- 37.38 In the period from when the listing document is issued to the date of listing an issuer must advise the Exchange of any material event that it would have disclosed in the listing document if it had been aware of the event before the listing document was finalised.
- 37.39 An issuer must publish a formal notice before listing. The notice must be in English or Chinese. A model form of notice is set out in Appendix 11.
- 37.39A An issuer must also publish on the Exchange's website the listing document (in English or Chinese) on the listing date. For debt issuance programmes this requirement applies to the base listing document and the supplementary listing document (including but not limited to the pricing supplement) for each issue of listed debt securities under the programme.

Programmes

- 37.40 This section sets out the procedures for listing securities under a programme that the Exchange has approved.
- 37.41 A debt programme that the Exchange has approved is valid for issuing debt securities for one year after the date it is published.
- 37.42 An issuer must submit the pricing supplement for an issue under a programme before 2:00 pm of the business day before listing is required to become effective. It must not issue the pricing supplement until the Exchange has confirmed that the issuer may issue it.

37.43 The Exchange will approve the listing of all securities issued under a valid programme subject to the issuer:

- (a) ~~N~~otifying it of the final terms of each issue;
- (b) ~~C~~onfirming that the securities have been issued; and
- (c) ~~P~~aying the appropriate listing fee before listing.

Continuing Obligations

37.44 This section sets out the obligations that apply to an issuer if the Exchange agrees to list its securities. If the securities are guaranteed then the guarantor must also comply with ~~the~~ these obligations set out in rules 37.45, 37.46, 37.46A, 37.47, 37.47A, 37.47D, 37.47E and 37.53 and accordingly, references in these rules to “issuer” shall be construed accordingly to mean the “guarantor” and references to “issuer’s listed debt securities”, “its listed debt securities” and “the listed debt securities” shall be construed accordingly to mean the listed debt securities guaranteed by the guarantor. An issuer (and a guarantor, if any) must comply with these obligations:

- (a) until the securities expire; or
- (b) until they are withdrawn from listing.

37.45 If an issuer is required to announce information then:

- (a) it must do so by an announcement under rule 2.07C, except that the announcement may be in English or Chinese only; and
- (b) ~~T~~he announcement must include the following disclaimer:

“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this announcement, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

37.46 An issuer must comply with the Listing Rules in force from time to time.

37.46A Where the Exchange makes enquiries concerning unusual movements in the price or trading volume of an issuer’s listed debt securities, the possible development of a false market in its listed debt securities, or any other matters, the issuer must respond promptly as follows:

- (a) provide to the Exchange and, if requested by the Exchange, announce, any information relevant to the subject matter(s) of the enquiries which is available to it, so as to inform the market or to clarify the situation; or
- (b) if, and only if, the directors of the issuer, having made such enquiry with respect to the issuer as may be reasonable in the circumstances, are not aware of any matter or development that is or may be relevant to the unusual trading movement of its listed debt securities, or information necessary to avoid a false market, or any inside information which needs to be disclosed under the Inside Information Provisions, and if requested by the Exchange, make an announcement containing a statement to that effect.
- 37.47 An issuer must as soon as reasonably practicable ~~immediately~~, after consultation with the Exchange, announce any information which:
- (a) [Repealed 1 January 2013]
- (b) is necessary to avoid a false market in its listed debt securities where in the view of the Exchange there is or there is likely to be a false market in its listed debt securities.
- Note: If an issuer believes that there is likely to be a false market in its listed debt securities, it must contact the Exchange as soon as reasonably practicable.*
- (c) [Repealed 1 January 2013]
- 37.47A ~~The issuer~~ ~~If the securities are guaranteed, the guarantor~~ must as soon as reasonably practicable ~~immediately~~ announce any information which may have a material effect on its ability to meet the obligations under the listed debt securities.
- 37.47B (a) Where an issuer is required to disclose inside information under the Inside Information Provisions, it must also simultaneously announce the information.
- (b) An issuer must simultaneously copy to the Exchange any application to the Commission for a waiver from disclosure under the Inside Information Provisions, and promptly upon being notified of the Commission's decision copy it to the Exchange.
- 37.47C An issuer must, as soon as reasonably practicable, apply for a trading halt or a trading suspension where there is information under rule 37.47 or rule 37.47A, or inside information which must be disclosed under the Inside Information Provisions, or inside information which is the subject matter of an application to the Commission for a waiver but its confidentiality has been lost, and the information cannot be announced promptly.
- 37.47D An issuer must, after trading in its listed debt securities has been suspended, publish quarterly announcements of its developments.

37.47E An issuer must as soon as reasonably practicable announce any information which relates to:

- (a) a default on its listed debt securities;
- (b) the appointment of a receiver or manager either by any court having jurisdiction or any application to any court having jurisdiction for the appointment of a receiver or manager, or equivalent action in the country of incorporation or other establishment, in respect of the business or any part of the business of the issuer or the property of the issuer;
- (c) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator, or equivalent action in the country of incorporation or other establishment, against or in respect of the issuer; or
- (d) the passing of any resolution by the issuer that it be wound up by way of members' or creditors' voluntary winding-up, or equivalent action in the country of incorporation or other establishment.

37.48 An issuer must announce as soon as possible:

- (a) ~~if~~ aggregate redemptions or cancellations exceed 10% and every subsequent 5% interval of an issue; or
- (b) ~~Any~~ public disclosure made on another stock exchange about its listed debt securities.

37.49 An issuer must notify the Exchange in advance of any proposal to:

- (a) ~~R~~replace a trustee for bondholders; or
- (b) ~~A~~amend the trust deed; or
- (c) ~~A~~amend the terms of convertible listed debt securities unless that amendment occurs automatically in accordance with their ~~the~~ terms of the debt securities.

An issuer must not proceed with any proposed change until the Exchange has advised whether it will impose conditions for the change.

37.50 An issuer must notify the Exchange as soon as possible if:

- (a) ~~i~~it has repurchased and cancelled all of an issue of its listed debt securities; or
- (b) ~~i~~it has redeemed all of an issue of its listed debt securities prior to the maturity date; or

(c) ~~All~~ of an issue of convertible listed debt securities has been fully converted.

In each case, the issuer must apply to the Exchange for the listed debt securities to be delisted. The Exchange will then formally delist ~~the~~ such debt securities.

- 37.51 An issuer must notify the Exchange as soon as possible if its listed debt securities are listed on another stock exchange.
- 37.52 An issuer must provide the Exchange with a copy of any circular that that is sent to bondholders or to any trustee. If the circular is published on a website and the issuer notifies the Exchange when it is published on that site it does not have to send it a printed copy.
- 37.53 If an issuer is a body corporate it must provide the Exchange with its annual accounts and any interim report when they are issued. An issuer is exempt from this requirement if its securities are guaranteed by a body corporate in which case it must provide the guarantor's annual accounts and interim report. The Exchange will accept a printed or electronic copy. If the annual accounts or interim report are published on a website and the issuer notifies the Exchange when they are published on that site it does not have to send it a printed copy.

Authorised Representatives

- 37.54 An issuer must appoint two authorised representatives to communicate with the Exchange and must notify the Exchange of any change of representative. The representatives do not have to be resident in Hong Kong.

Other

- 37.55 If an issuer or its debt securities does not comply with these requirements the Exchange will not list them unless it agrees to modify these requirements.
- 37.56 The Exchange may accept or reject a listing application or make listing subject to additional conditions.
- 37.57 The Exchange may impose additional obligations on an issuer or guarantor. The Exchange will allow an issuer or guarantor to make representations before imposing requirements on it that are not imposed on issuers or guarantors of debt securities generally.

Definitions

- 37.58 In this Chapter the following definitions apply:

“asset-backed securities”	debt securities backed by financial assets which, at the time of the relevant issues, are evidenced by agreements and intended to produce funds to be applied towards interest payments due on the securities and repayment of principal on maturity, except those debt securities which are directly secured, in whole or in part, on real property or other tangible assets
“bearer securities”	securities transferable to bearer
“convertible debt securities”	debt securities convertible into or exchangeable for equity securities or other property and debt securities with non-detachable options, warrants or similar rights to subscribe or purchase equity securities or other property attached.
“debt issuance programmes”	issues of debt securities where only part of the maximum principal amount or aggregate number of securities under the issue is issued initially and a further tranche or tranches may be issued subsequently
“debt securities”	debenture or loan stock, debentures, bonds, notes and other securities or instruments acknowledging, evidencing or creating indebtedness, whether secured or unsecured and options, warrants or similar rights to subscribe or purchase any of the foregoing and convertible debt securities.
<u>“listed debt securities”</u>	<u>debt securities that are listed on the Exchange</u>
“Professional Investor”	<p>(a) For a person in Hong Kong a professional investor as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance (excluding<u>including</u> those prescribed by rules made under section 397 of that Ordinance); or</p> <p>(b) For a person outside Hong Kong, a professional investor is a person to whom securities may be sold in accordance with a relevant exemption from public offer regulations in that jurisdiction.</p>
“State”	Includes any agency, authority, central bank, department, government, legislature, minister, ministry, official or public or statutory person of, or of the government of, a state or any regional or local authority thereof
“State corporation”	any company or other legal person which is directly or indirectly controlled or more than 50 per cent. of whose issued equity share capital (or equivalent) is beneficially owned by, and/or by any one or more agencies of, a State (<u>which does not include any regional or local authority</u>) or all of whose liabilities are guaranteed by a State or which is specified as such from time to time by the Exchange

- “stock exchange”** Any stock exchange that is a member of the World Federation of Exchanges
- “Supranational”** any institution or organisation at a world or regional level which is specified from time to time by the Exchange

APPENDIX IV: AMENDMENTS TO THE GEM RULES

Chapter 30

DEBT SECURITIES

DEBT ISSUES TO PROFESSIONAL INVESTORS ONLY

Introduction

30.01 This Chapter deals with debt issues to Professional Investors only. It sets out the qualifications for listing, application procedures, contents of listing documents and the obligations that apply after listing.

Listing Approval

30.02 A listing application may be approved by:

- (a) A member of the Listing Division to whom the Executive Director – Listing Division has delegated authority;
- (b) ~~T~~the Executive Director – Listing Division (who may also delegate approval authority within the Listing Division); or
- (c) ~~T~~the GEM Listing Committee.

Applicants' Qualifications for Listing

30.03 An issuer must be a company whose equity securities are listed on GEM or will be listed on GEM before any debt securities are listed.

30.04 If an issuer does not meet the eligibility criteria above it is eligible for a listing of guaranteed debt securities if:

- (a) ~~It~~ is a body corporate that is validly incorporated or established; and
- (b) ~~It~~ is wholly owned by a body corporate that meets the eligibility criteria above; and
- (c) ~~Its~~ owner guarantees its obligations; and
- (d) ~~It~~ and its owner agree to comply with the GEM Listing Rules.

Securities' Qualifications for Listing

30.05 The debt securities must be freely transferable with a denomination of at least HK\$500,000 (or equivalent in other currencies).

30.05A Except in the case of a tap issue, the debt securities must be of a principal amount of at least HK\$100 million (or equivalent in other currencies).

30.06 The debt securities must have been validly authorised.

30.07 The debt securities:

- (a) must comply with the law of the place where the issuer is incorporated or established; and
- (b) must comply with the issuer's memorandum and articles of association or equivalent documents.

30.08 If an issuer is issuing guaranteed debt securities under rule 30.04 the guarantee:

- (a) ~~M~~must have been validly authorised;
- (b) ~~M~~must comply with the guarantor's memorandum and articles of association or equivalent documents, if the guarantor is a body corporate; and
- (c) ~~M~~must comply with the law of the place where the guarantor is incorporated or established.

Convertible Debt Securities

30.09 This section sets out additional requirements that apply if debt securities are convertible.

30.10 If debt securities are convertible they must be convertible into:

- (a) ~~S~~shares listed or to be listed on the Exchange or another stock exchange; or
- (b) ~~D~~depository receipts listed or to be listed on the Exchange or another stock exchange; or
- (c) ~~O~~ther assets that the Exchange has agreed in writing are acceptable.

30.11 If debt securities are convertible into shares that have not yet been issued:

- (a) ~~T~~he issuance of the shares must have been validly authorised; and
- (b) ~~T~~he listing of the shares must have been validly authorised.

30.12 If debt securities are convertible into shares (or into depository receipts) the terms of the issue must provide for appropriate adjustments to the conversion terms if there is a change in the capital of the issuer of those shares or a change in the capital of the issuer whose shares underlie the depository receipts.

- 30.13 The Exchange treats debt securities with non-detachable warrants to subscribe for equity securities or other assets as convertible securities.

Options, Warrants and Similar Rights

- 30.14 This section sets out additional requirements that apply to options, warrants or similar rights.
- 30.15 The securities underlying the options, warrants or similar rights must be:
- (a) ~~D~~ebt securities that are listed or to be listed on the Exchange;
 - (b) ~~D~~ebt securities listed or to be listed on another stock exchange; or
 - (c) ~~O~~ther debt security that the Exchange has agreed in writing is acceptable.
- 30.16 If the underlying debt securities have not yet been issued:
- (a) ~~T~~heir issuance must have been validly authorised; and
 - (b) ~~A~~ny listing of them must have been validly approved.
- 30.17 If options, warrants or similar rights are convertible into debt securities, the terms of the issue must provide for appropriate adjustments to the conversion rights if there is a change in those debt securities.

Listing Document

- 30.18 This section sets out the information that an issuer must disclose in its listing document and other requirements relating to the listing document. For debt issuance programmes these requirements apply to the base listing document and the supplementary listing document (including but not limited to the pricing supplement) for each issue under the programme.
- 30.19 A listing document must contain a disclaimer statement:
- “Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this document, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”
- The disclaimer must be legible and appear on the front cover or inside cover of the listing document.
- 30.20 A listing document must contain the following statement:

“Characteristics of GEM of The Stock Exchange of Hong Kong Limited (the “Exchange”)

GEM has been positioned as a market designed to accommodate small and mid-sized companies to which a higher investment risk may be attached than other companies listed on the Exchange. Prospective investors should be aware of the potential risks of investing in such companies and should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors.

Given that the companies listed on GEM are generally small and mid-sized companies, there is a risk that securities traded on GEM may be more susceptible to high market volatility than securities traded on the Main Board and no assurance is given that there will be a liquid market in the securities traded on GEM.”

30.21 A listing document must contain a responsibility statement:

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The issuer accepts full responsibility for the accuracy of the information contained in this document and confirms, having made all reasonable enquiries, that to the best of its knowledge and belief there are no other facts the omission of which would make any statement herein misleading.”

The Exchange may require appropriate modification to the statement if an issue is guaranteed or issued pursuant to a debt issuance programme. The Exchange may allow others to make the statement but an issuer must seek prior consent for this.

30.22 A listing document must contain the information that the investors an issuer is offering the securities to would customarily expect it to contain. It need not comply with Appendix 1, part C.

30.23 A listing document must contain any additional information that the Exchange requires.

30.24 A listing document must contain a statement limiting its distribution to Professional Investors only.

30.24A The front cover of a listing document must contain a statement on the intended investor market in Hong Kong (i.e. Professional Investors only) for the debt securities.

30.25 A listing document must be in English or Chinese.

30.26 A listing document may be in printed or electronic form.

Application Procedures

- 30.27 This section sets out the procedures that an issuer must follow to apply for listing of securities or listing of a debt programme. An application involves determining whether an issuer is eligible for listing and whether securities are eligible for listing. The Exchange will use the information that an issuer supplies to make these assessments. The documents an issuer submits must be in English or Chinese or translated into one of these languages.
- 30.28 An issuer must submit the following:
- (a) ~~C~~ompleted application form. If an issue is guaranteed the guarantor must also complete the application form. This is set out in Appendix 5, part C.
 - (b) ~~L~~isting fee as provided in Appendix 9.
 - (c) ~~D~~raft listing document.
 - (d) ~~D~~raft formal notice of listing.
 - (e) ~~[Repealed [●]] If an issuer is not listed on GEM a copy of its memorandum and articles of association, certificate of incorporation or equivalent to show that the issuer is validly incorporated or established.~~
 - (f) ~~[Repealed [●]] If debt securities have been authorised by shareholders then a copy of the resolution.~~
 - (g) ~~[Repealed [●]] A copy of the resolutions by the issuer's board of directors authorising~~
 - ~~(1) the issue and allotment of the debt securities~~
 - ~~(2) the application for listing~~
 - ~~(3) issuing the listing document.~~
 - (h) ~~[Repealed [●]] If an issue is guaranteed, a copy of the resolutions by the guarantor's board of directors authorising~~
 - ~~(1) the listing application~~
 - ~~(2) issuing of the listing document.~~
 - (i) ~~I~~f an issue is convertible into shares a copy of the approvals authorising the issue and listing of those shares.
 - (i) a written statement by the issuer's duly authorised representative confirming:

- (1) where the issuer is not listed on the Exchange, the issuer has been validly incorporated or established in its place of incorporation or establishment; and
 - (2) the issuer has obtained all necessary internal authorisations to issue and allot the debt securities, make an application for listing and issue the listing document.
- (k) if an issue is guaranteed, a written statement by the guarantor's duly authorised representative confirming:
- (1) where the guarantor is not listed on the Exchange, the guarantor has been validly incorporated or established in its place of incorporation or establishment; and
 - (2) the guarantor has obtained all necessary internal authorisations to approve the listing application and the issuing of the listing document.

An issuer may submit drafts of the application form in (a) and the ~~authorisations and resolutions confirmation~~ in (f), (gj) and (hk) to enable the Exchange to consider whether an issue and issuer are eligible for listing. The final ~~resolutions and authorisations confirmation~~ in (f), (gj) and (hk) may be submitted after the listing application but before listing.

- 30.29 After the Exchange has considered an application it will issue a Listing Eligibility letter. In this letter it will advise an issuer whether it and its debt securities are eligible for listing. The Exchange will also indicate whether it requires inclusion of additional information in the listing document. The letter is valid for three months from the date of issue. For routine applications the Exchange aims to issue this letter 5 business days after it receives the application.
- 30.30 An issuer must not issue the listing document in final form until the Exchange has confirmed that the issuer may issue it. A draft may be circulated for the purpose of arranging underwriting, syndication and marketing of the offering to Professional Investors.
- 30.31 In the period from when the listing document is issued to the date of listing an issuer must advise the Exchange of any material event that it would have disclosed in the listing document if it had been aware of the event before the listing document was finalised.
- 30.32 An issuer must publish a formal notice before listing. The notice must be in English or Chinese. A model form of notice is set out in Appendix 10.
- 30.32A An issuer must also publish on the GEM website the listing document (in English or Chinese) on the listing date. For debt issuance programmes this requirement applies to the base listing document and the supplementary listing document (including but not limited to the pricing supplement) for each issue of listed debt securities under the

programme.

Programmes

- 30.33 This section sets out the procedures for listing securities under a programme that the Exchange has approved.
- 30.34 A debt programme that the Exchange has approved is valid for issuing debt securities for one year after the date it is published.
- 30.35 An issuer must submit the pricing supplement for an issue under a programme before 2:00 pm of the business day before listing is required to become effective. It must not issue the pricing supplement until the Exchange has confirmed that the issuer may issue it.
- 30.36 The Exchange will approve the listing of all securities issued under a valid programme subject to the issuer:
- (a) ~~N~~notifying it of the final terms of each issue;
 - (b) ~~C~~confirming that the securities have been issued; and
 - (c) ~~P~~paying the appropriate listing fee before listing.

Continuing Obligations

- 30.37 This section sets out the obligations that apply to an issuer if the Exchange agrees to list its securities. If the securities are guaranteed then the guarantor must also comply with the these obligations set out in rules 30.38, 30.39, 30.39A, 30.40, 30.40A, 30.40D, 30.40E and 30.46 and accordingly, references in these rules to “issuer” shall be construed accordingly to mean the “guarantor” and references to “issuer’s listed debt securities”, “its listed debt securities” and “the listed debt securities” shall be construed accordingly to mean the listed debt securities guaranteed by the guarantor. An issuer (and a guarantor, if any) must comply with these obligations:
- (a) until the securities expire or
 - (b) until they are withdrawn from listing.
- 30.38 If an issuer is required to announce information then:
- (a) it must do so by an announcement under rules 16.17 and 16.18, except that the announcement may be in English or Chinese only; and
 - (b) ~~T~~the announcement must include the following disclaimer:

“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong

Kong Limited take no responsibility for the contents of this announcement, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

30.39 An issuer must comply with the GEM Listing Rules in force from time to time.

30.39A When the Exchange makes enquiries concerning unusual movements in the price or trading volume of an issuer’s listed debt securities, the possible development of a false market in its listed debt securities, or any other matters, the issuer must respond promptly as follows:

- (a) provide to the Exchange and, if requested by the Exchange, announce, any information relevant to the subject matter(s) of the enquiries which is available to it, so as to inform the market or to clarify the situation; or
- (b) if, and only if, the directors of the issuer, having made such enquiry with respect to the issuer as may be reasonable in the circumstances, are not aware of any matter or development that is or may be relevant to the unusual trading movement of its listed debt securities, or information necessary to avoid a false market, or any inside information which needs to be disclosed under the Inside Information Provisions, and if requested by the Exchange, make an announcement containing a statement to that effect.

30.40 An issuer must as soon as reasonably practicable ~~immediately~~, after consultation with the Exchange, announce any information which:

- (a) [Repealed 1 January 2013]
- (b) is necessary to avoid a false market in its listed debt securities where in the view of the Exchange there is or there is likely to be a false market in its listed debt securities.

Note: If an issuer believes that there is likely to be a false market in its listed debt securities, it must contact the Exchange as soon as reasonably practicable.

- (c) [Repealed 1 January 2013]

30.40A ~~The issuer~~ ~~If the securities are guaranteed, the guarantor~~ must as soon as reasonably practicable ~~immediately~~ announce any information which may have a material effect on its ability to meet the obligations under the listed debt securities.

- 30.40B (a) Where an issuer is required to disclose inside information under the Inside Information Provisions, it must also simultaneously announce the information.
- (b) An issuer must simultaneously copy to the Exchange any application to the Commission for a waiver from disclosure under the Inside Information Provisions,

and promptly upon being notified of the Commission's decision copy it to the Exchange.

30.40C An issuer must, as soon as reasonably practicable, apply for a trading halt or a trading suspension where there is information under rule 30.40 or rule 30.40A, or inside information which must be disclosed under the Inside Information Provisions, or inside information which is the subject matter of an application to the Commission for a waiver but its confidentiality has been lost, and the information cannot be announced promptly.

30.40D An issuer must, after trading in its listed debt securities has been suspended, publish quarterly announcements of its developments.

30.40E An issuer must as soon as reasonably practicable announce any information which relates to:

(a) a default on its listed debt securities;

(b) the appointment of a receiver or manager either by any court having jurisdiction or any application to any court having jurisdiction for the appointment of a receiver or manager, or equivalent action in the country of incorporation or other establishment, in respect of the business or any part of the business of the issuer or the property of the issuer;

(c) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator, or equivalent action in the country of incorporation or other establishment, against or in respect of the issuer; or

(d) the passing of any resolution by the issuer that it be wound up by way of members' or creditors' voluntary winding-up, or equivalent action in the country of incorporation or other establishment.

30.41 An issuer must announce as soon as possible:

(a) ~~If~~ aggregate redemptions or cancellations exceed 10% and every subsequent 5% interval of an issue; or

(b) ~~Any~~ public disclosure made on another stock exchange about its listed debt securities.

30.42 An issuer must notify the Exchange in advance of any proposal to:

(a) ~~R~~replace a trustee for bondholders; or

(b) ~~A~~amend the trust deed; or

- (c) ~~A~~amend the terms of convertible listed debt securities unless that amendment occurs automatically in accordance with their~~the~~ terms of ~~the~~ debt securities.

An issuer must not proceed with any proposed change until the Exchange has advised whether it will impose conditions for the change.

- 30.43 An issuer must notify the Exchange as soon as possible if:
- (a) ~~it~~ has repurchased and cancelled all of an issue of its listed debt securities; or
 - (b) ~~it~~ has redeemed all of an issue of its listed debt securities prior to the maturity date; or
 - (c) ~~A~~all of an issue of convertible listed debt securities has been fully converted.

In each case, the issuer must apply to the Exchange for the listed debt securities to be delisted. The Exchange will then formally delist ~~the~~ such debt securities.

- 30.44 An issuer must notify the Exchange as soon as possible if its listed debt securities are listed on another stock exchange.
- 30.45 An issuer must provide the Exchange with a copy of any circular that is sent to bondholders or to any trustee. If the circular is published on a website and the issuer notifies the Exchange when it is published on that site it does not have to send it a printed copy.
- 30.46 If an issuer is a body corporate it must provide the Exchange with its annual accounts and any interim report when they are issued. An issuer is exempt from this requirement if its securities are guaranteed by a body corporate in which case it must provide the guarantor's annual accounts and interim report. The Exchange will accept a printed or electronic copy. If the annual accounts or interim report are published on a website and the issuer notifies the Exchange when they are published on that site it does not have to send it a printed copy.

Authorised Representatives

- 30.47 An issuer must appoint two authorised representatives to communicate with the Exchange and must notify the Exchange of any change of representative. The representatives do not have to be resident in Hong Kong.

Other

- 30.48 If an issuer or its debt securities does not comply with these requirements the Exchange will not list them unless it agrees to modify these requirements.
- 30.49 The Exchange may accept or reject a listing application or make listing subject to additional conditions.

30.50 The Exchange may impose additional obligations on an issuer or guarantor. The Exchange will allow an issuer or guarantor to make representations before imposing requirements on it that are not imposed on issuers or guarantors of debt securities generally.

Definitions

30.51 In this Chapter the following definitions apply:

“bearer securities”	securities transferable to bearer
“convertible debt securities”	debt securities convertible into or exchangeable for equity securities or other property and debt securities with non-detachable options, warrants or similar rights to subscribe or purchase equity securities or other property attached-
“debt issuance programmes”	issues of debt securities where only part of the maximum principal amount or aggregate number of securities under the issue is issued initially and a further tranche or tranches may be issued subsequently
“debt securities”	debenture or loan stock, debentures, bonds, notes and other securities or instruments acknowledging, evidencing or creating indebtedness, whether secured or unsecured and options, warrants or similar rights to subscribe or purchase any of the foregoing and convertible debt securities-
<u>“listed debt securities”</u>	<u>debt securities that are listed on the Exchange</u>
“Professional Investor”	(a) For a person in Hong Kong a professional investor as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance (excluding <u>including</u> those prescribed by rules made under section 397 of that Ordinance); or (b) For a person outside Hong Kong, a professional investor is a person to whom securities may be sold in accordance with a relevant exemption from public offer regulations in that jurisdiction-
“stock exchange”	Any stock exchange that is a member of the World Federation of Exchanges

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