

## Part B Consultation Questions

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

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

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

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

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

Yes

No

Please give reasons for your views.

The NAV Requirement is only applicable to companies that are not listed. It is right that there be a higher standard to ensure the quality of debt issuers.
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2. (a) Do you agree that the Exchange should maintain the current Eligibility Exemption available for State corporations?

Yes

No

Please give reasons for your views.

There should be no State corporation exception. State corporations should be subject to the same eligibility requirements as other debt issuers. Given their background as a State corporation, these issuers are likely to be of significant size and therefore already able to meet the eligibility requirements without special dispensation.

The consultation paper notes that the Eligibility Exemption is based on "whether corporations are majority owned by, and/or by agencies of, a State rather than financial support or backing provided by a State". However, ultimately the reason this is considered an acceptable basis is because it State ownership serves as a proxy for measuring the financial strength or safety of a debt issuer. Therefore this distinction in basis is not a good justification for maintaining the current Eligibility Exemption.

Rather, State corporations should be treated like all other corporations and subject to the same eligibility requirements, which already test for financial strength and safety. It is notable that there is no equivalent eligibility exemption available in SGX, LUXSE, ISE and LSE and that there has been no strongly reasoned justification for having the Eligibility Exemption in the first instance.

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

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

Yes

No

Please give reasons for your views.

HK\$100 million is significantly higher than the minimum issuance size requirements of other listing venues indicated in the consultation paper (between HK\$1.85 million and 29.05 million), which would put HKEX at a competitive disadvantage, particularly compared to Singapore (which is the most directly comparable listing venue for potential HKEX debt issuers).

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

The statement under proposed rule 37.31A is mandatory in all instances (as is the statement required under rule 37.31), and as paragraph 81 of the consultation paper suggests, it is intended to 'replace the current legend'. It is therefore duplicative to have both rule 37.31 and rule 37.31A, and it would be preferable, more simple and more user friendly for the wording to be combined into a single amended rule 37.31.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

This additional complexity is not to be preferred. Give the significant overlap in instances where debt is issued to Institutional Investors only and both Institutional and HNW Investors (particularly taking into account the secondary market activities discussed in the consultation paper), simplicity and consistency should be maintained in these disclosure requirements.

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

Yes

No

Please give reasons for your views.

Guidance by way of guidance letter is preferable to FAQs.

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

Yes

No

Please give reasons for your views.

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

Yes

No

You may provide reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

Given the reasoning for these rule amendments is equally applicable, it is suggested that rule 37.35(j) should also be repealed and replaced with a written confirmation of due approval and authorisation.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

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

37.02: Would it be more accurate for 'Listing Division' to be amended to 'Listing Department'? Additionally, (a) "a member of the Listing Division to whom the Executive Director - Listing has delegated authority" seems duplicative of the part of (b) in brackets, being "who may also delegate approval authority within the Listing Division".

- 37.11 and 37.12: In 37.11 the requirement regarding compliance with the law of the place comes BEFORE the requirement regarding compliance with the M&A (items a and b respectively). However, in 37.12 the requirement regarding compliance with the law of the place comes AFTER the requirement regarding compliance with the M&A (items c and b respectively). The ordering of these items should ideally be made consistent across the two rules.

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