



CHARTERED
SECRETARIES
特許秘書

The Hong Kong Institute of Chartered Secretaries

Submission:

Consultation Paper Review of Chapter 37 – Debt Issues to
Professional Investors Only

8 January 2020

By Email: response@hkex.com.hk
Corporate and Investor Communications Department
Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place, Central
Hong Kong

Dear Sirs

Consultation Paper: Review of Chapter 37 – Debt Issues to Professional Investors Only

Terms and expressions used in this Submission shall have the meanings under the Consultation Paper unless the context requires otherwise.

About HKICS

The Hong Kong Institute of Chartered Secretaries (Institute) is an independent professional institute representing Chartered Secretaries and Chartered Governance Professionals as governance professionals in Hong Kong and Mainland China with over 6,000 members and 3,200 students. The Institute originates from The Chartered Governance Institute, formerly known as The Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with 9 divisions and over 30,000 members and 10,000 students internationally. The Institute is also a Founder Member of Corporate Secretaries International Association Limited (CSIA), an international organisation comprising 14 national member organisations to promote good governance globally.

General Support

From the governance perspective, our Institute generally supports the proposals set out under the Consultation Paper.

Specifically, our Institute agrees that there should be a difference in terms of investor protection afforded to professional investors – and in this instance under the Professional Debt Regime. Our Institute recognises that a light-touch approach, as from 2011, is consistent with that of our competing markets. We have no concerns in this regard.

Our Institute also agrees with the concern in relation to secondary market access by non-professional investors requiring, by way of compliance, for Licensed Intermediaries to examine the suitability of a specific product for a specific customer in light of the investment objectives and financial circumstances of that customer (who is not a professional investor). In the context, our Institute generally support:

1. The increase of the NAV Requirement for issuers. We agree with the rationale under the Consultation Paper that a higher NAV Requirement would help to ensure that only issuers with larger asset pools could list debts on the Exchange under Chapter 37. Our Institute however cannot comment on

whether the move from HK\$100 million to HK\$1 billion is appropriate or not and defer this matter to industry participants who would have a better sense as to how this would affect the pipeline of debt issues to professional investors which is a market issue.

2. The maintenance of the current Eligibility Exemption available for State corporations given that the Eligibility Exemption is based on whether corporations are majority owned by, and/or by agencies of a State, rather than the financial support or backing provided by a State in case of default of its payment obligations.
3. The introduction of a minimum size requirement to enhance the Professional Debt Regime by ensuring that only issuers with financial capacity and a proven track-record of supporting debt issuances of significant amounts would be eligible in line with other key professional debt listing markets, including Singapore and the EU. Our Institute however cannot comment if HK\$100 million would be an appropriate minimum size and defer to industry participants on this market issue.
4. The requirement for 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 to better alert retail investors in Hong Kong that they are not the intended class of investors for Chapter 37 Debts.
5. The publication (on the listing date) of listing documents for Chapter 37 Debts which would benefit both Licensed Intermediaries and potential investors as they will have access to the necessary information on the relevant Chapter 37 Debts (for example, business description and financial position of issuers and/or guarantors, structure, terms and conditions and associated risks) and be alerted to the caution statements included in the listing documents highlighting the nature of the securities which target professional investors only.
6. The issuance of market guidance on what would be customarily expected by target investors to be included in the listing documents relating to disclosures of specified Special Features. We agree that the proposed guidance should: (a) discuss disclosures in offering documents which are customarily expected by professional investors (i.e. Institutional Investors and HNWI Investors) in respect of Chapter 37 Debts that contain Special Features and include suggestions on how to draw investors' attention to these Special Features and the associated risks; (b) remind issuers generally that disclosures in the listing document should be commensurate with the customary expectations of their intended investors; and (c) remind issuers to generally highlight in the summary of terms and conditions section of the offering documents the structure and features of the debts as well as any key terms affecting the rights of the investors.
7. The proposed codification of PI Waiver to streamline the applicable Rules and to alleviate unnecessary administrative burdens on issuers.
8. The proposals relating to:
 - (a) an amendment to allow an eligibility assessment referencing REIT Assets and REIT Financials if the REIT Assets will be applied for satisfying obligations under the debt securities issued by a REIT Issuer (or guaranteed by the REIT Guarantor, as the case may be). Further, if the REIT is listed on the Exchange, a REIT Issuer (or the REIT Guarantor, as the case may be) will enjoy the Eligibility Exemption (as afforded to HK Listcos);

- (b) the inclusion of a specific obligation for an issuer and a guarantor of Chapter 37 Debts to respond promptly to the Exchange's enquiries;
- (c) the inclusion of a specific obligation for issuers and guarantors to announce Relevant Information (i.e. default of its debt securities listed on the Exchange, winding-up and/or liquidation);
- (d) the inclusion of a requirement for issuers and/or guarantors to publish quarterly announcements of its developments after trading suspension of Chapter 37 Debts to improve transparency;
- (e) an amendment to allow the announcements of information to avoid a false market or information that may materially affect guarantor's obligations under Chapter 37 Debts if guarantees to be made "as soon as reasonably practicable" rather than "immediately";
- (f) an amendment to require an issuer to announce information which may have material effect on its ability to meet its obligations under Chapter 37 Debts;
- (g) an amendment to clarify the guarantors' continuing obligations;
- (h) an amendment to clarify the scope of debt securities with respect to the continuing obligations;
- (i) the replacement of the obligation for issuers (and the guarantors, as the case may be) to submit copies of constitutional documents and resolutions authorising, among other things, the issuance of debt securities with a written confirmation of due incorporation, capacity and authorisation;
- (j) the clarification of the requirements for issuers and guarantors to submit audited financial statements (instead of last published financial statements) to establish the fulfilment of the Issuer Eligibility Requirements (so that submission of audited financial statements is only necessary for the issuer or the guarantor that an issuer relies on in fulfilling the Issuer Eligibility Requirements, with no submission being necessary where the issuer (or the guarantor, as the case may be) is exempted from the Issuer Eligibility Requirements, or if the financial information is already included in the listing document);
- (k) an amendment to clarify that reference to supplementary listing document includes a pricing supplement; and
- (l) the making of housekeeping changes to improve Rules clarity and to correct any typographical errors.

Should you have any questions, please feel free to contact Samantha Suen FCIS FCS(PE), Chief Executive, HKICS or Mohan Datwani FCIS FCS(PE), Senior Director; and Head of Technical and Research, HKICS at [REDACTED]

Yours sincerely

For and on behalf of
The Hong Kong Institute of Chartered Secretaries



Gillian Meller FCIS FCS
President

